



City of Culver City

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Staff Report

File #: 16-120, **Version:** 2

Item #: C-10.

CC - (1) Waiver of Formal Competitive Bidding Procedures; and (2) Approval of a Professional Services Agreement with MuniServices, LLC for Utility Users Tax Compliance, Administration and Revenue Protection Program and Local Tax Compliance Services for a Term of up to Five Years.

Meeting Date: August 8, 2016

Contact Person/Dept: Jeff Muir/Finance Department

Phone Number: (310) 253-5865

Fiscal Impact: Yes ☒ No ☐

General Fund: Yes ☒ No ☐

Public Hearing: ☐ **Action Item:** ☐ **Attachments:** Yes ☐ No ☒

Commission Action Required: Yes ☐ No ☒

Public Notification: (E-Mail) Meetings and Agendas - City Council (08/02/16)

Department Approval: Jeff Muir, Chief Financial Officer (08/01/16)

RECOMMENDATION

Staff recommends the City Council (1) waive formal competitive bidding procedures; and (2) approve a professional services agreement with MuniServices, LLC for Utility Users Tax Compliance, Administration and Revenue Protection Program and Local Tax Compliance Services for a term of up to five years.

BACKGROUND

MuniServices, LLC (MuniServices) has provided Culver City with revenue consulting and audit services related to utility users tax (UUT) since 2000. Beginning in 2008, the City also contracted with MuniServices for discovery services on business taxes. MuniServices is the only company in California providing the combination of integrated services in this area that staff is aware of. They provide these services to over 225 cities in California alone, representing the vast majority of all cities with a UUT.

MuniServices, in cooperation with its client cities, was instrumental in passing AB 1717, which requires the City's UUT to be applied and collected for pre-paid wireless services. As a result, certain changes to the language of the City's agreements with MuniServices are necessary for

Board of Equalization (BOE) compliance.

DISCUSSION

Staff is recommending the City enter into a three-year agreement with two one-year extensions, unless cancelled by either party. The scope of services are consistent with what the City has been receiving in prior years from MuniServices, and are summarized below.

Utility Users Tax Compliance, Administrative and Revenue Protection Program

A. Compliance

1. **UUT Tax Application Review:** MuniServices will conduct a “focused compliance review of the major service utility providers on behalf of one or more cities to assure that the providers ‘tax application’ decisions are correct on a system-wide basis, to the benefit of all client cities.”
2. **UUT Payment Review:** Identification of possible gaps in payments, irregularities, calculation mistakes (e.g., wrong tax rate), and other payment errors. MuniServices will assist the City with the appropriate compliance correspondence and enforcement actions.
3. **Comparative Analysis of UUT Payment:** MuniServices will assure that the UUT payments are correct by performing a comparative analysis of a service provider’s UUT payments with Culver City and other neighboring client cities, as well as using industry market share data. MuniServices will also perform a comparative analysis of the franchise UUT payments for gas and electricity.
4. **Detection:**
 - a. MuniServices will annually update its proprietary database of “new telecom service providers” and send out a PUC 799 notice letter to such new providers on City’s behalf.
 - b. MuniServices will annually update its proprietary database of new “video service providers” and send out a notice letter to such new providers on the City’s behalf.
 - c. MuniServices will annually review the SB 278 lists of the major gas and electric companies to identify new non-core gas and direct access electric customers, as well as new third party providers, and take appropriate steps to assure that the UUT is being applied to “commodity” purchases.
5. **Exemption Review:** MuniServices will periodically review the exemption lists of the major service providers regarding non-residential customers.
6. **Optional City-Specific Compliance Reviews:** At City’s option MuniServices will offer “city-specific” reviews on a performance fee or other negotiated basis, only if the above activities or other factors would suggest that there is a reasonable need to do so.

B. Administrative

1. UUT Payment History: MuniServices will provide the City, on a monthly or otherwise mutually agreed upon basis, with a spreadsheet reflecting the City's UUT payments by provider and utility category.
2. Geocode Corrections: MuniServices will assist City and the utility service providers in correcting geocoding errors in response to taxpayer complaints.
3. UUT Website: Prepare and maintain an accurate copy of the City's UUT ordinance and its administrative rules and interpretations on the uutinfo.org website including a link to the City's web page, FAQ's, and model forms for exemptions, registration, remittances and other tax compliance documents will be maintained on the www.uutinfo.org website.
4. Revenue Forecasts and Management Report(s): MuniServices will provide an annual report that outlines the year's activities in review, revenue forecasts, YTD Comparison charts and revenue generated from compliance activities. This report contains an analysis of UUT revenues and a five-year revenue forecast on each of the utility business segments (electric, gas, CATV, wired telecom, wireless telecom, etc).
5. Tax Application Inquiries: MuniServices will provide technical assistance to City staff, and provide timely analysis and draft responses to tax application inquiries from utility companies, and will assist in responding to citizens regarding their utility bills and the computation of the UUT.

C. Revenue Protection and Enhancement

1. Legislative Review Services: MuniServices will monitor proposed state and federal legislation to identify issues affecting the City's UUT or utility franchise revenues, and, make recommendations to client cities, their lobbyists, and other potential stakeholders or municipal advocates and otherwise assist in developing effective consensus positions and coordinated advocacy.
2. Compliance with AB 1717 (Prepaid wireless): MuniServices will assist the City in meeting the requirements of the new state law on the collection of the UUT, including establishing statutory eligibility and satisfying the requirements of the BOE per AB 1717.
3. Ordinance Update and Election Assistance: MuniServices will provide to the City Attorney periodic reviews and recommended updates to the UUT ordinance, administrative rulings to address new issues that may arise because of deregulation, litigation, changes in laws or regulations, the unbundling of traditional utility services, or the introduction of new technologies to provide utility services.
4. Administrative Rulings: Under an updated UUT ordinance, the Tax Administrator has the authority to periodically issue administrative rulings as new tax application issues arise. MuniServices will assist City by timely identifying those issues, facilitating a thorough discussion among the client cities on an appropriate ruling, and then drafting a recommended ruling for Culver City's consideration.

5. Technology Reviews: MuniServices will continually research utility market information to identify potential taxable services delivered by new technologies and new providers.

Local Tax Compliance Services (Discovery, Audit and Collections)

1. Discovery Services. Discovery Services are designed to provide a full service solution to the City's business license enforcement procedures. It does not replace current functions, but provides a focused and fulltime solution to the identification of entities subject to taxation by the City, which are not properly registered, or otherwise not reporting taxes to the City.
2. Deficiency Audit Services. Deficiency Audit Services are designed to identify entities subject to taxation by the City that are not properly reporting the full amount of tax which they are subject to under the City's ordinances. Deficiency Audit Services also identifies entities that are potentially underreporting, or not reporting all applicable taxes. MuniServices reviews entities records to ensure compliance with the City's taxes.
3. Collection Service. The third portion of the LTC service is collecting on delinquent tax-related accounts referred by the City. These accounts shall only consist of those referred by the city and not those accounts subject to the Discovery and Audit services mentioned above. MuniServices shall collect only on those tax-related delinquent accounts the City designates for collection.

In general, Culver City Municipal Code (CCMC) § 3.07.085 exempts professional services from the formal competitive bid process. However, pursuant to CCMC Section 3.07.050, where the same consultant has been utilized for a period of five years, the formal bidding procedures shall apply unless waived by the City Council. In this case, based on MuniServices' being the only firm in California that staff can identify providing this level of comprehensive and integrated services, as well as their existing thorough understanding of the City's UUT and business tax information, staff recommends that the City continue to leverage this knowledge, and requests the City Council waive this requirement, in accordance with CCMC § 3.07.075.E.3.

FISCAL ANALYSIS

The City's annual fixed fee for participating in the UUT Compliance, Administration and Revenue Protection Program is five-tenths of one percent (0.5%) of the total UUT taxes received for the most recent fiscal year. For Fiscal Year 2015/16, this was \$63,158. Any specific provider audits requested by the City shall be a contingent fee arrangement, with MuniServices receiving 25% of the additional revenues for up to twelve calendar quarters. Additionally, pursuant to AB 1717 requirements, any audit work performed specific to AB 1717 will be performed on an hourly time and materials basis.

The Local Tax Compliance Services are contingency fees based upon additional revenue received by the City as a direct result of the services. The Discovery Services fee is 36% of additional current and prior year revenue received. The Audit Services fee is 36% of any eligible prior period revenues. The Collection Services fee is 22.5% of the amount recovered on accounts referred to

MunisServices. Total fees paid in Fiscal Year 2015/16 were approximately \$6,300.

ATTACHMENTS

None.

RECOMMENDED MOTIONS

That the City Council:

1. Pursuant to CCMC Section 3.07.075.E.3, waive the formal competitive bidding procedure; and
2. Approve a professional services agreement with MuniServices, LLC for a Utility Users Tax Compliance, Administration and Revenue Protection Program and Local Tax Compliance Services for a term of up to five years.; and,
3. Authorize the City Attorney to review/prepare the necessary documents; and,
4. Authorize the City Manager to execute such documents on behalf of the City.