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Metro

REVISED
CONSTRUCTION COMMITTEE
NOVEMBER 6, 2014

SUBJECT: BUSINESS INTERRUPTION FUND (BIF) MONTHLY REPORT

ACTION: APPROVE RECOMMENDATIONS

RECOMMENDATIONS

A. Authorize the Chief Executive Officer to amend the FY15 budget to add one (1) FTE for the Director, Business Interruption Fund Program.

B. Authorize the Chief Executive Officer to negotiate a two-year (2) with two (2) one-year options, sole source contract for a not to exceed amount of 4.5% of the annual Business Interruption Fund amount, with Pacific Coast Regional to serve as the fund administrator.

C. Authorize the Chief Executive Officer to negotiate a modification to contract PS05312717 with Carl Warren & Company for claims staffing support for an amount not to exceed $1.4 million for a period of two years.

D. Authorize the Chief Executive Officer to negotiate a modification to contract PS53101807 with Computer Science Corporation for claims system software and service for an amount not to exceed $250,000 for a period of eight years.

E. Receive and File the draft Business Interruption Fund Program Guidelines and Application.

F. Receive and File the Measure R Cost Management Process and Policy Analysis.

ISSUE

On October 2, 2014 Metro's Board issued Motion 57 that authorized the CEO to establish a pilot program for a special Business Interruption Fund (BIF) for mom and pop businesses located along the Crenshaw Line, the Little Tokyo area along the Regional Connector and Phase I of the Purple Line extension. Metro staff recommends that the Board of Directors approve the staff recommendations to meet the Board's objectives and ensure a successful program. This report provides an overview of the actions initiated and includes recommendations to support prompt implementation of the BIF.

DISCUSSION

Metro staff immediately convened a cross function team to provide ongoing focus on developing an approach and strategy for the implementation and administration of the BIF. Staff have initiated several actions inclusive of but not limited to: conducted peer agency review of Houston Metro's Business Assistance Fund Program; retained the services of dedicated counsel to provide oversight for the development of business loss claims guidelines and procedures; conducted a meeting with the Design Build Contractors for Crenshaw/LAX and Regional Connector transit projects; identified two approaches for the administration and implementation of the BIF; and conducted a Measure R policy analysis and funding assessment.

Lastly, Metro staff has also sought the advisory services from staff within the City of New Orleans, United States Department of Housing and Urban Development (HUD), Wells Fargo Bank's community investment group and others to gather lessons learned and best practices in disaster relief, emergency response and administration of emergency gap financing programs.

(1.) Approaches to BIF Administration

Staff has identified two approaches for the administration of the Business Interruption Fund. ~~which are not mutually exclusive.~~ One approach is to outsource fund administration to an external Community Development Financial Institution (CDFI) while another approach is to insource fund administration through an existing agreement with Metro's current tort liability Third Party Claims Administrator (TPA). In assessing each approach, the following factors have been considered and continue to be assessed: access and availability of service providers; resource requirements (personnel and infrastructure); timeline for disbursement of funds; and costs for administration.

A. Outsource (External): CDFI

In the course of conducting research of peer transit agencies that have implemented financial programs to support small businesses impacted by transit projects, best practices continue to emerge for programs that demonstrate strong advocacy and partnerships between public transit agencies and community development corporations in establishing programs and strategies that support impacted businesses.

During the peer review of Houston Metro's Business Assistance Fund Program, staff learned that they partnered with a successful local CDFI to administer their program. Recognizing the role CDFI's have in providing specialized financial, community and economic development services to diverse communities throughout Los Angeles County staff contacted four CDFIs: Local Initiative Support Corporation (LISC); Pacific Coast Regional Small Business Development Corporation (PCR); Enterprise Partners; and Genesis LA. Staff has held discussions with the Local Initiative Support Corporation and Pacific Coast Regional; PCR has already submitted a preliminary proposal that is under consideration. One of the four organizations, Enterprise Partners declined to participate in exploratory discussions due to their organization's specialization in housing and not financial services and Genesis LA did not respond.

Further, industry best practices for business impact mitigation on transit projects also recommend administration with a community partner familiar with small businesses. The assessment of partnering with a CDFI for the administration of the BIF is based on the following key considerations:

- Experience in community and economic development including small/micro businesses (including mom and pop businesses) and financial support services;
- Experience with disaster relief and/or emergency gap financing to demonstrate ability to accelerate disbursement of funds;
- Experience and familiarity with Los Angeles County, mom and pop businesses and community involvement; and
- Demonstrated resources and capacity to administer the fund.

Recognizing the urgency to develop a BIF implementation strategy that provides access to financial assistance for eligible impacted mom and pop businesses including the unique services to be provided for the administration of the program, it has been determined that a sole source procurement would be the most appropriate and suitable procurement type, thus requiring authorization from Metro's Board of Directors for the CEO to negotiate a sole source contract with PCR for a not to exceed the amount of 4.5% of the annual fund.

PCR is a private non-profit, 501-C3 corporation in the midst of its 38th year of helping entrepreneurs take their places as vital contributors to Los Angeles County economy. To fulfill its mission of the "delivery of education and finance services to small businesses most in need" PCR uses a combination of state, federal and private resources. Further since 1977 the State of California has contracted with a network of nine Financial Development Corporations (FDCs) including PCR to provide small business technical and financial assistance in the most difficult of circumstances. Consequently, the FDC have been deployed during earthquakes, fires floods, and even riots to assist the state's small business community when other resources were simply not available. These are the circumstances that have necessitated the BIF, and these are the experiences that make PCR uniquely qualified as the BIF administrator.

B. In-Source (Internal): TPA

<u>Staff's preferred approach is to use a CDFI for administration of the program. However, a</u>nother approach that has been initiated in parallel to the CDFI approach under consideration is to leverage Metro's existing agreement with the Third Party Claims Administrator (TPA) to perform as-needed claims administration services in the immediate to near term. Metro's current TPA agreement for low value (less than $50,000) third party claims administration is with Carl Warren and Company. The current agreement is for a firm fixed price contract to manage low-value tort claims

primarily related to bus and rail collisions. Through a contract modification, the TPA will be available to provide claim's administration services and staff to administer BIF claims on a temporary as-needed basis. The TPA's as-needed services for claims administration will allow for adaptive staffing during the initial rollout and implementation of the BIF. This approach will also support static adjustments given the number of claim applications is uncertain, particularly given that the construction schedule and duration of construction impacts in the Little Tokyo Regional Connector and Phase I Purple Line extension are uncertain.

Moreover, leveraging the existing agreement for as-needed TPA services does not need to be mutually exclusive of leveraging a CDFI for administration of the BIF. A contract modification to the existing TPA agreement will provide an immediate yet temporary approach to address the initial implementation activities. If it is deemed that a permanent TPA is required Metro's Risk Management Department will initiate a formal solicitation process to secure permanent services. If an agreement is entered with a CDFI for overall program administration, the as-needed TPA services will no longer be required. This approach will require authority to negotiate a modification to contract PS05312717 with Carl Warren & Company for an amount not to exceed $1.4 million for a period of two years. The proposed modification with Carl Warren & Company is hourly rate based, and Metro would not staff this contract to administer the BIF unless the CDFI approach is either unacceptably delayed or performance of the selected CDFI does not meet Metro's standards. Staff will notify the Board prior to initiating a notice to proceed for services.

(2.) Resource Requirements for BIF Administration

A. Software Upgrade

Metro currently uses a software system licensed from Computer Science Corporation (CSC) to process tort claims, electronically warehouse documents related to the assessment of claims and process payments through an interface with Bank of America. The existing system requires application configuration specifically to accommodate the administration of the BIF claims through the TPA. The system configuration services will require authority to negotiate a modification to contract PS53101807 with CSC for an amount not to exceed $250,000 for a full eight years. System and database configuration necessary to support the BIF is expected to cost roughly $100,000 on a one time basis and may take upwards of 4 months to complete. Not funding this activity would eliminate the TPA option as an alternative to the CDFI.

B. Staffing

After reviewing peer agencies and industry best practices for business impact mitigation programs, we recommend the creation of dedicated position to serve as the Managing Director to coordinate and lead the ongoing activities associated with the implementation and administration of the BIF program. The position will require knowledge and experience in community and/or economic development, grant management and familiarity of post disaster/emergency response coordination. A draft position description is provided as Attachment A. The creation of the Director level position will require authorization from Metro's Board of Directors for the CEO to amend the FY15 budget.

The highlighted tables summarize the forecasted costs and timeline associated with administration approaches. Either one or the other of these alternatives would be selected. Therefore, these two approaches are not additive. If the CDFI administration approach is implemented, the costs associated with the TPA option (including 10% contingency), except for initial systems development would not be required. If the TPA alternative is ultimately selected instead of the CDFI, we are estimating that the first year costs would be roughly $400,000 for three FTE's ramping up to five FTEs in the second year of the program.

YR 1 Forecasted Costs and Timeline

Resource	Third Party Claims Administrator (TPA)	Community Development Financial Institution (CDFI)
Professional Services for Program Administration	~~$700,000~~ $434,000	$450,000
Infrastructure / Computer System Configuration	~~$250,000~~ $126,000	N/A
Metro FTE	$200,000	$200,000
Business Loss Claims Management Consultant	TBD	TBD
Total Costs:	**~~$1,150,000~~ $760,000**	**$650,000**

Task	Third Party Claims Administrator (TPA)	Community Development Financial Institution (CDFI)
Contract Execution/ NTP	November 2014	November 2014
Personnel Hired/Assigned	February 2015	November 2014
Infrastructure/Computer System Configured	April 2015	December 2014
Program Operation/Launch	July 2015	February 2015
Total Months:	**9 months**	**4 months**

(3.) Preliminary Program Guidelines

In an effort to develop BIF program guidelines in an expedient yet prudent and credible manner, Metro staff has adapted Houston Metro's Business Assistance Program guidelines as a baseline model for Metro's BIF. The guidelines adopted by Houston Metro align with Metro's primary goals to:

- Develop a simple yet credible process.
- Promote efficient eligibility determination including application, appeals and audit process.
- Promote streamlined process for prompt disbursement.

The draft program guidelines for the Metro BIF include key elements such as:

- Business Definition: Micro/Small Business (mom and pop) defined as for-profit business with 25 or fewer employees.

- Geographic Location: Located immediately adjacent to the rail alignment of three distinct rail transit projects: Crenshaw/LAX, Little Tokyo area of Regional Connector and Phase I of Purple Line Extension.

- Eligibility: Businesses must meet the predefined eligibility requirements such as being in good standing with all local, state and federal taxes, must be pre-qualified to participate in the program, must not exceed any predefined annual gross revenue and other eligibility requirements under consideration.

- Eligible Expenses: Costs may be requested to cover business expenses limited to: utilities, insurance, rent or mortgage payments, payroll or other documented business related expenses based on BIF program determination.

- Disbursement Threshold: Multiple requests may be filed. In no event will the amount paid exceed a maximum of $50,000 annually per business or exceed 60 percent of annual business revenue loss.

- Appeals: Businesses denied BIF assistance may request reconsideration of their denial. A formal appellate process will be established for claims that are denied.

- Audit: An annual audit of the BIF program will be conducted by Metro in addition on-site inspection / site visits of businesses will be routine.

Metro has retained outside counsel under a legal services agreement with Nossaman LLP to provide advisory services for the development of program guidelines, in particular to ensure the established program and guidelines do not reduce or waive insurance coverage afforded to Metro by our Design Build Contractors for insurable business interruption losses. The services of Nossaman are also being leveraged to secure consultancy services for a Business Loss Claims Management firm experienced in community redevelopment, grants processing and post-disaster response to provide advice in the development of program guidelines, the application process, the creation of forms and/or documentation and other operational requirements.

Moreover, staff will enlist the services of Nossaman and the proposed Business Loss Claims Management Consultant for advice in the development and adoption of the final program guidelines. Hence, the guidelines will be developed through collaboration of the consultant, TPA and/or CDFI and Metro. An outline of the Preliminary Program Guidelines and the BIF Application are provided as Attachments B and C.

DETERMINATION OF SAFETY IMPACT

Approval of this recommendation will not impact the safety of Metro's patrons or employees.

FINANCIAL IMPACT

Metro Board of Directors directed staff to identify $10 million in eligible funds from within the FY15 budget on ~~October 2, 2015~~ October 2, 2014. On October 23, 2014, Metro Board of Directors received a report identifying the range of eligible fund sources that could be considered for this program (Attachment D). From these eligible sources, we are recommending that up to $1 million or 10% be allocated from Measure R Administration funds for use in administering the BIF program in FY15 and the funds are available. The remaining $9 million may come from a combination of Proposition C 25% Direct funding (one third) and Measure R Transit Capital Improvement Sub-fund (two thirds). While there are no immediate trade-offs necessary to accomplish these commitments in FY15, the Metro Board's pre-existing policies also require us to determine not only fund eligibility, but fund availability.

To assess availability, the possible financial trade-offs that will be necessary to fund the program post FY 15 are now understood and presented in Attachment E, the Measure R Cost Management Process and Policy Analysis prepared in response to a policy adopted by Metro Board of Directors in March of 2011. This FY 15 funding is to be the first installment of an annual program that will be needed for approximately eight years. Using these assumptions, we are forecasting an up to $80 million cost for the life of the program, though we will not know the actual cost until we gain more experience with actual BIF claims. Since we know very little about the ultimate cost of this new program, are providing information here about possible financial trade-offs at the up to $80 million level and we are recommending that the information be simply received and filed until we gain more experience with actual claims.

Per the adopted policy, funding availability trade-offs must be considered in a step-wise fashion prior to approving project cost changes in Measure R transit and highway projects. In the analysis, staff recommends against reductions in the scope-of-work of the projects and acknowledges the lack of local, state, or federal funding for this program. The remaining trade-offs necessary to make these funds available over the anticipated seven year balance of this program involve suspending grants to the appropriate sub-regional recipients of the Call for Projects (Attachment F), respective project contingency or utilizing funds from the remaining Measure R transit capital projects scheduled during the BIF program period that are not yet under construction. Beyond those sources, Metro Board of Directors could look to its own capital maintenance and operational budgets. In weighing the trade-offs necessary in capital maintenance and operations, staff concludes that these are not advisable as they have safety and service reliability impacts.

Impact to Budget

The initial costs for the BIF program are administrative. Measure R Administration funds have been identified as eligible for this expense in the FY15 budget and does not impact bus and rail operations. The source of the funds beyond FY15 can be determined by the Board after reviewing the Policy analysis.

ALTERNATIVES CONSIDERED

1. Utilizing Metro staff for the administration and implementation of the Business Interruption Fund. This alternative is not recommended because Metro does not have the required staffing availability, dedicated resources or expertise to administer the BIF.

2. Outsourcing the administration of the Business Interruption Fund to the Crenshaw/LAX Pilot Business Solution Center, Little Tokyo Small Business Assistance Program and/or a small business assistance center/program servicing businesses impacted by Phase I of Purple Line transit construction. This alternative is not recommended due to the complexity of the BIF program including the specialized expertise in financial oversight, claims administration and program management that is required. In addition, this alternative will increase operational and administrative risk in that it would entail administration by three separate entities. Moreover, this approach will lend to lack of continuity, decentralized processes and oversight.

3. Implement only the insource administration. This alternative is not recommended because of the likely delay in disbursement of funds.

NEXT STEPS

Based upon Board action, required contracts will be negotiated and executed. Staff will report back on the status at the next Board cycle in January 2015.