

File No. 110961

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: September 28, 2011

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget & Legislative Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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Completed by: Victor Young

Date: Sept 23, 2011

Completed by: Victor Young

Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [MuniServices, LLC to Examine Confidential State Board of Equalization Tax Records]

2
3 **Resolution authorizing MuniServices, LLC (Contractor) to examine sales or**
4 **transactions and use tax records of the State Board of Equalization on behalf of the**
5 **City and County of San Francisco pursuant to California Revenue and Taxation Code**
6 **Section 7056.**

7
8 WHEREAS, Pursuant to California Revenue and Taxation Code Section 7056, the
9 City, may designate any officer, employee or any other person to examine all of the sales
10 or transactions and use tax records of the State Board of Equalization ("Board of
11 Equalization") pertaining to sales or transactions and use taxes collected for the City; and,

12 WHEREAS, The City has entered into agreements for sales or transactions and use
13 tax audit and information services with the firm of MuniServices, LLC to designate
14 MuniServices, LLC ("Contractor") as the authorized Contractor to examine the Board of
15 Equalization's records of sales or transactions and use taxes collected for the City; now,
16 therefore, be it

17 RESOLVED, That in all respects as set forth above, the City hereby certifies to the
18 Board of Equalization that the Contractor is the designated representative of the City to
19 examine all of the sales or transactions and use tax records of the Board of Equalization
20 pertaining to sales or transactions use taxes collected by the Board of Equalization on
21 behalf of the City; and, be it

22 FURTHER RESOLVED, That pursuant to California Revenue and Taxation Section
23 7056(b), the City certifies that the Contractor meets all of the following conditions:

1 a. Contractor has an existing agreement with the City to examine sales or
2 transactions and use tax records;

3 b. Contractor is required to disclose information contained in, or derived from,
4 those sales or transactions and use tax records only to an officer or employee of the City
5 who is authorized by the City by resolution to examine the information;

6 c. Contractor is prohibited from performing consulting services for a retailer
7 during the term of the contract; and

8 d. Contractor is prohibited from retaining the information contained in, or derived
9 from, those sales or transactions and use tax records after the contract has expired.

10 FURTHER RESOLVED, That the Clerk of the Board of Supervisors shall transmit a
11 certified copy of this Resolution and send a fax or a portable document format (pdf) via e-mail
12 of the resolution to:

13 State Board of Equalization
14 P.O. Box 942879
15 Sacramento, CA 94279-0027
16 Attn: Donna Puchalski, Senior Tax Auditor
17 Donna.Puchalski@boe.ca.gov
18 fax: (916) 324-8117

19 APPROVED:
20 Office of the Controller

21 By:

22 
23 Benjamin Rosenfield
24
25

Items 2 and 3
Files 11-0960 and 11-0961

Department:
 Controller

EXECUTIVE SUMMARY

Legislative Objectives

- File 11-0960: The proposed resolution would authorize the Office of the Controller to examine Sales or Transactions and Use Tax records of the State Board of Equalization, pursuant to California Revenue and Taxation Code Section 7056.
- File 11-0961: The proposed resolution would authorize MuniServices, LLC (MuniServices) to examine Sales or Transactions and Use Tax records of the State Board of Equalization on behalf of the City, pursuant to California Revenue and Taxation Code Section 7056.

Key Points

- For more than ten years, the Controller's Office has contracted with a private firm to provide State Board of Equalization Sales or Transactions and Use Tax audit, analysis, and database system services. The purpose of these services is (a) to ensure the City receives the correct amount of Sales or Transactions and Use Tax revenue due from the State and (b) to provide the City with a database that allows for analysis of Sales or Transactions and Use Tax revenues.
- California Revenue and Taxation Code Section 7056 requires Board of Supervisors authorization before designated City officers and any third party contractors are permitted to access State Board of Equalization Sales or Transactions and Use Tax records. The two proposed resolutions would provide such authorizations.
- Based on a competitive RFP process, the Controller awarded an agreement to MuniServices to provide Sales or Transactions and Use Tax audit, analysis, and database system services for the five-year period from July 1, 2011 through June 30, 2016. MuniServices previously provided these services under a five-year agreement with the City for the period from July 1, 2006 through June 30, 2011.

Fiscal Impact

- Review of the sales or transaction and use tax records of the State Board of Equalization is estimated to generate \$2,777,778 in additional Sales or Transactions and Use Tax revenues for the City in excess of what the State would have otherwise remitted to the City over the next five fiscal years, at a total cost to the City of an estimated \$500,000 in service fees paid by the City to MuniServices. This total estimated \$500,000 cost is based on MuniServices receiving 18 percent of the total additional Sales or Transactions and Use Tax revenues recovered by MuniServices on behalf of the City.

Recommendation

- Approve the proposed two resolutions.

MANDATE STATEMENT AND BACKGROUND

Mandate Statement

In accordance with California Revenue and Taxation Code Section 7056, Board of Supervisors approval is required to designate officers and employees to examine confidential Sales or Transactions and Use Tax records of the State Board of Equalization. Furthermore, under California Revenue and Taxation Code Section 7056, the City may designate any officer, employee, or any other person to examine all of the Sales or Transactions and Use tax records of the State Board of Equalization pertaining to Sales or Transactions and Use Taxes remitted to the City by the State Board of Equalization.

Background

For more than ten years, the Controller's Office has contracted with private firms in order for such firms to provide audit, analysis, and database system services pertaining to Sales or Transactions and Use Tax records maintained by the State Board of Equalization. The purpose of these services is to ensure the City receives the correct amount of the Sales or Transactions and Use Tax revenue that is due to the City and to provide the City with a database that allows for analysis of Sales or Transactions and Use Tax revenues.

According to Ms. Michelle Allersma of the Budget and Analysis Division of the Controller's Office, the Controller uses a private firm for these services because (a) audit, and analysis, and database systems pertaining to the Sales or Transactions and Use Tax are specialized services that require detailed knowledge of State tax regulations and the auditing of Sales or Transactions and Use Tax records; (b) any errors made by the State Board of Equalization or Sales or Transactions and Use Tax permit holders need to be identified and addressed as quickly as possible, and the amount of work varies in response to the number of errors identified; and (c) two large private firms with extensive experience in Sales or Transactions and Use Tax practices, MuniServices, LLC and HdL and Associates, work with numerous California cities, counties, and special districts, providing those two firms with Statewide comparative information. Ms. Allersma adds that many large California jurisdictions contract for these services.

Competitive Selection Process

On March 14, 2011, the Controller issued a Request for Proposals (RFP) in order to retain a consultant to provide Sales or Transactions and Use Tax audit, analysis, and database system services. The solicitation was reissued on April 22, 2011 when it was discovered that the original RFP included an error in the minimum qualifications paragraph. According to Mr. Richard Kurylo of the Controller's Office, the original paragraph stated,

"The Proposer certifies that it has submitted two (2) Prior Project Descriptions in accordance with RFP Attachment V, Section B, clearly demonstrating successful provision of (Sales or Transactions and Use Tax) auditing, forecasting and reporting to *at least five (5)* of the twenty largest counties in California within the last five (5) years of the date of this RFP." (emphasis added)

The reissued RFP revised the minimum qualifications paragraph to state

“The Proposer certifies that it has submitted two (2) Prior Project Descriptions in accordance with RFP Attachment V, Section B, clearly demonstrating successful provision of (Sales or Transactions and Use Tax) auditing, forecasting and reporting to *two (2)* of the twenty largest counties in California within the last five (5) years of the date of this RFP.” (emphasis added)

The Controller received three proposals, and two of the proposers were deemed to be qualifying: MuniServices, LLC (MuniServices) and HdL and Associates. MuniServices is the Controller’s existing contractor for these services; HdL and Associates previously held the service agreement with the Controller from April 1, 2001 through December 31, 2006.

A three member scoring panel¹ initially evaluated the qualifying firms’ written proposals. Because the scoring of the written proposals was close (MuniServices received 80/100 points, HdL and Associates received 81/100 points), the review panel selected both firms to be interviewed. Based on the interviews of both firms, the review panel selected MuniServices, which received an oral interview score of 90/100 points, compared to HdL and Associates’ 78/100 points. A summary of the scoring for both the written proposals and interviews is shown in Table 1 below. Based on the interview scores, the Controller’s office has awarded an agreement to MuniServices, for the five year period from July 1, 2011 through June 30, 2016.

Table 1: Scoring Summary of the Two Proposals

Written Proposal (Maximum Points)	Average Scores	
	HdL & Associates	MuniServices
Proposer / Partner Firm Qualifications (15 Points)	13.00	14.33
Proposed Staff Qualifications (25 Points)	18.67	20.00
Approach to Services (40 Points)	33.33	32.00
Cost Proposal (20 Points)	16.00	13.67
Written Proposal Total	81.00	80.00
Oral Interview (Maximum Points)	HdL & Associates	MuniServices
Prior Project Experience (20 Points)	16.00	18.00
Firm Qualifications, Approach, Score (40 Points)	30.33	35.33
Query Demonstration (30 Points)	25.00	27.67
Proposer Wrap-up (5 Points)	3.33	4.67
Overall Presentation (5 Points)	3.33	4.33
Oral Interview Total	78.00*	90.00

* Rounded.

The agreement between the City and MuniServices does not contain a Local Business Enterprise (LBE) component. According to Mr. Kurylo, the Controller’s Office was granted an LBE waiver by the Human Rights Commission because it has proven difficult for prime contractors to subcontract an appropriate and substantive portion of the service agreement to an LBE firm due to the specialized nature of the services.

¹ The three-member scoring panel consisted of one employee each from the Controller’s Office, the Treasurer and Tax Collector’s Office, and the Office of Economic and Workforce Development.

DETAILS OF PROPOSED LEGISLATION

California Revenue and Taxation Code Section 7056 requires Board of Supervisors approval before designated City officers and any third party contractors are permitted to access Sales or Transactions and Use Tax records maintained by State Board of Equalization.

File 11-0960 would authorize the Office of the Controller to examine Sales or Transactions and Use Tax records of the State Board of Equalization pursuant to California Revenue and Taxation Code Section 7056.

File 11-0961 would authorize MuniServices to examine Sales or Transactions and Use Tax records maintained by the State Board of Equalization on behalf of the City, pursuant to California Revenue and Taxation Code Section 7056, for the duration of the agreement between the City and MuniServices, from July 1, 2011 through June 30, 2016. MuniServices is to determine whether or not the State Board of Equalization has allocated the correct amount of Sales or Transactions and Use Tax to San Francisco, under California Tax Revenue and Taxation Code Section 7056.

The proposed resolution (File 11-0961) does not approve the agreement itself between the Controller and MuniServices, but rather designates MuniServices as the City's authorized representative in Sales or Transactions and Use Tax Records Examinations, as required by the California Revenue and Taxation Code. The Controller has entered into a five-year agreement, from July 1, 2011 through June 30, 2016 with MuniServices, to provide the City with Sales or Transactions and Use Tax audit, analysis, and database system services pertaining to records maintained by the State Board of Equalization.

Regarding the proposed resolution (File 11-0961), California Revenue and Taxation Code Section 7056(b) requires that the Board of Supervisors certify that MuniServices has an existing agreement with the City to examine Sales or Transactions and Use Tax records, and that the agreement meet the following conditions:

- (1) MuniServices is required by the agreement to disclose information contained in, or derived from, those Sales or Transactions and Use Tax records only to an officer or employee of the City who is authorized by the City to examine such information;
- (2) MuniServices is prohibited by the agreement from performing consulting services for a retailer during the term of the agreement; and,
- (3) MuniServices is prohibited by the agreement from retaining information contained in, or derived from, those Sales or Transactions and Use Tax records after the agreement has expired.

According to Deputy City Attorney Ms. Rosa Sanchez, the above conditions, as required by California Revenue and Taxation Code Section 7056(b), are part of the agreement.

FISCAL IMPACTS

File 11-0960, which authorizes the Office of the Controller to examine Sales or Transactions and Use Tax records of the State Board of Equalization pursuant to California Revenue and Taxation Code Section 7056, does not have fiscal impact to the City. Under File 11-0961, per the agreement between MuniServices and the Controller, the Controller's Office would pay a fee to MuniServices based on 18 percent of the total additional Sales or Transactions and Use Tax revenues realized by the City in excess of the amount of the Sales or Transactions and Use Tax amount which would have otherwise been allocated by the State Board of Equalization to the City and County of San Francisco. According to Ms. Allersma, this additional Sales or Transactions and Use Tax revenue to be realized by the City are estimated, based on historical data, to total \$2,777,778 over the five-year term of the MuniServices agreement, resulting in total estimated payments to MuniServices of \$500,000 over five years, or an average of \$100,000 per year. As noted above, this agreement itself, which is estimated to cost the City a total of \$500,000 over five years, is not subject to Board of Supervisors approval.

In response to the RFP, MuniServices initially proposed a fee amount of 20 percent of the total additional Sales or Transactions and Use Tax revenues to be recovered by MuniServices on behalf of the City.² This 20 percent fee amount is the same percentage as the previous five-year agreement between MuniServices and the City that extended from July 1, 2006 to June 30, 2011. After MuniServices was selected as the winning proposal, the Controller and MuniServices negotiated a reduced fee of 18 percent of the total additional Sales or Transactions and Use Tax revenues to be recovered by MuniServices on behalf of the City.

RECOMMENDATION

Approve the two proposed resolutions.

² According to Mr. Kurylo, the other qualifying respondent to the RFP, HdL & Associates, proposed a 15 percent fee. As is noted in Table 1 above, the cost proposal comprised only 20 percent of the scoring of the written proposal.

** Complete copy of document is located in

File No. 110961

City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

RECEIVED
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BY _____

**Agreement between the City and County of San Francisco and
MUNISERVICES, LLC**

This Agreement is made this 1st day of July, 2011, in the City and County of San Francisco, State of California, by and between: MuniServices, LLC, 7335 N. Palm Bluffs Avenue, Fresno, CA, 93711, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Controller's Office ("Department") wishes to obtain Sales and Use Tax Audit, Analysis and System Services and,

WHEREAS, a Request for Proposal ("RFP") was issued on March 14, 2011, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4110-10/11 on June 6, 2011;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement provides for compensation to Contractor solely through a percentage of monies Contractor collects in the performance of this Agreement. No payments are made to Contractor from City's general fund. Should this Agreement be amended to impose costs to City other than the agreed upon contingency-fee set forth in Appendix B, such amended Agreement shall be subject to the budget and fiscal provisions of the City's Charter. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

