

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
FINANCE DEPARTMENT**

**TO:** Mayor and City Council

**FROM:** Milo Nitschke, Director, Finance Department

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES:** Melissa Byrne Vossmer, Assistant City Manager; City Attorney's Office; City Clerk; File

**SUBJECT:** Arbitrage Rebate Compliance Services Contract

**DATE:** November 13, 2003

**SUMMARY AND RECOMMENDATIONS**

This Ordinance authorizes the execution of a contract with Ernst & Young LLP, for Arbitrage Rebate Compliance Services for various issues of tax-exempt obligations at a base fee of \$1,900.00 per issue, per calculation year, to commence on December 1, 2003 and to terminate on November 30, 2006, with the option to extend the contract for two (2) additional successive one (1) year periods under the same terms and conditions.

Staff recommends approval of this Ordinance.

**BACKGROUND INFORMATION**

Laws codified in Internal Revenue Service (IRS) Code Section 148 and regulations promulgated by the United States Treasury mandate that interest income derived from the investment of tax-exempt proceeds in excess of the permitted arbitrage rate must be rebated to the United States Government. Arbitrage rebate compliance requires that computations be performed which are consistent with the complex technical requirements contained in the aforementioned laws and regulations to determine the rebate amount, if any. Any rebate amount due must be reported and paid to the United States Government. The scope of Arbitrage Rebate Compliance Services includes a comprehensive review of the City's outstanding tax-exempt obligations, debt service funds, debt service reserve funds, capital projects funds and other funds, into which tax-exempt proceeds have been deposited. Such services also encompass calculation and verification of the arbitrage rate for each tax exempt obligation for which an arbitrage rebate computation is required, on-going service with respect to questions that may arise from time to time concerning arbitrage rebate, and assisting the City in responding to queries posed to the City related to arbitrage.

A Request for Proposal ("RFP") to provide Arbitrage Rebate Compliance Services was mailed to seven firms on September 2, 2003. The RFP was placed on the City of San Antonio web site and the notice of solicitation was advertised in the San Antonio Express-News on Sunday, August 31, 2003 noting that the RFP would be made available on Tuesday, September 2, 2003. On October 6, 2003, three (3) proposals were received. All three respondents were invited to make oral presentations on October 27, 2003.

The written proposals and firms were evaluated by a selection committee (the "Selection Committee") comprised of representatives from the City Manager's Office and the Departments of Finance, Economic Development, and the Office of Management and Budget. The Selection Committee evaluated and scored the firms based on the following criteria:

- Responsiveness to the RFP
- Arbitrage rebate compliance services experience
- Qualifications and experience of personnel to be assigned to the account
- Technical and quantitative proficiency
- Sensitivity to SBEDA goals

The responding firms and their scores are listed below:

- |  |    |
|--|----|
| ▪ Ernst & Young LLP  | 82 |
| ▪ First Southwest Asset Management, Inc.                               | 76 |
| ▪ Ballard Spahr Andrews & Ingersoll LLP and Bond Resource Partners, LP | 65 |

Based on the aforementioned evaluation criteria and selection process, the Selection Committee proposes for City Council approval the firm of Ernst & Young to provide Arbitrage Rebate Compliance Services.

As part of the proposal submitted by Ernst & Young, they propose to subcontract with Garza, Gonzales & Associates to perform tests of compliance of the City's debt service funds with the requirements of a "bona fide debt service fund" as defined in the arbitrage regulations. In addition, in the event that a bond issue contains pooled investment proceeds that must be allocated before the calculation of the rebate amount can be determined, Ernst & Young will utilize Garza, Gonzales & Associates to perform the allocations of the pooled funds. Garza, Gonzales & Associates will receive 33% of the per issue fees for a bond issue that requires both a debt service fund analysis and pooled investment proceeds allocation.

### **POLICY ANALYSIS**

The proposed selection of the Arbitrage Rebate Compliance Services provider is consistent with the City's policy and previous actions to employ these services.

## **FISCAL IMPACT**

Fees for Arbitrage Rebate Compliance Services are paid from tax-exempt obligation proceeds and interest earned on the investment of such proceeds; therefore, there is no impact on the City's Operating Budget. The following is a fee schedule for the Arbitrage Rebate Compliance Services:

<b>Arbitrage Rebate Compliance Services Fee Schedule</b>	
<b>Description</b>	<b>Annual Fees Per Issue Per Computation Year</b>
<b>Base Fee Per Computation Year</b>	<b>\$1,900</b>
<b>Additional Charges for Special Services Related to:</b>	
Debt Service Funds	\$0
Pooled Funds	\$500
Transferred Proceeds	\$250
Debt Service Fund Residual Calculations (Excess Tax Collections)	\$500
\$100,000 Test for Debt Service Funds	\$0
Variable/Floating Rate Bond Issue	\$0
Yield Restriction Analysis/Yield Reduction Computation	\$250
Premium for Quick Turnaround (Preliminary or Final Numbers within 21 days or less)	\$0
Preparation of IRS Refund Request	\$5,000
<b>Penalty Calculations</b> – Semiannual fee for each issue of Bonds, regardless of issue size	<b>\$750</b>

In the event the City requests additional services not specifically provided for in the Contract, the City shall negotiate the fee prior to the engagement or performance of any such additional work, subject to City Council approval.

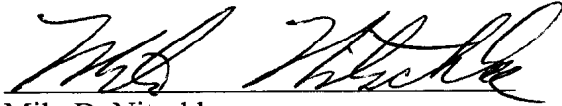
## **SUPPLEMENTAL COMMENTS**

The score sheet and the disclosures required by the City's Ethics Ordinance, Good Faith Effort Plan (SBEDA Form 117C), and Litigation Disclosure Form are attached.

## COORDINATION

This action was coordinated with the City Manager's Office, the Departments of Finance, Economic Development, the Office of Management and Budget and the City Attorney's Office.

## SIGNATURES



Milo D. Nitschke  
Director, Finance Department

Approved:



Melissa Byrne Vossmer  
Assistant City Manager



Terry M. Brechtel  
City Manager

**City of San Antonio**  
**Evaluation of Firms to Provide Arbitrage Rebate Compliance Services**

	Firm Name:	Ballard Spahr Andrews & Ingersoll, LLP/ BondResource Partners, LP	Ernst & Young LLP	First Southwest Asset Management, Inc.
	*SBEDA:	WBE, SBE		
EVALUATION CRITERIA	Maximum Score			
Responsiveness to the Request for Proposal	5	3	5	4
Arbitrage Rebate Compliance Services Experience	25	16	25	21
Qualifications and Experience of Personnel to be Assigned to this Account	25	21	22	21
Technical and Quantitative Proficiency	15	11	15	14
Cost of Services	10	7	5	10
<b>SUBTOTAL</b>	<b>80</b>	<b>58</b>	<b>72</b>	<b>70</b>
Local Business Enterprise	10	3	6	6
Historically Underutilized Enterprise	5	2	2	0
SBEDA Policy Compliance	5	2	2	0
<b>SUBTOTAL</b>	<b>20</b>	<b>7</b>	<b>10</b>	<b>6</b>
<b>TOTAL</b>	<b>100</b>	<b>65</b>	<b>82</b>	<b>76</b>

\* SBEDA (Small Business Economic Development Advocacy) certification:

MBE = Minority Business Enterprise  
AABE = African American Business Enterprise  
WBE = Woman Owned Business Enterprise  
DBE = Disadvantaged Business Enterprise  
SBE = Small Business Enterprise

# City of San Antonio

## Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Mr. Terence P. Burke, Partner and National Director of the Arbitrage Rebate Group for  
Ernst & Young LLP

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

Ernst & Young L.L.P.  
2121 San Jacinto Street, Suite 1500  
Dallas, TX 75201

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

Mr. Rene Gonzalez  
Garza Gonzalez & Associates CPAs  
207 Arden Grove Street  
San Antonio, TX 78215

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

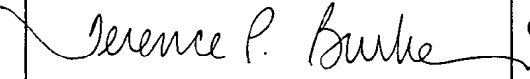
#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
N/A	N/A	N/A

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

N/A		
<b>Signature:</b> 	<b>Title:</b> Partner <b>Company:</b> Ernst & Young LLP	<b>Date:</b> October 3, 2003

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

## CITY OF SAN ANTONIO LITIGATION DISCLOSURE

**Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.**

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

☒ NO

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

☒ NO

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One

YES

☒ NO

**If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.**

**TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS TRUE AND CORRECT.**

Company Name: Ernst & Young L.L.P.

Terence P. Burke  
Signature of Principal:

Terence P. Burke  
Printed Name of Principal:

Partner  
Title of Principal



**NAME OF COMPANY:** Ernst & Young L.L.P.

**PROJECT NAME:** Arbitrage Rebate Compliance Services

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Affirmed List of Subcontractors form).

*Good Faith Effort Plan*

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

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3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

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4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

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5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

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6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

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*Good Faith Effort Plan*

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	HUE (Y/N)	REASON FOR REJECTION

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.
9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.
- Mr. Terence P. Burke, Partner
- (214) 969-8359
10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

**AFFIRMATION**

*I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.*

  
SIGNATURE OF AUTHORIZED OFFICIAL

Partner  
TITLE OF OFFICIAL

October 3, 2003 (214) 969-8359  
DATE PHONE

*Good Faith Effort Plan*

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**FOR CITY USE**

Plan Reviewed By: \_\_\_\_\_

Recommendation:                      Approval \_\_\_\_\_                      Denial \_\_\_\_\_

Action Taken:                              Approved \_\_\_\_\_                      Denied \_\_\_\_\_

\_\_\_\_\_  
DIRECTOR OF ECONOMIC DEVELOPMENT