

My Name is Ingrid Merriwether, President & CEO – Merriwether & Williams Insurance Services – A Commercial Property & Casualty Brokerage and Risk Management Consulting Firm.

Our firm provides commercial insurance brokerage services placing insurance such as property, general liability, builders risk and workers compensation for entities such as developers, manufactures and public entities including BART; CCSF; Sempra

We also provide Risk Management Consulting services including insurance program administration; claims third party administration construction safety and loss control and Owner Controlled Insurance Program brokerage and administration. These clients include public entities engaged in large \$100M plus construction projects such as Sacramento Regional Transit, BART and in the past, the State of California

Our firm also designs, implements and administers contractor bonding assistance programs for public entities throughout the state to reduce the barrier of bonding impeding access to public construction projects by small (including women and minority) contractors. We administer these programs for entities such as CCSF, Alameda County, the City of Los Angeles, and BART and have done so for 18 years.

I'd like to present two perspectives on the impact and recommendations in a post prop. 209 era. First, speaking from the direct contracting experience of our firm as respects public entity procurement of insurance brokerage and risk management consulting procurement, - generally convened through a professional services RFP process.

Although in our 18 years we've pursued many such opportunities, in the interest of time I will speak specifically to our experience with the State of California itself.

Prior to Prop 209, our firm as well as our predecessor entity who was also a minority owned firm, had the opportunity to participate in several State insurance procurements including that as a sub-consultant to a majority broker on a program for veteran homes as well as a direct prime contract whereby we placed property coverage for the Thermalito-Hyatt Water Facility. The State – pre=Prop. 209 had a mandated minimum MWBE participation requirement which opened up these opportunities for our firm.

Post prop. 209 and almost immediately following its passing, our firm was eliminated as a sub-consultant and had no new opportunities from the State absent the MWBE (Or a SBE alternative) participation requirement.

The State (as is the case with some other public entities) RFP procurement process has inherent and insurmountable obstacles eliminating many of the State's insurance brokerage firms from consideration. First off, absent a required participation goal – larger brokerage firms have no incentive to engage a firm such as ours – upon approach – these firms make it clear if there is no requirement, they have no interest to partner.

As respects direct prime contract opportunities, firms such as ours despite our past experience and our representation of other public entities on large complex risk are defacto eliminated from consideration through such “minimum qualification” requirements that establish arbitrary volume based criteria - such as you must have more than \$XXX premium dollars in the insurance marketplace for the specific coverages being procured. These levels range anywhere from \$50 Million to \$200 Million in premium representation. Typically, only a small number of brokers meet such requirements - this number would average no more than 5 firms being eligible. So – this omits our firm from consideration as a prime consultant.

This practice of procurement – using volume criteria, not only perpetuates the status of quo of the State only engaging 4 or 5 brokers for all the State's insurance business, it has historically contributed to market factors which led to industry fraud – whereby these very large brokerages were manipulating the large premium dollars they controlled in

the insurance marketplace (comprised of the majority of public entity business) to “direct” insurance placements to insurance carrier whom paid the highest profit sharing contingency – not making placements on the most competitive terms for their clients – this was exposed by Elliott Spitzer as Insurance Market Bid Rigging and ultimately led to the largest and quickest insurance broker settlements in history - \$890 Million which represented just 1 year of profit sharing from the biggest perpetrator of this practice. So – public entity using market volume factors to discern “most qualified” – creates an inherent and insurmountable obstacle for smaller firms like ours – but it also has contributed to perverse fraudulent activity for which the State itself could have been a victim.

Another and more recent practice by the State in procuring insurance brokerage services is the aggregation “or bundling” the vast majority of the State’s insurance placements into a single RFP and contract –omitting smaller placement opportunities for which the State under its “premium volume” guidelines could consider smaller firms. This recent procurement absent any small business participation requirements concurrent with minimum qualifications exclusively biased to only the State’s largest majority owned firm, virtually places a “closed for business” sign on the State of California for firms such as ours.

Another practice by public entities in California is the formation of JPA’s Joint Power Authorities – Although not likely intentional – many of these entities which are comprised of various “like agencies” (Counties, school districts, etc.) in part of the purpose of aggregating insurance purchasing – have omitted their participation in the public procurement process at all. Although they individually as single entities would have to follow State competitive bid contracting protocol, when they collect themselves as a JPA – these protocols seem to not apply or are not monitored for compliance. Many of these entities not only don’t have an open public competition for the insurance professional services they procure such as administration, brokerage, third party administration – they often all their “professional administrator” who manages the business of the JPA to provide all these services directly – also rendering these public entities as “closed for business”.

Based on our experience of these public entity procurement practices we would recommend the following:

- . Convert the current 25% aspirational goal to a 25% certifies small business requirement in all direct State contracting as well as making applicable to all recipient public entities (a waiver exception process could be included for appropriate application)

- . Eliminate RFP requirements that establish minimum qualifications on the basis of “How Much or How Many” without establishing consideration factors that allow firms to present their relevant qualifications in an objective evaluation – not slanted or biased to large majority firms

- . Eliminate bundling, or at minimum establish a minimum level of small business set asides in all areas of State procurement and require the same of State recipient entities

- . Require entities such as State Joint Power Authorities to follow public competitive contracting for all their procurement and inclusive of small business participation requirements

Thank You