



**Metro**

Metropolitan Transportation Authority

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**18**

**FINANCE AND BUDGET COMMITTEE  
NOVEMBER 18, 2009**

**SUBJECT: CONTRACT NUMBER PS52102418, TRANSACTION & USE TAX  
AUDIT, RECOVERY & FORECASTING SERVICES**

**ACTION: AWARD CONTRACT AND ADOPT RESOLUTIONS**

**RECOMMENDATIONS**

- A. Award a contract to MuniServices for transaction (sales) and use tax audit, recovery and forecasting services for three years, plus two-one year options on a contingency basis and forecasting services at a firm fixed amount of \$110,000 for the five-year period.
- B. Adopt resolutions for Prop A, Prop C and Measure R that authorize staff and MuniServices ("MMC") to examine State Board of Equalization ("SBOE") sales and use tax records.

**RATIONALE**

Sales tax audit services are necessary to ensure the correct collection, allocation, and distribution of Prop A, Prop C and Measure R sales taxes to MTA. In order to recover sales and use taxes incorrectly allocated to other jurisdictions, we must file claims with the SBOE when errors are noted.

SBOE requires that resolutions be adopted before granting access to sales tax allocation information. The information is necessary for the identification and recovery of uncollected sales tax revenue. Resolutions for Propositions A and C were approved in December 1999. Since then, the titles of staff authorized to receive the information have changed and MuniServices changed its legal name from Municipal Resource Consultants ("MRC"), resulting in the need for adoption of new resolutions.

**DISCUSSION**

As of August 2009, after 9 ½ years of contract work, MuniServices, formerly MRC, has recovered over \$12 million and has received contingency fees of approximately \$2.4 million.

Currently 33 local governmental entities, including the City of Los Angeles and Los Angeles County, contract with MMC for sales tax audit or forecasting services.

## **FINANCIAL IMPACT**

The funding of \$30,000 for sales tax forecasting is included in the FY10 budget, in Treasury Department, cost center 5210, project numbers 100002, 300076, and 610340. Since this is a multi-year contract, the cost center manager and Chief Financial Services Officer and Treasurer will be accountable for budgeting the cost in future years, including any option exercised. In FY09, \$28,432 was expended on forecasting services.

Fees for MMC audit and revenue recovery services are as follows:

<u>Recoveries</u>	<u>Fee %</u>
Under \$5M	17%
\$5M - 10M	14%
\$10 M - \$15M	11%
Over \$15 M	9%

Since the fees will be deducted from actual gross recovered revenues when realized there is no budget impact.

### **Impact to Bus and Rail Operating and Capital Budget**

The funding for this service comes from all sales taxes supported funds. \$22,000 of the sales tax forecasting costs are charged to sales tax supported activities that are eligible for bus and rail operating costs. Recovered Prop A, Prop C and Measure R sales tax revenues, net of contingency fees, will increase bus and rail eligible operating revenues.

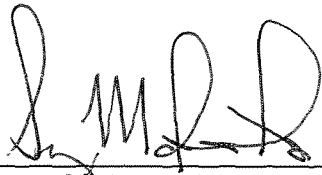
## **ALTERNATIVES CONSIDERED**

The alternative is to perform these services in-house. Independent forecasting sources are necessary to compliment other sources of data currently in use. MMC is the only known firm that maintains sales tax data applicable to transit districts. We have neither the staff resources nor expertise to monitor and audit all aspects of sales and use tax revenue unique to transit districts. This alternative is not recommended.

## **ATTACHMENTS**

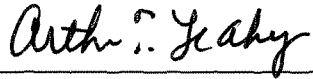
- A Procurement Summary
- A-1 Procurement History
- B-1 Resolution – Prop A
- B-2 Resolution – Prop C
- B-3 Resolution – Measure R

Prepared by: Robert Vasquez, Contract Administrator  
Mary E. Morgan, Project Manager  
Donna Mills, Assistant Treasurer



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Terry Matsumoto  
Chief Financial Services Officer and  
Treasurer



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Arthur T. Leahy  
Chief Executive Officer

**BOARD REPORT ATTACHMENT A  
PROCUREMENT SUMMARY**

**TRANSACTION & USE TAX REVENUE AUDIT,  
RECOVERY & FORECASTING SERVICES**

1.	Contract Number: PS52102418		
2.	Recommended Vendor: MuniServices, LLC		
3.	Cost/Price Analysis Information:		
	A. Bid/Proposed Price: \$116,801 for forecasting services. Audit/recovery fees range from 9% to 17% depending on amounts recovered.	Recommended Price: \$110,000 for forecasting services. Audit/recovery fees range from 9% to 17% depending on amounts recovered.	
	B. Details of Significant Variances are in Attachment A-1.D		
4.	Contract Type: Firm Fixed Unit Rate		
5.	Procurement Dates:		
	A. Issued: 09.04.09		
	B. Advertised: 09.04.09		
	C. Pre-proposal Conference: 09.16.09		
	D. Proposals Due: 09.25.09		
	E. Pre-Qualification Completed: 09.30.09		
	F. Conflict of Interest Form Submitted to Ethics: 10.14.09		
6.	Small Business Participation:		
	A. Bid/Proposal Goal: None	Date Small Business Evaluation Completed: N/A	
	B. Small Business Commitment: 0% (Details are in Attachment A-2)		
7.	Invitation for Bid/Request for Proposal Data:		
	Notifications Sent: 4	Bids/Proposals Picked up: 15	Bids/Proposals Received: 1
8.	Evaluation Information:		
	A. Bidders/Proposers Names:  MuniServices, LLC	<u>Bid/Proposal Amount:</u> \$116,801 (forecasting services only)	<u>Negotiated Amount:</u> \$110,000 (forecasting services only)
	B. Evaluation Methodology: Explicit Factors (Details are in Attachment A-1.C)		
9.	Protest Information:		
	A. Protest Period End Date: 11/24/09 (anticipated)		
	B. Protest Receipt Date: N/A		
	C. Disposition of Protest Date: N/A		
10.	Contract Administrator: Robert Vasquez	Telephone Number: 213-922-1044	
11.	Project Manager: Mary Morgan	Telephone Number: 213-922-4143	

**BOARD REPORT ATTACHMENT A-1  
PROCUREMENT HISTORY**

**TRANSACTION & USE TAX REVENUE AUDIT,  
RECOVERY & FORECASTING SERVICES**

A. Background on Contractor

MuniServices, LLC is located in Fresno, CA and has been providing transaction and use tax revenue audit, recovery and forecasting services to public agencies, including the MTA, for about 10 years. MuniServices is a wholly-owned subsidiary of Portfolio Recovery Associates, Inc. The MTA was MuniServices' first customer regarding the subject services and the firm's performance has been satisfactory to date under the first two contracts. Some of its other current clients include OCTA, BART, SANDAG and Los Angeles County.

The firm also has over 30 years experience in auditing and recovering sales and use tax revenues for the public sector. MuniServices has a solid relationship with the State Board of Equalization (SBOE) and certified that it will continue to comply with the terms of Regulation 7056 and perform the scope of work under a confidentiality resolution required by the SBOE.

B. Procurement Background

This negotiated procurement was handled using a competitive Request for Proposals (RFP). The contract will be awarded on a Firm Fixed Unit Rate basis for a three-year base period plus two one-year options, for a potential of five years. Although adequate competition was expected in response to the RFP, only one proposal was received by the proposal due date. The Contract Administrator contacted four firms that had expressed an interest in the RFP to learn why they did not submit a proposal. Three of the firms stated that they did not meet the minimum qualifications and had a conflict with Regulation 7056 regarding services to the private sector. The fourth firm responded that it learned of the RFP too late so that the proposal due date was not possible to meet.

C. Evaluation of Proposals

After a review to determine that MuniServices met the Minimum Qualifications, the MTA's source selection committee (SSC) used the explicit factors (weighted criteria) method of evaluating the proposal in accordance with established MTA Procurement Policies and Procedures. The committee consisted of the Contract Administrator (non-voting chairman), two voting members from the MTA (Treasury and OMB) and an outside voting member from SCAG. Technical factors constituted 70% of the total possible score and price made up the remaining 30%. References were checked and responses were all very positive. MuniServices' proposal received high scores in all categories; however, negotiations were required because of several RFP exceptions taken by the firm relating to Insurance Requirements and Terms and Conditions. Involved in the negotiation process, directly or indirectly, were personnel from Procurement, Treasury, Risk Management and County Counsel.

D. Cost/Price Analysis Explanation of Variances

The recommended price has been determined to be fair and reasonable based upon a cost/price analysis, a comparison with current contract pricing and fees charged to other like-customers. There are no significant pricing variances.

**LIST OF SUBCONTRACTORS**

**TRANSACTION & USE TAX REVENUE AUDIT,  
RECOVERY & FORECASTING SERVICES**

**PRIME CONTRACTOR – MuniServices, LLC**

Small Business Commitment

Other Subcontractors

None (N/A)

None (N/A)

Total Commitment: None (N/A)

## ATTACHMENT B-1

### RESOLUTION

**RE: Authorizing the Examination of State Board of Equalization Transactions (Sales) and Use Tax Records**

**WHEREAS**, ordinance No. 16 approved by the Los Angeles County Transportation Commission (LACTC), on August 20, 1980, is an ordinance of the LACTC imposing a Transactions (Sales) and Use Tax to be administered by the State Board of Equalization (Board); and

**WHEREAS**, Section 7270 of the Revenue and Taxation Code includes the provision that prior to the operative date, the LACTC shall contract with the Board to perform all functions incident to the administration and operation of the Transactions and Use Tax Ordinance; and

**WHEREAS**, on May 12, 1982, the LACTC approved the Agreement for Preparation to Administer and Operate LACTC's Transactions and Use Tax Ordinance and the Agreement for State Administration of District Transactions and Use Taxes, and said agreements were approved by the State Department of General Services on May 24, 1982; and

**WHEREAS**, as of April 1, 1993, the LACTC was abolished and Los Angeles County Metropolitan Transportation Authority (LACMTA) succeeded to all the power, duties, rights, obligations, liabilities, indebtedness, immunities and exemptions of the LACTC; and

**WHEREAS**, the LACMTA deems it desirable and necessary for authorized representatives of LACMTA to examine confidential transactions and use tax records of the Board pertaining to transactions and use taxes collected by the Board for LACMTA pursuant to that contract; and

**WHEREAS**, Section 7056 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records, and establishes criminal penalties for the unlawful disclosure of information contained in or derived from, the Transactions and Use Tax records of the Board;

**NOW, THE LACMTA BOARD OF DIRECTORS HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** That the following officers or employees of LACMTA or other officers or employees designated in writing by the Chief Executive Officer to the Board are hereby appointed to represent the LACMTA with authority to examine Transactions and Use Taxes collected for the LACMTA by the Board pursuant to the contracts between the LACMTA and the Board:

Chief Financial Services Officer and Treasurer  
Assistant Treasurer  
Debt Manager  
Principal Financial Analyst  
Financial Analyst



**Section 2.** That MuniServices is hereby designated to examine the sales and use tax records of the Board pertaining to transactions and use taxes collected for LACMTA by the Board. The entity designated by this section meets all of the following conditions

- a) has an existing contract with LACMTA to examine those sales and use tax records;
- b) is required by that contract to disclose information contained in, or derived from, those transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- d) is prohibited by that contract from retaining the information contained in, or derived from those transactions and use tax records, after the contract has expired.

The information obtained by examination of Board records shall be used only for purposes related to the collection of LACMTA transactions and use taxes by the Board pursuant to the contract between LACMTA and the Board.

**Section 3.** That this resolution supersedes all prior transactions and use tax resolutions of the LACMTA adopted pursuant to subdivision (b) of Revenue and Taxation Section 7056.

#### CERTIFICATION

The undersigned, duly qualified and acting as Secretary of the Los Angeles County Metropolitan Transportation Authority, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally-convened meeting of the Board of Directors of the Los Angeles County Metropolitan Transportation Authority held on .

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Michele Jackson (Seal)  
MTA Secretary

DATED

**ATTACHMENT B-2**

**RESOLUTION**

**RE: Authorizing the Examination of State Board of Equalization Transactions (Sales) and Use Tax Records**

**WHEREAS**, ordinance No. 49 approved by the Los Angeles County Transportation Commission (LACTC), on August 8, 1990, is an ordinance of the LACTC imposing a Transactions (Sales) and Use Tax to be administered by the State Board of Equalization (Board), and

**WHEREAS**, Section 7270 of the Revenue and Taxation Code includes the provision that prior to the operative date, the LACTC shall contract with the Board to perform all functions incident to the administration and operation of the Transactions and Use Tax Ordinance; and

**WHEREAS**, on March 18, 1991, the LACTC approved the Agreement for Preparation to Administer and Operate LACTC's Transactions and Use Tax Ordinance and the Agreement for State Administration of District Transactions and Use Taxes, and said agreements were approved by the State Department of General Services on March 25, 1991; and

**WHEREAS**, as of April 1, 1993, the LACTC was abolished and Los Angeles County Metropolitan Transportation Authority (LACMTA) succeeded to all the power, duties, rights, obligations, liabilities, indebtedness, immunities and exemptions of the LACTC; and

**WHEREAS**, the LACMTA deems it desirable and necessary for authorized representatives of LACMTA to examine confidential transactions and use tax records of the Board pertaining to transactions and use taxes collected by the Board for LACMTA pursuant to that contract; and

**WHEREAS**, Section 7056 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records, and establishes criminal penalties for the unlawful disclosure of information contained in or derived from, the Transactions and Use Tax records of the Board;

**NOW, THE LACMTA BOARD OF DIRECTORS HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** That the following officers or employees of LACMTA or other officers or employees designated in writing by the Chief Executive Officer to the Board, are hereby appointed to represent the LACMTA with authority to examine Transactions and Use Taxes collected for the LACMTA by the Board pursuant to the contracts between the LACMTA and the Board:

Chief Financial Services Officer and Treasurer  
Assistant Treasurer  
Debt Manager  
Principal Financial Analyst  
Financial Analyst

**Section 2.** That MuniServices is hereby designated to examine the sales and use tax records of the Board pertaining to transactions and use taxes collected for LACMTA by the Board. The entity designated by this section meets all of the following conditions:

- a) has an existing contract with LACMTA to examine those sales and use tax records;
- b) is required by that contract to disclose information contained in, or derived from, those transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- d) is prohibited by that contract from retaining the information contained in, or derived from those transactions and use tax records, after the contract has expired.

The information obtained by examination of Board records shall be used only for purposes related to the collection of LACMTA transactions and use taxes by the Board pursuant to the contract between LACMTA and the Board.

**Section 3.** That this resolution supersedes all prior transactions and use tax resolutions of the LACMTA adopted pursuant to subdivision (b) of Revenue and Taxation Section 7056.

#### CERTIFICATION

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Michele Jackson (Seal)  
MTA Secretary

DATED

## ATTACHMENT B-3

### RESOLUTION

**RE: Authorizing the Examination of State Board of Equalization Transactions (Sales) and Use Tax Records**

**WHEREAS**, ordinance No. 08-01 approved by the Los Angeles County Metropolitan Transportation Authority (LACMTA), on July 24, 2008, is an ordinance of the LACMTA imposing a Transactions (Sales) and Use Tax to be administered by the State Board of Equalization (Board); and

**WHEREAS**, Section 7270 of the Revenue and Taxation Code includes the provision that prior to the operative date, the LACMTA shall contract with the Board to perform all functions incident to the administration and operation of the Transactions and Use Tax Ordinance; and

**WHEREAS**, the LACMTA approved the Agreement for Preparation to Administer and Operate District's Transactions and Use Tax Ordinance and the Agreement for State Administration of District Transactions and Use Taxes, and said agreements were approved by the State Department of General Services on May 27, 2009; and

**WHEREAS**, the LACMTA deems it desirable and necessary for authorized representatives of LACMTA to examine confidential transactions and use tax records of the Board pertaining to transactions and use taxes collected by the Board for LACMTA pursuant to that contract; and

**WHEREAS**, Section 7056 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records, and establishes criminal penalties for the unlawful disclosure of information contained in or derived from, the Transactions and Use Tax records of the Board;

**NOW, THE LACMTA BOARD OF DIRECTORS HEREBY RESOLVES AS FOLLOWS:**

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Assistant Treasurer  
Debt Manager  
Principal Financial Analyst  
Financial Analyst

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- b) is required by that contract to disclose information contained in, or derived from, those transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- d) is prohibited by that contract from retaining the information contained in, or derived from those transactions and use tax records, after the contract has expired.

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DATED

