

AN ORDINANCE 2011-03-10-0208

APPROVING AN ARBITRAGE REBATE COMPLIANCE SERVICES CONTRACT WITH THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. TO PROVIDE ARBITRAGE REBATE COMPLIANCE SERVICES IN CONNECTION WITH THE CITY'S FINANCES FOR A TERM BEGINNING MARCH 14, 2011 AND ENDING FEBRUARY 28, 2014, WITH THE OPTION TO EXTEND FOR ONE (1) ADDITIONAL TWO (2) YEAR TERM.

* * * * *

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the scope of arbitrage rebate compliance services required by the City 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; calculation and verification of the arbitrage rate for each tax-exempt obligation for which an arbitrage rebate computation is required; on-going services 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; and

WHEREAS, a Request for Proposal ("RFP") was developed inclusive of the various types of financings the City may undertake during the term of the Arbitrage Rebate Compliance Services Contract, for the purpose of soliciting proposals for the provision of Arbitrage Rebate Compliance Services to the City; and

WHEREAS, the RFP was released on November 7, 2010; and

WHEREAS, on December 10, 2010, four (4) firms submitted proposals for provision of Arbitrage Rebate Compliance Services, which were received by the City and evaluated by an evaluation committee; and

WHEREAS, the evaluation involved, among other inquiries, each of the following: Respondent Background, Experience, Qualifications and References; Lead Arbitrage Rebate Compliance

Consultant Experience and Availability; Technical and Quantitative Expertise and Availability; Cost of Services; and Small Business Economic Development Advocacy Program Goals; and

WHEREAS, in addition to evaluating the proposals, all of the firms submitting proposals were interviewed by the evaluation committee, in order to address any outstanding issues and to gain a clear perspective of each firm's ability to service the City's unique and varied requirements; and

WHEREAS, City Staff has recommended that the City enter into an Arbitrage Rebate Compliance Services Contract with The Bank of New York Mellon Trust Company, N.A., with the term of the contract to begin March 14, 2011 and end February 28, 2014, and containing an option to extend for one (1) additional two (2) year term; and

WHEREAS, following discussion and deliberations by the City Council on the matter, the City Council is of the opinion that the recommendation of City Staff should be accepted and followed; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Arbitrage Rebate Compliance Services Contract between the City and The Bank of New York Mellon Trust Company, N.A., (the "Contract"), a true and correct copy of which, in substantially final form, is attached hereto and incorporated herein for all purposes as Attachment I, is hereby approved. The City Manager or her Designee, or the Chief Financial Officer (CFO) or his Designee, are hereby authorized to execute the Contract containing the same or substantially the same terms and conditions as those set forth in Attachment I.

SECTION 2. The City Manager or the CFO is authorized sixty (60) business days from the effective date of this Ordinance within which to execute a contract, substantially according to the terms and conditions set forth in Attachment I. If said contract is not executed within said sixty (60) business days, or if the parties cannot agree to terms of such contract that are in substantially the same form as Attachment I within such time, then there shall be no authority to execute said contract unless there is subsequent City Council approval.

SECTION 3. Fees for Arbitrage Rebate Compliance Services are paid from tax-exempt proceeds and the interest earned on the investment of such proceeds. Therefore, there is no impact on the City's Operating Budget.

Remainder of Page Intentionally Left Blank

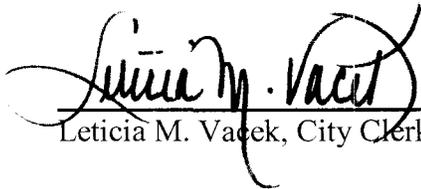
SECTION 4. This ordinance is effective immediately upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 10TH day of March, 2011.



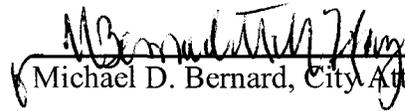
M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 21

Name:	6, 7, 9, 10, 12, 13, 15A, 15B, 16, 17, 18, 21, 22A, 22B, 22C, 24, 25, 26, 27						
Date:	03/10/2011						
Time:	10:03:40 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Arbitrage Rebate Compliance Services Contract with The Bank of New York Mellon Trust Company, N.A. to provide arbitrage rebate compliance services in connection with the City's financings for a term beginning March 1, 2011 and ending February 28, 2014, with the option to extend the contract for one additional 2-year period. [Ben Gorzell, Chief Financial Officer]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x			x	

A T T A C H M E N T I

CITY OF SAN ANTONIO

Arbitrage Rebate Compliance Services Contract

This Arbitrage Rebate Compliance Services Contract (hereinafter referred to as “**CONTRACT**”) is made and entered into by and between the **CITY OF SAN ANTONIO, TEXAS**, (hereinafter referred to as “**CITY**”) a Texas Municipal Corporation, acting by and through its Chief Financial Officer, pursuant to Ordinance Number 2011-03-10-____ approved on March 10, 2011, and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, hereinafter referred to as “**CONSULTANT**”) a national association to provide Arbitrage Rebate Compliance Services to **CITY**. The purpose of this **CONTRACT** is to engage **CONSULTANT** to provide Arbitrage Rebate Compliance Services in connection with **CITY**’s outstanding tax-exempt bond proceeds balances in debt service funds, debt service reserve funds, capital projects funds, and other funds, if any, into which tax-exempt proceeds may have been deposited.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROVISIONS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. GENERAL STATEMENT

- 1.1 **CITY**, from time to time, is required to calculate interest earned on invested tax-exempt bond proceeds balances to determine the arbitrage rebate amount due to the Internal Revenue Service, if any. The purpose of this **CONTRACT** is to establish parameters within which **CONSULTANT** is to provide Arbitrage Rebate Compliance Services related to reviewing **CITY**’s tax-exempt debt service funds, debt service reserve funds, capital projects funds and other funds, if any, into which tax-exempt proceeds may have been deposited, coordinate with **CITY** the compilation of data, compute the arbitrage rate, interest income and rebate amount, if any, for each outstanding tax-exempt obligation by the required reporting date, prepare and submit a report to **CITY** citing the findings for each tax-exempt obligation for which a computation was made, provide counsel to **CITY** staff as required with respect to Arbitrage Rebate Compliance Services and related issues, attend meetings if required, assist **CITY** in responding to queries posed to **CITY** related to arbitrage, and assist **CITY** as may be required from time to time on any additional matters related to arbitrage.

II. SCOPE OF SERVICES

- 2.1 **CONSULTANT** agrees to provide the following services and all other Arbitrage Rebate Compliance Services normally performed by such consultants as may be necessary or advisable:
- a. Provide all services as set forth in **CITY**'s Request for Proposal (RFP), issued November 7, 2010, and **CONSULTANT**'s Proposal, dated December 10, 2010, attached hereto as Attachments "A" and "B" respectively and incorporated herein. In the event of conflict or inconsistency between this **CONTRACT** and Attachments A and/or B, the provisions of this **CONTRACT** shall govern. In the event of conflict or inconsistency between Attachments A and B, the terms and provisions of Attachment A shall govern.
 - b. Perform a comprehensive review of **CITY**'s outstanding tax-exempt obligations, debt service funds, debt service reserve funds, capital projects funds and other funds, if any, into which tax-exempt proceeds may have been deposited. From such review, identify the issues to which the arbitrage rebate calculations are applicable and the reporting dates applicable to each of such issues.
 - c. Calculate and verify the arbitrage rate for each tax-exempt obligation for which an arbitrage rebate computation is required.
 - d. Coordinate with **CITY** the compilation of data and information required to review **CITY**'s outstanding tax-exempt obligations and perform the arbitrage rebate calculations.
 - e. Analyze the revenue, expenditures, and transfer of monies pertaining to funds into which tax-exempt proceeds have been deposited.
 - f. Calculate interest income and arbitrage amount, if any, for each issue or series of tax-exempt obligations prior to the Internal Revenue Service arbitrage rebate reporting deadline.
 - g. Advise **CITY** on revisions made to the arbitrage regulations for the term of contract, including renewals, as defined in Section III, Term.
 - h. Advise and assist **CITY** in complying with, and preparing arbitrage rebate reports.
 - i. Provide continuing Arbitrage Rebate Compliance Services on questions that may arise from time to time on one or more tax-exempt obligations prior to or subsequent to the computations made in connection with each reporting period.
 - j. Prepare reports and other documents for **CITY**'s review that **CITY** may be required to submit to the Internal Revenue Service and/or interested third parties.

- k. Advise and assist **CITY** in responding to queries posed to **CITY** related to arbitration. Such service shall include, but not be limited to, assembling information, preparing written reports, making personal appearances in response to arbitration questions, and performing such other tasks as may be required from time to time.
 - l. Attend meetings, as may be required.
 - m. Assist **CITY** in assembly and conveyance of data and information related to the Arbitrage Rebate Compliance Services provided by **CONSULTANT** as may be required by municipal bond attorneys, tax counsel, or other interested third parties if required or requested by **CITY**.
- 2.2 All services to be provided by **CONSULTANT** under this **CONTRACT** will be performed in accordance with all professional standards applicable to **CONSULTANT** and/or each of its state or federally licensed officers, employees, or representatives.

III. TERM

- 3.1 This **CONTRACT** shall commence on March 14, 2011 and shall be in effect through February 28, 2014, unless extension or earlier termination shall occur pursuant to any of the provisions of this **CONTRACT**.
- 3.2 **CITY** shall have the option to renew this **CONTRACT** for one (1) additional, two (2) year period under the same terms and conditions as provided herein. Any renewals shall be in writing and be subject to City of San Antonio City Council approval, as evidenced by passage of an ordinance. An election by **CITY** not to renew shall not require any action or notification to **CONSULTANT**.

IV. CONSIDERATION

- 4.1 In consideration for the performance of services provided by **CONSULTANT**, and as reimbursement for the expenses which may be incurred and associated therewith by **CONSULTANT**, **CITY** agrees to pay **CONSULTANT** and **CONSULTANT** agrees to accept a fee in a total amount equal to the applicable fee set forth below, plus the applicable additional charge(s), if any, set forth in Section 4.2. **CONSULTANT** shall submit invoices upon completion of work performed. **CITY** shall pay **CONSULTANT** no later than thirty (30) days from the said invoice.

Fee Schedule	
Description	Annual Fees Per Issue Per Computation Year (*)
General Obligation Bonds	\$1,300
Certificates of Obligation	\$1,300
Tax Notes	\$1,300
Build America Bonds (BABs)	\$1,300
Airport System Revenue Improvement Bonds	\$1,400
Airport Special Facilities Revenue Bonds	\$1,400
Airport Passenger Facility Charge Revenue Bonds	\$1,400
Municipal Drainage Utility System Revenue Bonds	\$1,300
Municipal Facilities Corporation Lease Revenue Bonds	\$1,300
Convention Center Revenue Bonds	\$1,400
Contract Revenue Bonds	\$1,400
Tax-Exempt Commercial Paper	\$1,300
Conduit Financings	\$1,300
Variable/Floating Rate Bonds	\$1,300
Multi-use Community Facility Bonds	\$1,300
Other Financings	\$1,300

(*) The annual fees quoted above are based upon an issue with five project funds or less.

4.2 Additional Charges

The structure and complexity of certain bond issues may require or benefit from additional services for which additional fees will be charged. The following table indicates situations that require additional calculations and increases the amount of work necessary to compile the report. In these instances, additional fees will be charged for that issue.

Description	Note	Annual Fees Per Issue Per Computation Year (1)
<i>Additional Charges for Special Services Related to:</i>		
Report Fee		\$0
Project Fund Fee	(2)	\$100
Variable Rate Bond Fee		\$200
Commingled Fund Allocations per fund	(3)	\$250
Transferred proceeds transactions due to refunding (per refunding)	(4)	\$250
Yield Restriction Analysis/Yield Reduction Computation on Non-Purpose Investments	(5)	\$250
Alternate Yield Period Calculations for Variable Rate Issues	(6)	\$1,500
Refund Requests	(7)	\$3,000

Note:

- (1) A “**Computation Year**” represents a one-year period from the delivery date of the bonds and each subsequent anniversary date of the delivery of the bonds or shorter period if selected by the issuer. Fees are quoted separately for each bond year.
- (2) **Project Funds:** An additional charge of \$100 for each project fund in excess of five will be added each year until the number of active funds reduces to five or less. For example, a bond issue with 7 project funds would be charged an additional \$200 annually until expended.
- (3) **Commingled Funds:** In the event funds containing bond proceeds are commingled with funds from other sources, including other bond issues, it is necessary to perform an allocation of the commingled fund to determine the interest earnings associated with the portion of the commingled fund that relates to the bond issue in question. An additional fee is charged to perform the necessary allocations for commingled funds.
- (4) **Transferred Proceeds:** When an issuer refinances (refunds) an existing bond issue, any unexpended proceeds from the issue(s) being refunded become “transferred proceeds” of the refunding bonds. Under the arbitrage regulation, as the escrow established with refunding bond proceeds pay principal of the refunded bonds, a pro-rata share of unexpended proceeds from the refunded bonds is no longer treated as proceeds of the refunding bonds, but becomes subject to rebate and yield restriction as part of the refunding bond issue calculation. In the event proceeds of the refinanced bond issue become transferred to the refunding bonds for calculation purposes, it will be necessary to perform the transferred proceeds calculations.
- (5) **Yield Restriction/Yield Reduction:** In addition to the arbitrage rebate requirement imposed by Section 148(f)(2) of the Internal Revenue Code, issuers must also comply with separate yield restriction rules imposed by the Code. Arbitrage earned after permitted “temporary periods” defined in the Code may not be retained and may not be offset against negative arbitrage earned during the temporary periods. If proceeds remain after the permitted temporary periods, calculations must be performed to determine if any yield reduction payment is required.
- (6) **Variable Rate Issues & Qualified Hedges:** The computation of the bond yield for a variable rate issue differs from that of a fixed rate issue. Fixed rate issues can generally be computed only once and used for all arbitrage calculations. The yield on a variable rate issue changes as the rates change and must be updated each time a calculation is performed. The arbitrage regulations permit the use of an alternate yield period methodology might decrease the rebate liability.
- (7) **Refund Requests:** In the event **CITY** is entitled to a refund for overpayment of a prior arbitrage liability, **CONSULTANT** will prepare the IRS Form 8038-R and supporting documentation necessary for an agent to process the request.

CONSULTANT will answer any questions the agent may have regarding the calculations or the request.

- 4.3 In the event **CITY** requests **CONSULTANT** to provide additional services not specifically provided for herein, **CITY** and **CONSULTANT** shall negotiate a reasonable fee prior to the engagement or performance of any such additional work by **CONSULTANT**. Such agreement shall be effected in accordance with Section XVII, Changes and Amendments, and is subject to City of San Antonio City Council approval, as evidenced by passage of an ordinance. **CITY** reserves the right to utilize or engage another **CONSULTANT** to provide such other services not provided for herein.

V. RECORDS

- 5.1 **CONSULTANT** and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder, and shall make such materials available to **CITY** at their respective offices, at all reasonable times and as often as **CITY** may deem necessary during the **CONTRACT** period, including any extension or renewal hereof, and during the retention period specified below, for purposes of inspection, examination, and making excerpts and or copies of same by **CITY** and any of its authorized representatives.
- 5.2 **CONSULTANT** shall retain any and all documents produced as a result of services provided hereunder for a period of six (6) years after the related bond issue has been completely redeemed (the "Retention Period"). If at the end of the Retention Period there is litigation involving or concerning this documentation or the services provided hereunder, **CONSULTANT** shall retain the records until the resolution of such litigation. **CONSULTANT** shall return or turn over to **CITY** all documentation at the end of the Retention Period or upon resolution of litigation.
- 5.3 **CONSULTANT** agrees to notify **CITY** immediately if a request is made by a third person for information produced and/or maintained by **CONSULTANT** as a result of the provision of services under this **CONTRACT**. **CONSULTANT** shall immediately forward said request to **CITY** for response.

VI. INSURANCE

- 6.1 Prior to the commencement of any work under this **CONTRACT**, **CONSULTANT** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to **CITY**'s Finance Department, which shall be clearly labeled "Arbitrage Rebate Compliance Services Contract" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. **CITY** will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the

insurer's authorized representative to **CITY**. **CITY** shall have no duty to pay or perform under this **CONTRACT** until such certificate and endorsements have been received and approved by **CITY's** Finance Department. No officer or employee, other than **CITY's** Risk Manager, shall have authority to waive this requirement.

- 6.2 **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this **CONTRACT** and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **CONTRACT**. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk.
- 6.3 **CONSULTANT's** financial integrity is of interest to **CITY**; therefore, subject to **CONSULTANT's** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **CONSULTANT** shall obtain and maintain in full force and effect for the duration of this **CONTRACT**, and any extension hereof, at **CONSULTANT's** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability a. Owned/leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

6.4 **CONSULTANT** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **CONSULTANT** herein, and provide a certificate of insurance and endorsement that names **CONSULTANT** and **CITY** as additional insureds. **CONSULTANT** shall provide **CITY** with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by **CITY**'s Risk Manager, without subsequent City of San Antonio City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by **CITY**'s Risk Manager, which shall become a part of the contract for all purposes.

6.5 As they apply to the limits required by **CITY**, **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **CONSULTANT** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within 10 days of the requested change. **CONSULTANT** shall pay any costs incurred resulting from said changes.

6.6 **CONSULTANT** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to **CITY** where **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of **CITY**; and
- Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

6.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **CONSULTANT** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **CONSULTANT**'s performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this **CONTRACT**.

6.8 In addition to any other remedies **CITY** may have upon **CONSULTANT**'s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **CONSULTANT** to stop work hereunder, and/or withhold any payment(s) which become due to **CONSULTANT** hereunder until **CONSULTANT** demonstrates compliance with the requirements hereof.

6.9 Nothing herein contained shall be construed as limiting in any way the extent to which **CONSULTANT** may be held responsible for payments of damages to persons or property resulting from **CONSULTANT**'s or its subcontractor's performance of the work covered under this **CONTRACT**.

6.10 It is agreed that **CONSULTANT**'s insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by **CITY** for liability arising out of operations under this **CONTRACT**.

6.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **CONTRACT** and that no claim or action by or on behalf of **CITY** shall be limited to insurance coverage provided.

6.12 **CONSULTANT** and any subcontractors are responsible for all damage to their own equipment and/or property.

VII. INDEMNITY

- 7.1 **CONSULTANT** covenants and agrees to **FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, CITY** and the elected officials, employees, officers, directors, volunteers and representatives of **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including but not limited to, personal or bodily injury, death and property damage, made upon **CITY** directly or indirectly arising out of, resulting from or related to **CONSULTANT's** activities under this **CONTRACT**, including any acts or omissions of **CONSULTANT**, any agent, officer director, representative, employee, consultant or subcontractor of **CONSULTANT**, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this **CONTRACT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers, or employees. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 7.2 The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 7.3 **CONSULTANT** shall promptly advise **CITY** in writing of any claim or demand against **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this **CONTRACT**.
- 7.4 **CITY** shall have the right to select or to approve defense counsel to be retained by **CONSULTANT** in fulfilling its obligation hereunder to defend and indemnify **CITY**, unless such right is expressly waived by **CITY** in writing. **CONSULTANT** shall retain **CITY** approved defense counsel within seven (7) business days of **CITY's** written notice that **CITY** is invoking its right to indemnification under this **CONTRACT**. If **CONSULTANT** fails to retain Counsel within such time period, **CITY** shall have the right to retain defense counsel on its own behalf, and **CONSULTANT** shall be liable for all costs incurred by **CITY**. **CITY** shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

- 7.5 In any and all claims against any party indemnified hereunder by any employee of **CONSULTANT**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for **CONSULTANT** or any subcontractor under worker's compensation or other employee benefit acts.

VIII. OTHER WORK

- 8.1 **CONSULTANT** understands and agrees that any Arbitrage Rebate Compliance Services that may be in progress prior to the execution of this **CONTRACT** shall remain the responsibility of **CONSULTANT(s)** that are providing such services, and that responsibility for such services is governed by the terms of that prior relationship. Fees will be paid to **CONSULTANT(s)** working on the transaction and prior contractual arrangements with such **CONSULTANT(s)** shall be concluded pursuant to the terms of such prior contractual arrangements.

IX. CONFIDENTIALITY

- 9.1 **CONSULTANT** acknowledges that during the term of this **CONTRACT** it may have access to confidential information, and in accordance therewith, agrees to establish and have in place and fully operational on March 14, 2011 a method reasonably acceptable to **CITY** to secure and maintain the confidentiality of such information.

X. OWNERSHIP OF DOCUMENTS

- 10.1 Any and all writings, documents or information in whatsoever form and character produced by **CONSULTANT** pursuant to the provisions of this **CONTRACT**, is the exclusive property of **CITY**; and no such writing, document, or information shall be the subject of any copyright or proprietary claim by **CONSULTANT**.
- 10.2 **CONSULTANT** understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, **CITY** has the right to use all such writings, documents and information as **CITY** desires, without restriction.

XI. TERMINATION

- 11.1 For purposes of this **CONTRACT**, "termination" of this **CONTRACT** shall mean termination by completion of the provision of services stated herein, expiration or earlier termination pursuant to any of the provisions hereof.

- 11.2 Termination for Cause: In addition to any other provisions of this **CONTRACT**, **CITY** may terminate this **CONTRACT** in accordance with this clause, in whole or in part, for any of the following:
- a. Neglect or failure by **CONSULTANT** to perform or observe any of the terms, conditions, covenants or guarantees of this **CONTRACT** or of any amendment between **CITY** and **CONSULTANT**; or
 - b. Violation by **CONSULTANT** of any rule, regulation or law to which **CONSULTANT** is bound or shall be bound while and in performing the services required under this **CONTRACT**.
- 11.3 Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** in accordance with Section XXI, Notices, specifying the effective date of termination and the extent to which performance of work under this **CONTRACT** will be terminated. **CONSULTANT** shall retain all documents created through the date of termination, whether or not completed, in accordance with Section V, Records.
- 11.4 Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by **CITY**), **CONSULTANT** shall submit to **CITY** any claim in detail for the monies owed by **CITY** for services performed under this **CONTRACT**, including for all work performed to date of notice of termination, and for any necessary and proper work performed in the ensuing thirty (30) day period, provided however, that such payment does not exceed the maximum amount set out in Section IV, Consideration.
- 11.5 Termination without Cause: Notwithstanding the provisions contained in Section 11.2 above, either party may terminate this **CONTRACT** by giving the other party thirty (30) days written notice in accordance with Section XXI, Notices.

XII. SUBCONTRACTING

- 12.1 None of the work or services covered by this **CONTRACT** shall be subcontracted without the prior written approval of **CITY**. **CONSULTANT** shall secure said written approval prior to the performance by any subcontractor of the work or services required hereunder. Any work or services approved for subcontracting, however, shall be subcontracted only by written contract, and unless specific waiver is granted in writing by **CITY**, such subcontracted work shall be subject by its terms to all provisions of this **CONTRACT**. Compliance by subcontractors with this **CONTRACT** shall be the responsibility of **CONSULTANT**.

XIII. ASSIGNMENT OF RIGHTS OR DUTIES

- 13.1 This **CONTRACT** shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.
- 13.2 Except as otherwise provided herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this **CONTRACT** nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or any other means, without the consent of **CITY**.
- 13.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of services outlined in this **CONTRACT** in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this **CONTRACT** to an assignee, transferee or subcontractor indicate only such an entity as has been approved by **CITY** in accordance with this Section.
- 13.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of, its right, title, interest or duties to or under this **CONTRACT** without said written approval shall be void *ab initio* and shall confer no rights upon any third party. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of, its right, title or interest or duties to or under this **CONTRACT**, **CITY** may, at its option, terminate this **CONTRACT** in accordance with Section XI, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this **CONTRACT**, nor shall it relieve or release **CONSULTANT** from payment of any damages to **CITY** which **CITY** sustains as a result of such violation.
- 13.5 **CONSULTANT** agrees to notify **CITY** of any changes in ownership interest greater than thirty percent (30%) or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this **CONTRACT**, any such change of ownership interest or control of its business entity may be grounds for termination of this **CONTRACT** in accordance with Section XI, Termination.

XIV. CONFLICT OF INTEREST

- 14.1 **CONSULTANT** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its individual officers, employees, and agents are neither officers nor employees of **CITY** or any **CITY** agencies, such as **CITY**-owned utilities. **CONSULTANT** further warrants and certifies that it, its individual officers, employees, and agents do not have a prohibited financial interest as proscribed by the Ethics Code of **CITY**.

- 14.2 An officer or employee has a “**prohibited financial interest**” in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies, or service, if any of the following individuals or entities is a party to the **CONTRACT**: **CITY** officer or employee; his or her parent, child, or spouse; a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly, owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity of which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner, or a parent or subsidiary business entity.

XV. COMPLIANCE

- 15.1 **CONSULTANT** and each of its licensed employees or representatives shall comply with all federal, state and local laws, rules and regulations, including but not limited to all securities rules and regulations, in performing the services required hereunder.

XVI. INDEPENDENT CONTRACTOR

- 16.1 It is expressly understood and agreed that **CONSULTANT** provides services as an independent contractor responsible for its respective acts or omissions and that **CITY** shall in no way be responsible therefor. Except as provided herein, neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XVII. CHANGES AND AMENDMENTS

- 17.1 Except where the terms of this **CONTRACT** expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both **CITY** and **CONSULTANT**, and subject to approval by the City of San Antonio City Council, evidenced by passage of an ordinance.
- 17.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this **CONTRACT** and that any such changes shall be automatically incorporated into this **CONTRACT** without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVIII. LICENSES/CERTIFICATIONS

- 18.1 **CONSULTANT** warrants and certifies that **CONSULTANT** and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. ENTIRE AGREEMENT

19.1 This **CONTRACT**, together with its authorizing ordinance and exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this **CONTRACT** shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by both parties in accordance with Section XVII, Changes and Amendments.

XX. SEVERABILITY

20.1 If any clause or provision of this **CONTRACT** is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the **CITY** Charter, **CITY** Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this **CONTRACT** shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties hereto that in lieu of each clause or provision of this **CONTRACT** that is invalid, illegal, or unenforceable, there be added as a part of the **CONTRACT** a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. NOTICES

21.1 For purposes of this **CONTRACT**, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed certified mail, postage prepaid, effective upon receipt, to the addresses set forth below:

CITY

City of San Antonio
Chief Financial Officer
Attention: Ben Gorzell, Jr.
111 Soledad Street, 5th Floor
San Antonio, Texas 78205

CONSULTANT

The Bank of New York Mellon Trust Company, N.A.
Attention: Terence P. Burke
Managing Director
13760 Noel Road, Suite 1040
Dallas, Texas 75240

XXII. EQUAL EMPLOYMENT OPPORTUNITY

22.1 **CONSULTANT** shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, disability, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable

provisions of the City of San Antonio ordinance number 69403 on file in the City Clerk's office.

XXIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

- 23.1 **SBEDA Program.** The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the CITY's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this **CONTRACT**:
- 23.2 SBEDA Enterprise ("SE") – A corporation, Limited Liability Company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.
- 23.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- 23.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.
- 23.5 SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with **CONSULTANT's** bid for this project **CONTRACT**.
- 23.6 **For this CONTRACT, the Parties agree that:**
- a. The terms of the CITY's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this **CONTRACT** by reference;

- b. The failure of **CONSULTANT** or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this **CONTRACT**;
- c. Failure of **CONSULTANT** or any applicable SE to provide any documentation or written submissions required by the **CITY** Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this **CONTRACT**;
- d. During the Term of this **CONTRACT**, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in **CONSULTANT**'s SBEDA Plan shall constitute a material breach of the SBEDA Program and this **CONTRACT**; and
- e. **CONSULTANT** shall pay all suppliers and subcontractors identified in its SBEDA Plan in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by **CONSULTANT** to the **CITY** Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this **CONTRACT**.

23.7 **The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this CONTRACT:**

- a. Failure of **CONSULTANT** to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this **CONTRACT**, or failing to allow such SE to perform a Commercially Useful Function;
- b. Modification or elimination by **CONSULTANT** of all or a portion of the scope of work attributable to an SE upon which the **CONTRACT** was awarded;
- c. Termination by **CONSULTANT** of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the **CONTRACT** without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; and
- d. Participation by **CONSULTANT** in a Conduit relationship with an SE scheduled to perform work that is the subject of this **CONTRACT**.

23.8 **Remedies for Violation of SBEDA Program.** The Parties further agree that in addition to any other remedies the **CITY** may have at law or in equity, or under this **CONTRACT** for material breach, including the specified remedies available under the

SBEDA Program for Alternative Construction Delivery Method, the **CITY** shall be entitled, at its election, to exercise any one or more of the following remedies if the **CONSULTANT** materially breaches the requirements of the SBEDA Program:

- a. Terminate this **CONTRACT** for default;
- b. Suspend this **CONTRACT** for default;
- c. Withhold all payments due to the **CONSULTANT** under this **CONTRACT** until such violation has been fully cured or the Parties have reached a mutually agreeable resolution;
- d. Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the **CITY** pursuant to the **CONTRACT**, or from any other amounts due to the **CONSULTANT** under the **CONTRACT**; and
- e. Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

23.9 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this **CONTRACT**.

23.10 *The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.*

23.11 **City Process for Exercising SBEDA Program Remedies.** The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the **CITY** to exercise in the event a **CONSULTANT** violates the SBEDA Program. The Managing Department Director responsible for the affected **CONTRACT** shall then make the decision as to what remedies will be exercised if the **CONTRACT** is valued at less than \$25,000. If the **CONTRACT** is valued at \$25,000 or greater, then the Managing Department Director shall make a

recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the **CONTRACT**. If the recommended remedy is to terminate the **CONTRACT**, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to the City of San Antonio City Council for final determination.

23.12 **Special Provisions for Extension of Agreements.** In the event the **CITY** extends this **CONTRACT** without a competitive Bid or Proposal process, the **CITY** Managing Department responsible for monitoring the **CONTRACT** shall establish the following, subject to review and approval by the SBEDA Program Manager:

- a. A SBEDA Utilization Goal for the extended period;
- b. A modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if **CONSULTANT** does not meet the SBEDA Utilization Goal; and
- c. The required minimum Good Faith Efforts outreach attempts that **CONSULTANT** shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the **CONTRACT** extension document. The **CONSULTANT** entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
 1. Subject **CONSULTANT** to any of the remedies listed above; and/or
 2. Result in rebid of the **CONTRACT** to be extended.

XXIV. GOVERNING LAW AND VENUE

24.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

24.2 Any legal action, claim, proceeding or dispute brought or maintained, directly or indirectly, as a result of this **CONTRACT** shall be heard and determined in the City of San Antonio, County of Bexar, Texas.

XXV. LEGAL AUTHORITY

25.1 The signer of this **CONTRACT** for **CONSULTANT** represents, warrants, assures and guarantees that he has full legal authority to execute this **CONTRACT** on behalf of **CONSULTANT** and to bind **CONSULTANT** to all of the terms, conditions, provisions and obligations herein contained.

XXVI. PARTIES BOUND

26.1 This **CONTRACT** shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives and successors, except as otherwise expressly provided for herein.

XXVII. GENDER

27.1 Words of any gender used in this **CONTRACT** shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVIII. CAPTIONS

28.1 The captions contained in this **CONTRACT** are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this **CONTRACT**.

XXIX. ACKNOWLEDGMENT

29.1 Each of the Parties acknowledges that it has read this **CONTRACT**, understands its contents and executes this **CONTRACT** voluntarily.

EXECUTED and **AGREED** to this the ____ day of March, 2011.

CITY

CITY OF SAN ANTONIO

CONSULTANT

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.**

By: _____

Name: Ben Gorzell, Jr., CPA

Title: Chief Financial Officer

By: _____

Name: Terence P. Burke

Title: Managing Director

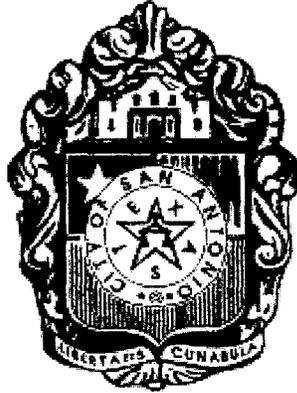
APPROVED AS TO FORM:

Robert K. Nordhaus
Assistant City Attorney

ATTACHMENT A
REQUEST FOR PROPOSAL (RFP)

CITY OF SAN ANTONIO

Finance Department



REQUEST FOR PROPOSAL ("RFP")

for

Arbitrage Rebate Compliance Services RFP-010-011

Release Date: November 7, 2010
Proposals Due: December 10, 2010

Table of Contents

	Section	Page Number
I.	Introduction	1
II.	Background	1
III.	Scope of Services	1
IV.	Ownership and Licenses	2
V.	Intellectual Property	3
VI.	Term of Contract	4
VII.	Proposal Requirements	4
VIII.	Amendments to RFP	5
IX.	Submission of Proposals	6
X.	Restrictions on Communication	7
XI.	Evaluation Criteria	8
XII.	Personal Presentation	10
XIII.	Award of Contract and Reservation of Rights	10
XIV.	Schedule of Events	11

RFP Attachments

Respondent's Proposal must contain the following documents. These forms can be found as attachments to this RFP or web links, as indicated.

Attachment 1, Part 1	Arbitrage Rebate Compliance Questionnaire Form	13
Attachment 1, Part 2	References	17
Attachment 2	Fee Schedule	18
Attachment 3	Discretionary Contracts Disclosure Form	20
Attachment 4	Litigation Disclosure Form	21
Attachment 5	Small Business Economic Development Advocacy (SBEDA) Forms	23
Attachment 6	Signature Page	28
Attachment 7	Proposal Checklist	30

RFP Exhibits

RFP Exhibit 1	Small Business Economic Development Advocacy (SBEDA) Program Policy	32
RFP Exhibit 2	Insurance Requirements	36
RFP Exhibit 3	Indemnification Requirements	41
RFP Exhibit 4	Draft Arbitrage Rebate Compliance Services Contract	44

I. INTRODUCTION

The City of San Antonio, Texas Finance Department (the “City”) is soliciting proposals for the purpose of retaining a Consultant(s) to provide Arbitrage Rebate Compliance Services in connection with the City’s outstanding tax-exempt obligations, debt service funds, debt service reserve funds, capital projects funds and other funds, if any, into which tax-exempt proceeds may have been deposited.

This Request for Proposal (“RFP”) represents a competitive process which will facilitate a fair opportunity for qualified Respondent(s) to offer their services for consideration. This competitive RFP process will provide the City the flexibility to select the Respondent(s) whose proposal(s) is deemed most advantageous for the City and to negotiate with such Respondent(s) to arrive at a mutually agreeable contract(s).

II. BACKGROUND

The City, from time to time, is required to calculate interest earned on invested tax-exempt bond proceeds fund balances to determine the arbitrage rebate amount due to the Internal Revenue Service, if any. The purpose of this RFP is to establish parameters within which the Consultant(s) is to provide Arbitrage Rebate Compliance Services related to reviewing the City’s tax-exempt debt service funds, debt service reserve funds, capital projects funds and other funds, if any, into which tax-exempt proceeds may have been deposited, coordinate with the City the compilation of data, compute the arbitrage rate, interest income and rebate amount, if any, for each outstanding tax-exempt obligation by the required reporting date, prepare and submit a report to the City citing the findings for each tax-exempt obligation for which a computation was made, provide counsel to City staff, as required, attend meetings, if required, assist the City in responding to queries posed to the City related to arbitrage, and assist the City, as may be required, from time to time, on any additional matters related to arbitrage.

At September 30, 2010, the City’s outstanding general obligation debt was \$1,300,330,000 which was comprised of \$931,120,000 in general obligation bonds, \$305,850,000 in certificates of obligation, and \$63,360,000 in tax notes. At September 30, 2010, the City had outstanding the following revenue bonds: \$211,100,000 City of San Antonio, Texas Airport System Revenue Bonds, \$133,425,000 City of San Antonio, Texas Passenger Facility Charge and Subordinate Lien Airport System Revenue Improvement Bonds, \$90,135,000 City of San Antonio, Texas, Municipal Drainage Utility System Revenue Bonds, \$229,057,412 City of San Antonio, Texas Hotel Occupancy Tax Revenue Bonds, and \$14,370,000 in City of San Antonio, Texas Sales Tax Revenue Commercial Paper.

The Consultant who is currently under contract to provide Arbitrage Rebate Compliance Services will complete any analyses currently in progress, including but not limited to, the Fiscal Year 2010 arbitrage liability analysis.

Firm(s) must submit separate proposals. The City reserves the right to select and appoint Consultants, Co-Consultants, and/or a team or teams of Consultants at its sole discretion. “Arbitrage Rebate Compliance Services,” as used herein, shall refer to all those services outlined below in Section III, Scope of Services.

III. SCOPE OF SERVICES

The Respondent(s) must be capable of providing the following services and the Arbitrage Rebate Compliance Services as may be necessary or advisable:

- A. Perform a comprehensive review of the City's outstanding tax-exempt obligations, debt service funds, debt service reserve funds, capital projects funds and other funds, if any, into which tax-exempt proceeds may have been deposited. From such review, identify the issues to which the arbitrage rebate calculations are applicable and the reporting dates applicable to each of such issues.
- B. Calculate and verify the arbitrage rate for each tax-exempt obligation for which an arbitrage rebate computation is required.
- C. Coordinate with the City the compilation of data and information required to review the City's outstanding tax-exempt obligations and perform the arbitrage rebate calculations on an annual basis as of September 30th of each year to coincide with the City's fiscal year end.
- D. Analyze the revenue, expenditures, and transfer of monies pertaining to funds into which tax-exempt proceeds have been deposited.
- E. Calculate interest income and arbitrage amount, if any, for each issue or series of tax-exempt obligations prior to the Internal Revenue Service arbitrage rebate reporting deadline.
- F. Advise the City on revisions made to the arbitrage regulations for the term of the contract, including renewals as defined in Section VI, Term of Contract.
- G. Advise and assist the City in complying with, and preparing arbitrage rebate reports.
- H. Provide continuing Arbitrage Rebate Compliance Services on questions that may arise from time to time on one or more tax-exempt obligations prior to or subsequent to the computations made in connection with each reporting period.
- I. Prepare reports and other documents for the City's review that the City may be required to submit to the Internal Revenue Service and/or interested third parties.
- J. Advise and assist the City in responding to queries posed to the City related to arbitrage. Such service shall include, but not be limited to, assembling information, preparing written reports, making personal appearances in response to arbitrage questions, and performing such other tasks as may be required from time to time.
- K. Attend meetings, as may be required.
- L. Assist the City in assembly and conveyance of data and information related to the Arbitrage Rebate Compliance Services provided by Consultant as may be required by municipal bond attorneys, tax counsel or other interested third parties if required or requested by City.

IV. OWNERSHIP AND LICENSES

In accordance with Texas law, Respondent acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Respondent pursuant to this Contract shall be the subject of any copyright or proprietary claim by Respondent.

The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Respondent acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Respondent, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Respondent, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Respondent, if selected, agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

V. INTELLECTUAL PROPERTY

If selected, Respondent agrees to abide by the following regarding intellectual property rights:

Respondent shall pay all royalties and licensing fees. Respondent shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Respondent has reason to believe that the design, service, process, or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Respondent will immediately:

1. Either:
 - a) obtain, at Respondent's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or

- b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

2. Respondent further agrees to:

- a) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- c) indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- 1. Respondent is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Respondent agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
- 2. the Software or the equipment is used by the City in the form, state, or condition as delivered by Respondent or as modified without the permission of Respondent, so long as such modification is not the source of the infringement claim, and
- 3. the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Respondent with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Respondent assumes responsibility under this section.

VI. TERM OF CONTRACT

The Arbitrage Rebate Compliance Services Contract, once awarded, is anticipated to become effective February 1, 2011 and shall be in effect through January 31, 2014, with the City's option to renew for one (1) additional, two (2) year period under the same terms and conditions. It is at the sole discretion and option of the City to exercise its right to renew or extend the Arbitrage Rebate Compliance Services Contract. An election by the City not to renew the Arbitrage Rebate Compliance Services Contract shall require no action or notification by the City to the Arbitrage Rebate Compliance Services provider.

VII. PROPOSAL REQUIREMENTS

Respondent's Proposal shall include the following items in the following sequence, tabbed and noted with the appropriate heading as indicated below.

A. TABLE OF CONTENTS

B. ARBITRAGE REBATE COMPLIANCE QUESTIONNAIRE FORM: Complete and submit RFP Attachment 1, Part 1, Arbitrage Rebate Compliance Questionnaire Form.

- C. REFERENCES: Complete and submit the References in RFP Attachment 1, Part 2
- D. FEE SCHEDULE: Complete and submit the Fee Schedule in RFP Attachment 2.
- E. DISCRETIONARY CONTRACTS DISCLOSURE: Follow the instructions provided in RFP Attachment 3, Discretionary Contracts Disclosure Form.
- F. LITIGATION DISCLOSURE: Complete and submit RFP Attachment 4 Litigation Disclosure Form.
- G. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM: Complete, sign, and submit the Good Faith Effort Plan contained in RFP Attachment 5.
- H. PROOF OF INSURABILITY: Submit a letter from insurance provider stating insurer's commitment to insure the Respondent for the types of coverages and at the levels specified in Exhibit 2 of this RFP if awarded a contract in response to this RFP. Respondent shall also submit a copy of their current insurance certificate.
- I. AUDITED FINANCIAL STATEMENTS: Submit a copy of Respondent's most recent annual financial statements prepared in accordance with Generally Accepted Accounting principles, audited by an independent Certified Public Accountant.
- J. SIGNATURE PAGE: Respondent must complete, sign, and submit the Signature Page found in the RFP Attachment 6. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the Proposal.
- K. PROPOSAL CHECKLIST: Complete and submit the Proposal Checklist found in RFP Attachment 7. Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE PROPOSAL REQUIREMENTS MAY RESULT IN THE PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE PROPOSAL REQUIREMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

VIII. AMENDMENTS TO RFP

Amendments to the RFP, including written responses to questions received in compliance with Section X, Restrictions on Communication may be posted as addendums on the City's website at <https://webapps1.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. A Respondent who does not have access to the Internet, must notify City in accordance with Section X, Restrictions on Communication, that Respondent wishes to receive copies of addendums by mail or fax.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only.

IX. SUBMISSION OF PROPOSAL

- A. Respondent shall submit one (1) original, signed in ink, ten (10) copies of the proposal, and one (1) compact disk (CD) containing an Adobe PDF version of the entire proposal in a sealed package clearly marked with the project name, “Arbitrage Rebate Compliance Services” on the front of the package.

All proposals must be received in the City Clerk’s Office no later than **2:00 p.m., Central Time**, on **December 10, 2010** at the address below. Proposals submitted prior to the above time and date may be modified provided such modifications are sealed and received by the City Clerk’s Office prior to the time and date set for submission of proposals. Any proposal or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should note that delivery to the P.O. Box address in a timely manner does not guarantee its receipt in the City Clerk’s Office by the deadline for submission. Therefore, Respondents should strive for early submission to avoid the possibility of rejection for late arrival.

Mailing Address:

City Clerk’s Office
Attn: *Department of Finance*
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

City Clerk’s Office
Attn: *Department of Finance*
100 Military Plaza
2nd Floor, City Hall
San Antonio, Texas 78205

Proposals sent by facsimile or email will not be accepted.

- B. Proposal Format: The City specifically requests that all responses be limited to the information requested. All RFP’s shall be limited to a maximum of **twenty (20)** pages, exclusive of the required attachments, and must be stapled. Please do not submit spiral bound, GBC bound, or three-ring binders, nor printed brochures, pamphlets or informational items. Failure to submit the requested information as required may result in the Respondent being deemed non-responsive and therefore disqualified from consideration.
- C. Respondents who submit Proposals to this RFP shall correctly reveal, disclose, and state the true and correct name of the individual, proprietorship, corporation, and/or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or shorthand, or local “handles” will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas

Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number in their Arbitrage Rebate Compliance Questionnaire Form.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on their responses to the Arbitrage Rebate Compliance Questionnaire Form, the City's Chief Financial Officer ("CFO") shall have the discretion, at any point in the contracting process, to suspend consideration of the Proposal.

- D. All provisions in Respondent's Proposal, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or, if a Proposal is accepted, throughout the entire term of the contract.
- E. Respondent shall submit full and accurate information in response to this RFP. If a Respondent is found to have incorrectly or incompletely stated any information, the CFO shall have the discretion, at any point, to suspend consideration of the RFP.
- F. All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- G. Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, or during any phase of the selection process, shall be borne solely by Respondent.

X. RESTRICTIONS ON COMMUNICATION

- A. Respondents are prohibited from communicating with: 1.) elected City officials and their staff regarding the RFP or Proposals from the time the RFP has been released until the contract is posted as a City Council agenda item; and 2.) City employees from the time the RFP has been released until the contract is awarded. These restrictions extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or Proposal submitted by Respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's proposal from consideration.

Exceptions to the Restrictions on Communication with City employees include:

- 1. Respondents may submit written questions concerning this RFP to the Staff Contact Person listed below until **2:00 p.m. Central Time, on November 19, 2010**. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by email to:

Debra Reyes, Contract Coordinator
City of San Antonio, Purchasing and General Services Department
debra.reyes@sanantonio.gov

Questions submitted and the City's responses will be posted in the form of an Addendum to the City's web site at <https://webapps1.sanantonio.gov/RFPListings/>.

2. Respondents and/or their agents are encouraged to contact the Small Business Office of the International and Economic Development Department for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact is Mr. Ram Srinivasan. Mr. Srinivasan may be reached by telephone at (210) 207-0071 or by e-mail at ram.srinivasan@sanantonio.gov. Contacting him or his office regarding this RFP after the proposal due date is not permitted.
 3. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. The City reserves the right to exclude any persons from interviews as it deems in its best interests.
 4. Upon completion of the evaluation process, Respondents shall receive a notification letter indicating the recommended firm and anticipated City Council agenda date. Respondents desiring a review of the solicitation process may submit a written request no later than seven (7) calendar days from the date letter was sent. The letter will indicate the name and address for submission of requests for review.
- B. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City. Such negotiations, initiated by City staff persons, shall not be considered a violation by Respondent of this section.

XI. EVALUATION CRITERIA

The City will conduct a comprehensive, fair, and impartial evaluation of all Proposals received in response to this RFP. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon the same criteria. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council.

Arbitrage Rebate Compliance Services Evaluation Criteria

Category	Scoring Percentage
Respondent Background, Experience, Qualifications and References	25%
Lead Arbitrage Rebate Compliance Consultant Experience and Availability	25%
Technical and Quantitative Expertise and Availability	20%
Cost of Services	10%
Local Business Enterprise	10%
<p>Prime contractors who are headquartered within Bexar County for at least one (1) year will receive ten percent (10%) of the selection points.</p> <p>Prime contractors who have a local branch office within Bexar County for at least one (1) year with at least ten (10) employees will receive six percent (6%) of the selection points.</p> <p>Non-local prime contractors can receive points for subcontracting with local businesses proportional to the amount of work performed by those local subcontractors. (For example, if a non-local prime contractor subcontracts with a local subcontractor for 50% of the work, they are eligible for up to five points).</p>	
Historically Underutilized Enterprise (HUE)	5%
<p>Prime contractors who are HUEs will receive five percent (5%) of the selection points.</p> <p>Prime contractors who subcontract with HUEs can receive points proportional to amount of work performed by those HUEs. (For example, if a prime contractor subcontracts with a small, minority and/or a small, woman business enterprise for 50% of the work, they are eligible for up to 2.5 points).</p> <p>S/MBEs and/or SWBEs must be certified by the South Central Texas Regional Certification Agency, the City's certifying agency, or approved by the Director of International and Economic Development or designee to be considered HUEs.</p>	
Compliance with SBEDA Policy	5%
<ul style="list-style-type: none"> a. One percent (1%) for submission/approval of the SBEDA form. b. One percent (1%) for meeting/exceeding the MBE goal. c. One percent (1%) for meeting/exceeding the WBE goal. d. One percent (1%) for meeting/exceeding the AABE goal. e. One percent (1%) for meeting/exceeding the SBE goal. 	
Total	100%

XII. PERSONAL PRESENTATION

The City anticipates conducting a preliminary review of the Proposals. The City may elect to interview, in person, any or all Respondents that have submitted a Proposal. Notification of such interview will be made by the Staff Contact Person in a timely manner to allow sufficient time for Respondents to prepare a personal presentation.

XIII. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

- A. City reserves the right to award one, more than one or no contract(s) in response to this RFP.
- B. The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.
- C. City may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Respondent is subject to City Council approval.
- D. City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.
- E. City will require the selected Respondent(s) to execute a contract in substantially the form as attached with the City, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFP and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- F. This RFP does not commit City to enter into a Contract, award any services related to this RFP, nor does it obligate City to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.
- H. The successful Respondent must be able to formally invoice the City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by the City.
- I. Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent,

child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City’s Ethics Code. (Discretionary Contracts Disclosure – form is posted as a separate document.)

- J. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be an independent contractor, responsible for their respective acts or omissions, and that City shall in no way be responsible for Respondent’s actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- K. Public Information. Respondents are advised that all proposals shall become City property at the time of submission, and the information contained in the proposals could be made available to the public upon request under the Texas Public Information Act.
- L. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Respondent should consult its own legal advisor for answers to questions regarding the statute or form.

XIV. SCHEDULE OF EVENTS

Following is a list of **projected dates/times** with respect to this RFP:

RFP Issue Date	November 7, 2010
Deadline for Questions	November 19, 2010
Proposals Due	December 10, 2010
Anticipated City Council Approval	January 13, 2011
Anticipated Effective Date of Contract	February 1, 2011

RFP ATTACHMENTS

THE DOCUMENTS THAT FOLLOW ARE FORMS THAT MUST BE COMPLETED BY RESPONDENT AND INCLUDED WITH RESPONDENT'S PROPOSAL. ATTACH THESE DOCUMENTS TO YOUR PROPOSAL IN THE ORDER INDICATED IN RFP SECTION VII, WHICH IS ENTITLED "PROPOSAL REQUIREMENTS"

RFP ATTACHMENT 1, PART 1

ARBITRAGE REBATE COMPLIANCE QUESTIONNAIRE FORM

To be submitted with Respondent's Proposal as TAB B

A. Respondent Background, Experience and Qualifications: Provide the following information regarding the Respondent.

1. Respondent Name: _____

(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Website address: _____

Year established: _____

Provide the number of years in business under present name: _____

Social Security Number or Federal Employer Identification Number: _____

Texas Comptroller's Taxpayer Number, if applicable: _____

(NOTE: This 11-digit number is sometimes referred to as the Comptroller's TIN or TID.)

DUNS NUMBER: _____

Business Structure: Check the box that indicates the business structure of the Respondent.

Individual or Sole Proprietorship If checked, list Assumed Name, if any:

Partnership

Corporation If checked, check one: For-Profit Nonprofit

Also, check one: Domestic Foreign

Other If checked, list business structure: _____

Printed Name of Contract Signatory: _____

Job Title: _____

2. Provide any other names under which Respondent has operated within the last 10 years and length of time under for each: _____

3. Is Respondent authorized and/or licensed to do business in Texas?

Yes No If "Yes", list authorizations/licenses.

4. Explain changes that have occurred within the Firm over the last six (6) months regarding staffing, organizational structure, as well as future changes you expect may occur.

5. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes No If "Yes", state anticipated changes.

6. List the Firm's number of offices.

	National ¹	Texas ²	Bexar County ³	San Antonio	Total
Indicate Headquarter Location (City, State)					N/A
Number of Offices in Area					
Length of Time in Business From Office	N/A	N/A	Years: Months:	Years: Months:	N/A
Number of Full-time Employees at Office					

¹ National data excludes Texas, Bexar County and San Antonio.

² Texas data excludes Bexar County and San Antonio.

³ Bexar County data excludes San Antonio.

7. Describe any actions taken against Firm, any of its directors, officers, or employees currently, or within the past three (3) years by any governmental regulatory body including State or Federal agencies relating to services provided.

8. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes No If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

9. Has the Respondent ever had a bond or surety canceled or forfeited?

Yes No If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

10. Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes No If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

11. Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations?

Yes No If "Yes", state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

12. Provide a brief history and background of the Firm and describe the Firm's experience, expertise and capabilities specific to providing the services as described in the Scope of Services, including resumes of key personnel.

B. Lead Arbitrage Rebate Compliance Experience and Availability

1. Identify the Lead Arbitrage Rebate Compliance Consultant for the Respondent who would be involved in potential engagements with the City and provide contact information in the following format:

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: _____ Fax Number: _____

Mobile Number: _____ Email Address: _____

2. Provide a brief biography to include background, experience, expertise and capabilities specific to providing the services as described in the Scope of Services.
3. Provide a statement of availability to the City.

C. Technical and Quantitative Expertise and Availability

1. Include a description of your Firm’s quantitative expertise and capabilities, including type of financial software utilized and other technical tools utilized.
2. Provide a statement of availability to the City.
3. Describe the training resources available to the City to include materials available and/or on-site training provided by your Firm.
4. Provide any other information that your team may deem applicable to the Arbitrage Rebate Compliance Services that the City may utilize but has not been directly requested in this RFP.

RFP ATTACHMENT 1, PART 2

REFERENCES

To be submitted with Respondent's Proposal as TAB C

Provide three (3) references that Respondent has provided services to within the past three (3) years. The contact person named should be familiar with the day-to-day management of the contract and **be willing to respond to questions** regarding the type, level, and quality of service provided.

Reference No. 1:

Firm/Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

Date and Type of Service(s) Provided: _____

Reference No. 2:

Firm/Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

Date and Type of Service(s) Provided: _____

Reference No. 3:

Firm/Company Name: _____

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

Date and Type of Service(s) Provided: _____

RFP ATTACHMENT 2

FEE SCHEDULE

To be submitted with Respondent's Proposal as **TAB D**

FEE SCHEDULE

Provide a fee schedule for the following types of financings:

Fee Schedule	
Description	Annual Fees Per Issue Per Computation Year
General Obligation Bonds	
Certificates of Obligation	
Tax Notes	
Build America Bonds (BABs)	
Airport System Revenue Improvement Bonds	
Airport Special Facilities Revenue Bonds	
Airport Passenger Facility Charge Revenue Bonds	
Municipal Drainage Utility System Revenue Bonds	
Municipal Facilities Corporation Lease Revenue Bonds	
Convention Center Revenue Bonds	
Contract Revenue Bonds	
Tax-Exempt Commercial Paper	
Conduit Financings	
Variable/Floating Rate Bonds	
Multi-use Community Facility Bonds	
Other Financings	

RFP ATTACHMENT 3

DISCRETIONARY CONTRACTS DISCLOSURE FORM To be submitted with Respondent's Proposal as TAB E

Discretionary Contracts Disclosure Form is posted as a separate document.

Instructions for completing the Discretionary Contracts Disclosure form are listed below:

1. Download form and complete all fields. Note: All fields must be completed prior to submitting the form.
2. Click on the "Print" button and place the copy in proposal response as indicated in the Proposal Checklist.

RFP ATTACHMENT 4

LITIGATION DISCLOSURE FORM

To be submitted with Respondent's Proposal as TAB F

LITIGATION DISCLOSURE

Respond to each of the questions below by checking the appropriate box. 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?

Yes No

2. Have you or any member of your Firm or Team to be assigned to this engagement 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?

Yes No

3. Have you or any member of your Firm or Team to be assigned to this engagement 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?

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.

RFP ATTACHMENT 5

GOOD FAITH EFFORT PLAN FORM

SBEDA FORM

To be submitted with Respondent's Proposal as **TAB G**

GOOD FAITH EFFORT PLAN

(Page 1 of 4)

NAME OF

PROJECT: Arbitrage Rebate Compliance Services

BIDDER/PROPOSER INFORMATION:

Name of Bidder/Proposer: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ E-mail Address: _____

Is your firm certified? ____ Yes ____ No (If yes, please submit Certification Certificate.)

1. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE- AABE- SBE CERTIFICATION NUMBER

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Small Business Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

GOOD FAITH EFFORT PLAN

(Page 2 of 4)

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 International and Economic Development and Director of the appropriate contracting department (through the proposal of the Request for Approval of Change to Original Affirmed 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.

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

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

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

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

GOOD FAITH EFFORT PLAN

(Page 3 of 4)

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

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	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.

10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

GOOD FAITH EFFORT PLAN

(Page 4 of 4)

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN 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

TITLE OF OFFICIAL

DATE PHONE

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval _____ Denial _____

Action Taken: Approved _____ Denied _____

Director of International and Economic Development

RFP ATTACHMENT 6

SIGNATURE PAGE

To be submitted with Respondent's Proposal as TAB J

SIGNATURE PAGE

The undersigned certifies that (s) he is authorized to submit this proposal on behalf of the entity named below:

Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

(NOTE: If proposal is submitted by Co-Respondents, an authorized signature from a representative of each Co-Respondent is required. Add additional signature blocks as required.)

Co-Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

By signature(s) above, Respondent(s) agrees to the following:

1. If awarded a contract in response to this RFP, Respondent will be able and willing to execute a contract in the form shown in the RFP, as attached and set out in RFP Exhibit 4, with the understanding that the scope and compensation provisions will be negotiated and included in the final document.
2. If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.
3. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in RFP Exhibits 2 & 3.
4. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's proposal and during Proposal process.
5. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
6. Respondent agrees to fully and truthfully submit a Respondent Questionnaire and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.
7. To comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is posted as a City Council agenda item.

RFP ATTACHMENT 7

PROPOSAL CHECKLIST

To be submitted with Respondent's Proposal as **TAB K**

PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and that they are properly tabbed and appear in the correct order.

Tab in Proposal	Document	Initial to Indicate Document is Attached to Proposal
A	Table of Contents	
B	Arbitrage Rebate Compliance Questionnaire Form (RFP Attachment 1, Part 1)	
C	References (RFP Attachment 1, Part 2)	
D	Fee Schedule (RFP Attachment 2)	
E	* Discretionary Contracts Disclosure Form (RFP Attachment 3) (complete attached form)	
F	Litigation Disclosure Form (RFP Attachment 4)	
G	* Good Faith Effort Plan Form (RFP Attachment 5) and associated Certificates, if applicable	
H	Proof of Insurability <ul style="list-style-type: none"> • Insurance Provider's Letter • Copy of Current Certificate of Insurance 	
I	Audited Financial Statements	
J	* Signature Page (RFP Attachment 6)	
K	Proposal Checklist (RFP Attachment 7)	
	* One (1) original signed in ink and ten (10) copies	

***Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**

RFP EXHIBIT 1

**SMALL BUSINESS ECONOMIC DEVELOPMENT
ADVOCACY (SBEDA) PROGRAM POLICY**

SMALL BUSINESS PROGRAM

1. **Small Business Participation**

Pursuant to Ordinance No. 2007-04-12-0396, it is the policy of the City of San Antonio to involve Small, Minority, Women and African-American Business Enterprises (S/M/W/AABE) to the greatest extent feasible in the City's discretionary contracts. The intent and purpose of the policy is to ensure that S/M/W/AABE firms have the opportunity to compete for City contracts without discrimination on the basis of race, color, religion, national origin, age, sex or handicap. To accomplish the objectives of the Small Business policy, the City has established specific goals for local S/M/W/AABE participation in this contract.

2. **DEFINITIONS** related to the Small Business Program Provisions:

- a. **Small Business Program:** the Small Business Economic Development Advocacy ("SBEDA") Program governed by this ordinance and managed by the SMALL BUSINESS Program Office.
- b. **Small Business Enterprises (SBE):** a corporation, partnership, sole proprietorship or other legal entity, for the purpose of making a profit, which is independently owned and operated and which meets the U.S. Small Business Administration (SBA) size standard for a small business. All firms meeting these thresholds will be considered an SBE.
- c. **Local Business Enterprise (LBE):** a corporation, partnership, sole proprietorship, or other legal entity which is headquartered within Bexar County for at least one year. For a branch office of a non-headquartered business to qualify as an LBE, the branch office must be located in Bexar County for at least one-year and employ a minimum of ten (10) residents of Bexar County for use at the local branch office.
- d. **Minority Business Enterprise (MBE):** a sole proprietorship, partnership, or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. Minority group member(s) include African-Americans; Hispanic Americans; Asian-Pacific Americans; Asian-Indian Americans; American Indians; and Disabled Individuals. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an MBE, the enterprise shall be headquartered in Bexar County or the San Antonio Metropolitan Statistical Area (the SAMSA) for any length of time, or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the MBE's category of contracting for at least one year.
- e. **Woman Business Enterprise (WBE):** a sole proprietorship, partnership, or corporation owned, operated and controlled by women who have at least 51% ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as a WBE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing

business in a locality or localities from which the City regularly solicits or receives bids on or proposals for, City contracts within the WBE’s category of contracting for at least one year.

- f. **African-American Business Enterprise (AABE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by an African-American group member(s) who has at least 51% ownership. The African American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the AABE’s category of contracting for at least on year.

3. **Goals for Small Business Participation**

The goals for the utilization and participation of SBE-MBE-WBE-AABE businesses on this contract are as follows:

MBE	31%
WBE	10%
AABE	2.2%
SBE	50%

Please note that a small business could be classified in multiple categories and thus their utilization could in theory be counted in each category of goals. For example, **Prime Contractor X** submits a proposal, which specifies that they intend to subcontract with Subcontractor A for 10% of the contract. Subcontractor A is certified by the City as an SBE and MBE (a male-owned Hispanic Business owner can be certified as an SBE and MBE). **Prime Contractor X** also intends to subcontract with Subcontractor B for 13% of the contract. Subcontractor B is certified by the City as SBE, MBE and a WBE (a female-owned Hispanic Business owner can be certified as SBE, MBE and WBE). In addition, **Prime Contractor X** also intends to subcontract 10% of the contract to Subcontractor C—a City certified SBE, MBE and AABE (a male-owned African-American business owner can be certified as both a MBE and as an AABE Business). **Prime Contractor X** is also classified as a local SBE. **Prime Contractor X’s** compliance with the Small Business goals under this scenario would be as follows:

	City’s Small Business Goals	Prime Contractor X’s Compliance
MBE	31%	33%
WBE	10%	13%
AABE	2.2%	10%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

Another example regarding compliance with the policy is as follows: **Prime Contractor Y** submits a proposal, which specifies that they intend to partner through a joint-venture agreement with Company D. Company D is certified by the City as both an SBE and MBE (a male-owned Hispanic Business—certified as an SBE and MBE). As part of their joint-venture agreement, Company D will perform on 32.5% of the contract. **Prime Contractor Y** also intends to subcontract 13% of the contract with Subcontractor F. Subcontractor F is a City certified SBE/MBE/WBE and AABE business. **Prime Contractor Y** is also classified as a local SBE. **Prime Contractor Y** compliance with the Small Business goals would be as follows:

	City's Small Business Goals	Prime Contractor Y's Compliance
MBE	31%	45.5%
WBE	10%	13%
AABE	2.2%	13%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

4. **Good Faith Effort Required**

Proposals shall include a Good Faith Effort Plan (GFEP—ATTACHED). The GFEP shall include specific documentation to utilize local, small, MBE-WBE-AABE businesses in a percentage, which equals or exceeds the above goals. **Any proposal that does not include this SBEDA form shall be declared non-responsive, and excluded from consideration.**

5. **SBE-MBE-WBE-AABE Certification Required**

Only companies certified as SBE, MBE, WBE, or AABE through the South Central Texas Regional Certification Agency (SCTRCA), or as approved by the City of San Antonio Director of International and Economic Development, can be applied towards the contracting goals. Proof of certification must be submitted.

6. **Small Business Program Information**

Interested Respondents are encouraged to contact the Small Business Office for information regarding the City's Small Business Program in accordance with the City's Communication Policy outlined in the solicitation document. Please call (210) 207-3900 or FAX: (210) 207-8151.

RFP EXHIBIT 2
INSURANCE REQUIREMENTS

If selected to provide the services described in this RFP, Respondent shall be required to comply with the insurance requirements set forth below:

INSURANCE

- A. Prior to the commencement of any work under this CONTRACT, CONSULTANT shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the CITY's Finance Department, which shall be clearly labeled "Arbitrage Rebate Compliance Services Contract" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by the CITY's Finance Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- B. The CITY reserves the right to review the insurance requirements of this Article during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT. In no instance will CITY allow modification whereby CITY may incur increased risk.
- C. CONSULTANT'S financial integrity is of interest to the CITY; therefore, subject to CONSULTANT'S right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONSULTANT'S sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations * b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability a. Owned/leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

- D. CONSULTANT agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of CONSULTANT herein, and provide a certificate of insurance and endorsement that names the FIRM and the CITY as additional insureds. CONSULTANT shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by CITY's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the contract for all purposes.
- E. As they apply to the limits requires by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CONSULTANT shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided

below within 10 days of the requested change. CONSULTANT shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- F. CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the CITY where the CITY is an additional insured shown on the policy;
 - Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY; and
 - Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- G. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT'S performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this CONTRACT.
- H. In addition to any other remedies the CITY may have upon CONSULTANT'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.
- I. Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT'S or its subcontractor's performance of the work covered under this CONTRACT.

- J. It is agreed that CONSULTANT'S insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the CITY for liability arising out of operations under this CONTRACT.
- K. It is understood and agreed that the insurance required is in addition to and separate from other obligations contained in this CONTRACT and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.
- L. CONSULTANT and any subcontractors are responsible for all damage to their own equipment and/or property.
- M. A self-insurance program or plan is not an acceptable alternative to the insurance requirements set out above. The CITY reserves the right to deem a Proposal that proposes such a self-insurance program to be non-responsive.

RFP EXHIBIT 3
INDEMNIFICATION REQUIREMENTS

If selected to provide the services described in this RFP, Respondent shall be required to comply with the indemnification requirements set forth below:

INDEMNIFICATION

CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this CONTRACT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of RESPONDENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT'S activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONSULTANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this CONTRACT. If CONSULTANT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

RFP EXHIBIT 4

DRAFT ARBITRAGE REBATE COMPLIANCE SERVICES CONTRACT

CITY OF SAN ANTONIO
Arbitrage Rebate Compliance Services Contract

This Arbitrage Rebate Compliance Services Contract (hereinafter referred to as “**CONTRACT**”) is made and entered into by and between the City of San Antonio, Texas, (hereinafter referred to as “**CITY**”) a Texas Municipal Corporation, acting by and through its City Manager, pursuant to Ordinance Number _____ approved on _____, 2011 and _____, hereinafter referred to as “**CONSULTANT**”) a _____, acting by and through its _____, to provide Arbitrage Rebate Compliance Services to **CITY**. The purpose of this **CONTRACT** is to engage **CONSULTANT** to provide Arbitrage Rebate Compliance Services in connection with **CITY**’s outstanding, tax-exempt bond proceeds balances in debt service funds, debt service reserve funds, capital projects funds and other funds, if any, into which tax-exempt proceeds may have been deposited.

IN CONDISERATION OF THE MUTUAL COVENANTS AND PROVISIONS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. GENERAL STATEMENT

- 1.1 The **CITY**, from time to time, is required to calculate interest earned on invested tax-exempt bond proceeds fund balances to determine the arbitrage rebate amount due to the Internal Revenue Service, if any. The purpose of this **CONTRACT** is to establish parameters within which the firm is to provide Arbitrage Rebate Compliance Services related to reviewing the **CITY**’s tax-exempt debt service funds, debt service reserve funds, capital projects funds and other funds, if any, into which tax-exempt proceeds may have been deposited, coordinate with the **CITY** the compilation of data, compute the arbitrage rate, interest income and rebate amount, if any, for each outstanding tax-exempt obligation by the required reporting date, prepare and submit a report to the **CITY** citing the findings for each tax-exempt obligation for which a computation was made, provide counsel to **CITY** staff as required, attend meetings if required, assist the **CITY** in responding to queries posed to the **CITY** related to arbitrage, and assist the **CITY** as may be required from time to time on any additional matters related to arbitrage.

II. SCOPE OF SERVICES

- 2.1 **CONSULTANT** agrees to provide the following services and all other Arbitrage Rebate Compliance Services normally performed by such consultants as may be necessary or advisable:
- a. Provide all services as set forth in **CITY'S** Request for Proposal (RFP), issued November 7, 2010, and **CONSULTANT'S** Proposal, dated December 10, 2010, attached hereto as Attachments "A" and "B" respectively and incorporated herein. In the event of conflict or inconsistency between this **CONTRACT** and Attachments A and/or B, the provisions of this **CONTRACT** shall govern. In the event of conflict or inconsistency between Attachments A and B, the terms and provisions of Attachment A shall govern.
 - b. Perform a comprehensive review of the **CITY's** outstanding tax-exempt obligations, debt service funds, debt service reserve funds, capital projects funds and other funds, if any, into which tax-exempt proceeds may have been deposited. From such review, identify the issues to which the arbitrage rebate calculations are applicable and the reporting dates applicable to each of such issues.
 - c. Calculate and verify the arbitrage rate for each tax-exempt obligation for which an arbitrage rebate computation is required.
 - d. Coordinate with the **CITY** the compilation of data and information required to review the **CITY's** outstanding tax-exempt obligations and perform the arbitrage rebate calculations.
 - e. Analyze the revenue, expenditures, and transfer of monies pertaining to funds into which tax-exempt proceeds have been deposited.
 - f. Calculate interest income and arbitrage amount, if any, for each issue or series of tax-exempt obligations prior to the Internal Revenue Service arbitrage rebate reporting deadline.
 - g. Advise the **CITY** on revisions made to the arbitrage regulations for the term of contract, including renewals, as defined in Section III, Term.
 - h. Advise and assist the **CITY** in complying with, and preparing arbitrage rebate reports.
 - i. Provide continuing Arbitrage Rebate Compliance Services on questions that may arise from time to time on one or more tax-exempt obligations prior to or subsequent to the computations made in connection with each reporting period.

CONSULTANT CONTRACT

- j. Prepare reports and other documents for the **CITY**'s review that the **CITY** may be required to submit to the Internal Revenue Service and/or interested third parties.
 - k. Advise and assist the **CITY** in responding to queries posed to the **CITY** related to arbitrage. Such service shall include, but not be limited to, assembling information, preparing written reports, making personal appearances in response to arbitrage questions, and performing such other tasks as may be required from time to time.
 - l. Attend meetings, as may be required.
 - m. Assist the **CITY** in assembly and conveyance of data and information related to the Arbitrage Rebate Compliance Services provided by **CONSULTANT** as may be required by municipal bond attorneys, tax counsel or other interested third parties if required or requested by **CITY**.
- 2.2 All services to be provided by **CONSULTANT** under this **CONTRACT** will be performed in accordance with all professional standards applicable to **CONSULTANT** and/or each of its state or federally licensed officers, employees or representatives.

III. TERM

- 3.1 This **CONTRACT** shall commence on February 1, 2011 and shall be in effect through January 31, 2014, unless extension or earlier termination shall occur pursuant to any of the provisions of this **CONTRACT**.
- 3.2 **CITY** shall have the option to renew this **CONTRACT** for one (1) additional, two (2) year period under the same terms and conditions as provided herein. Any renewals shall be in writing and be subject to City Council approval, as evidenced by passage of an ordinance. An election by **CITY** not to renew shall not require any action or notification to **CONSULTANT**.

IV. CONSIDERATION

- 4.1 In consideration for the performance of services provided by **CONSULTANT**, and as reimbursement for the expenses which may be incurred and associated therewith by **CONSULTANT**, **CITY** agrees to pay **CONSULTANT** and **CONSULTANT** agrees to accept a fee in an amount equal to the applicable fee set forth in the schedule below. **CONSULTANT** shall submit invoices upon completion of work performed. The **CITY** shall pay **CONSULTANT** no later than 30 Days from the said invoice.

CONTRACT

Fee Schedule	
Description	Annual Fees Per Issue Per Computation Year
General Obligation Bonds	
Certificates of Obligation	
Tax Notes	
Build America Bonds (BABs)	
Airport System Revenue Improvement Bonds	
Airport Special Facilities Revenue Bonds	
Airport Passenger Facility Charge Revenue Bonds	
Municipal Drainage Utility System Revenue Bonds	
Municipal Facilities Corporation Lease Revenue Bonds	
Convention Center Revenue Bonds	
Contract Revenue Bonds	
Tax-Exempt Commercial Paper	
Conduit Financings	
Variable/Floating Rate Bonds	
Multi-use Community Facility Bonds	
Other Financings	

- 4.2 In the event **CITY** requests **CONSULTANT** to provide additional services not specifically provided for herein, **CITY** and **CONSULTANT** shall negotiate a reasonable fee prior to the engagement or performance of any such additional work by **CONSULTANT**. Such agreement shall be effected in accordance with Section XVII, Changes and Amendments, and is subject to City Council approval, as evidenced by passage of an ordinance. **CITY** reserves the right to utilize or engage another **CONSULTANT** to provide such other services not provided for herein.

V. RECORDS

- 5.1 **CONSULTANT** and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder, and shall make such materials available to **CITY** at their respective offices, at all reasonable times and as often as **CITY** may deem necessary during the **CONTRACT** period, including any extension or renewal hereof, and during the retention period specified below, for purposes of inspection, examination, and making excerpts and or copies of same by **CITY** and any of its authorized representatives.
- 5.2 **CONSULTANT** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date of termination of the

CONSULTANT CONTRACT

CONTRACT (the “retention period”). If at the end of the retention period there is litigation involving or concerning this documentation or the services provided hereunder, **CONSULTANT** shall retain the records until the resolution of such litigation. **CONSULTANT** shall return or turn over to **CITY** all documentation at the end of the retention period or upon resolution of litigation.

- 5.3 **CONSULTANT** agrees to notify **CITY** immediately if a request is made by a third person for information produced and/or maintained by **CONSULTANT** as a result of the provision of services under this **CONTRACT**. **CONSULTANT** shall immediately forward said request to **CITY** for response.

VI. INSURANCE

- 6.1 Prior to the commencement of any work under this **CONTRACT**, **CONSULTANT** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the **CITY**'s Finance Department, which shall be clearly labeled “Arbitrage Rebate Compliance Services Contract” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this **CONTRACT** until such certificate and endorsements have been received and approved by the **CITY**'s Finance Department. No officer or employee, other than the **CITY**'s Risk Manager, shall have authority to waive this requirement.
- 6.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this **CONTRACT** and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY**'s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **CONTRACT**. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk.
- 6.3 A **CONSULTANT**'s financial integrity is of interest to the **CITY**; therefore, subject to **CONSULTANT**'s right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **CONSULTANT** shall obtain and maintain in full force and effect for the duration of this **CONTRACT**, and any extension hereof, at **CONSULTANT**'s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

EXHIBIT A-1

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations * b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability a. Owned/leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

6.4 **CONSULTANT** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **CONSULTANT** herein, and provide a certificate of insurance and endorsement that names the **CONSULTANT** and the **CITY** as additional insureds. **CONSULTANT** shall provide the **CITY** with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by **CITY**'s Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by **CITY**'s Risk Manager, which shall become a part of the contract for all purposes.

6.5 As they apply to the limits requires by the **CITY**, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **CONSULTANT** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address

CONSULTANT'S CONTRACT

provided below within 10 days of the requested change. **CONSULTANT** shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 6.6 **CONSULTANT** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the **CITY** where the **CITY** is an additional insured shown on the policy;
 - Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**; and
 - Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 6.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **CONSULTANT** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **CONSULTANT**'s performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this **CONTRACT**.
- 6.8 In addition to any other remedies the **CITY** may have upon **CONSULTANT**'s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **CONSULTANT** to stop work hereunder, and/or withhold any payment(s) which become due to **CONSULTANT** hereunder until **CONSULTANT** demonstrates compliance with the requirements hereof.
- 6.9 Nothing herein contained shall be construed as limiting in any way the extent to which **CONSULTANT** may be held responsible for payments of damages to persons or property

CONSULTANT CONTRACT

resulting from **CONSULTANT**'s or its subcontractor's performance of the work covered under this **CONTRACT**.

- 6.10 It is agreed that **CONSULTANT**'s insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the **CITY** for liability arising out of operations under this **CONTRACT**.
- 6.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **CONTRACT** and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.
- 6.12 **CONSULTANT** and any subcontractors are responsible for all damage to their own equipment and/or property.

VII. INDEMNITY

- 7.1 **CONSULTANT** covenants and agrees to **FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONSULTANT**'s activities under this **CONTRACT**, including any acts or omissions of **CONSULTANT**, any agent, officer director, representative, employee, consultant or subcontractor of **CONSULTANT**, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this **CONTRACT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers, or employees. **IN THE EVENT CONSULTANT AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 7.2 The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONSULTANT CONTRACT

- 7.3 **CONSULTANT shall promptly advise the CITY in writing of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT.**
- 7.4 **CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this CONTRACT. If CONSULTANT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.**
- 7.5 **In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.**

VIII. OTHER WORK

- 8.1 **CONSULTANT understands and agrees that any Arbitrage Rebate Compliance Services that may be in progress prior to the execution of this CONTRACT shall remain the responsibility of the CONSULTANT(s) that are providing such services, and that responsibility for such services is governed by the terms of that prior relationship. Fees will be paid to the CONSULTANT(s) working on the transaction and prior contractual arrangements with such CONSULTANT(s) shall be concluded pursuant to the terms of such prior contractual arrangements.**

IX. CONFIDENTIALITY

- 9.1 **CONSULTANT acknowledges that during the term of this CONTRACT it may have access to confidential information, and in accordance therewith, agrees to establish and have in place and fully operational on February 1, 2011 a method reasonably acceptable to CITY to secure and maintain the confidentiality of such information.**

CONSULTANT CONTRACT

X. OWNERSHIP OF DOCUMENTS

- 10.1 Any and all writings, documents or information in whatsoever form and character produced by **CONSULTANT** pursuant to the provisions of this **CONTRACT**, is the exclusive property of **CITY**; and no such writing, document, or information shall be the subject of any copyright or proprietary claim by **CONSULTANT**.
- 10.2 **CONSULTANT** understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, **CITY** has the right to use all such writings, documents and information as **CITY** desires, without restriction.

XI. TERMINATION

- 11.1 For purposes of this **CONTRACT**, “termination” of this **CONTRACT** shall mean termination by completion of the provision of services stated herein, expiration or earlier termination pursuant to any of the provisions hereof.
- 11.2 Termination for Cause: In addition to any other provisions of this **CONTRACT**, **CITY** may terminate this **CONTRACT** in accordance with this clause, in whole or in part, for any of the following:
- a. Neglect or failure by **CONSULTANT** to perform or observe any of the terms, conditions, covenants or guarantees of this **CONTRACT** or of any amendment between **CITY** and **CONSULTANT**; or
 - b. Violation by **CONSULTANT** of any rule, regulation or law to which **CONSULTANT** is bound or shall be bound while and in performing the services required under this **CONTRACT**.
- 11.3 Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** in accordance with Section XXI, Notices, specifying the effective date of termination and the extent to which performance of work under this **CONTRACT** will be terminated. **CONSULTANT** shall retain all documents created through the date of termination, whether or not completed, in accordance with Section V, Records.
- 11.4 Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by **CITY**), **CONSULTANT** shall submit to **CITY** any claim in detail for the monies owed by **CITY** for services performed under this **CONTRACT**, including for all work performed to date of notice of termination, and for any necessary and proper work performed in the ensuing thirty day period, provided however, that such payment does not exceed the maximum amount set out in Section IV, Consideration.

CONTRACT

- 11.5 Termination without Cause: Notwithstanding the provisions contained in Section 11.2 above, either party may terminate this **CONTRACT** by giving the other party thirty (30) days written notice in accordance with Section XXI, Notices.

XII. SUBCONTRACTING

- 12.1 None of the work or services covered by this **CONTRACT** shall be subcontracted without the prior written approval of **CITY**. **CONSULTANT** shall secure said written approval prior to the performance by any subcontractor of the work or services required hereunder. Any work or services approved for subcontracting, however, shall be subcontracted only by written contract, and unless specific waiver is granted in writing by **CITY**, such subcontracted work shall be subject by its terms to all provisions of this **CONTRACT**. Compliance by subcontractors with this **CONTRACT** shall be the responsibility of **CONSULTANT**.

XIII. ASSIGNMENT OF RIGHTS OR DUTIES

- 13.1 This **CONTRACT** shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.
- 13.2 Except as otherwise provided herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this **CONTRACT** nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or any other means, without the consent of **CITY**.
- 13.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of services outlined in this **CONTRACT** in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this **CONTRACT** to an assignee, transferee or subcontractor indicate only such an entity as has been approved by **CITY** in accordance with this Section.
- 13.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of, its right, title, interest or duties to or under this **CONTRACT** without said written approval shall be void *ab initio* and shall confer no rights upon any third party. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of, its right, title or interest or duties to or under this **CONTRACT**, **CITY** may, at its option, terminate this **CONTRACT** in accordance with Section XI, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this **CONTRACT**, nor shall it relieve or release

CONSULTANT from payment of any damages to **CITY** which **CITY** sustains as a result of such violation.

- 13.5 **CONSULTANT** agrees to notify **CITY** of any changes in ownership interest greater than thirty percent (30%) or control of its business entity not less than 60 days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this **CONTRACT**, any such change of ownership interest or control of its business entity may be grounds for termination of this **CONTRACT** in accordance with Section XI, Termination.

XIV. CONFLICT OF INTEREST

- 14.1 **CONSULTANT** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its individual officers, employees, and agents are neither officers nor employees of **CITY** or any **CITY** agencies, such as **CITY**-owned utilities. **CONSULTANT** further warrants and certifies that it, its individual officers, employees, and agents do not have a prohibited financial interest as proscribed by the Ethics Code of the **CITY**.
- 14.2 An officer or employee has a “**prohibited financial interest**” in a contract with **CITY** or in the sale to the **CITY** of land, materials, supplies, or service, if any of the following individuals or entities is a party to the **CONTRACT**: **CITY** officer or employee; his or her parent, child, or spouse; a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly, owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity of which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner, or a parent or subsidiary business entity.

XV. COMPLIANCE

- 15.1 **CONSULTANT** and each of its licensed employees or representatives shall comply with all federal, state and local laws, rules and regulations, including but not limited to all securities rules and regulations, in performing the services required hereunder.

XVI. INDEPENDENT CONTRACTOR

- 16.1 It is expressly understood and agreed that the **CONSULTANT** provides services as an independent contractor responsible for its respective acts or omissions and that **CITY** shall in no way be responsible therefor. Except as provided herein, neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XVII. CHANGES AND AMENDMENTS

- 17.1 Except where the terms of this **CONTRACT** expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both **CITY** and **CONSULTANT**, and subject to approval by the City of San Antonio City Council, evidenced by passage of an ordinance.
- 17.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this **CONTRACT** and that any such changes shall be automatically incorporated into this **CONTRACT** without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVIII. LICENSES/CERTIFICATIONS

- 18.1 **CONSULTANT** warrants and certifies that **CONSULTANT** and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. ENTIRE AGREEMENT

- 19.1 This **CONTRACT**, together with its authorizing ordinance and exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this **CONTRACT** shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by both parties in accordance with Section XVII, Changes and Amendments.

XX. SEVERABILITY

- 20.1 If any clause or provision of this **CONTRACT** is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the **CITY** Charter, **CITY** Code, or ordinances of the **CITY** of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this **CONTRACT** shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties hereto that in lieu of each clause or provision of this **CONTRACT** that is invalid, illegal, or unenforceable, there be added as a

part of the **CONTRACT** a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. NOTICES

21.1 For purposes of this **CONTRACT**, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed certified mail, postage prepaid, effective upon receipt, to the addresses set forth below:

CITY

City of San Antonio
Chief Financial Officer
Attention: Ben Gorzell, Jr.
111 Soledad Street, 5th Floor
San Antonio, Texas 78205

CONSULTANT

XXII. EQUAL EMPLOYMENT OPPORTUNITY

22.1 **CONSULTANT** shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, disability, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of the City of San Antonio ordinance number 69403 on file in the City Clerk's office.

XXIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

23.1 **SBEDA Program.** The **CITY** has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the **CITY'S** Economic Development Department website and is also available in hard copy form upon request to the **CITY**. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this **CONTRACT**:

23.2 **SBEDA Enterprise ("SE")** – A corporation, Limited Liability Company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

CONTRACT

- 23.3 Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.
- 23.4 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.
- 23.5 SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with **CONSULTANT**’s bid for this project **CONTRACT**, attached hereto and incorporated herein as “Attachment 5”.
- 23.6 **For this CONTRACT, the Parties agree that:**
- a. The terms of the **CITY**’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this **CONTRACT** by reference;
 - b. The failure of **CONSULTANT** or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this **CONTRACT**;
 - c. Failure of **CONSULTANT** or any applicable SE to provide any documentation or written submissions required by the **CITY** Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this **CONTRACT**;
 - d. During the Term of this **CONTRACT**, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in **CONSULTANT**’s SBEDA Plan (“Attachment 5”) shall constitute a material breach of the SBEDA Program and this **CONTRACT**; and

CONTRACT

- e **CONSULTANT** shall pay all suppliers and subcontractors identified in its SBEDA Plan (“Attachment 5”) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by **CONSULTANT** to the **CITY** Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this **CONTRACT**.

23.7 **The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this CONTRACT:**

- a. Failure of **CONSULTANT** to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this **CONTRACT**, or failing to allow such SE to perform a Commercially Useful Function;
- b. Modification or elimination by **CONSULTANT** of all or a portion of the scope of work attributable to an SE upon which the **CONTRACT** was awarded;
- c. Termination by **CONSULTANT** of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the **CONTRACT** without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; and
- d. Participation by **CONSULTANT** in a Conduit relationship with an SE scheduled to perform work that is the subject of this **CONTRACT**.

23.8 **Remedies for Violation of SBEDA Program.** The Parties further agree that in addition to any other remedies the **CITY** may have at law or in equity, or under this **CONTRACT** for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the **CITY** shall be entitled, at its election, to exercise any one or more of the following remedies if the **CONSULTANT** materially breaches the requirements of the SBEDA Program:

- a. Terminate this **CONTRACT** for default;
- b. Suspend this **CONTRACT** for default;
- c. Withhold all payments due to the **CONSULTANT** under this **CONTRACT** until such violation has been fully cured or the Parties have reached a mutually agreeable resolution;

CONTRACT

- d. Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the **CITY** pursuant to the **CONTRACT**, or from any other amounts due to the **CONSULTANT** under the **CONTRACT**; and
 - e. Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.
- 23.9 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this **CONTRACT**.
- 23.10 *The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.*
- 23.11 **City Process for Exercising SBEDA Program Remedies.** The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the **CITY** to exercise in the event a **CONSULTANT** violates the SBEDA Program. The Managing Department Director responsible for the affected **CONTRACT** shall then make the decision as to what remedies will be exercised if the **CONTRACT** is valued at less than \$25,000. If the **CONTRACT** is valued at \$25,000 or greater, then the Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the **CONTRACT**. If the recommended remedy is to terminate the **CONTRACT**, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.
- 23.12 **Special Provisions for Extension of Agreements.** In the event the **CITY** extends this **CONTRACT** without a competitive Bid or Proposal process, the **CITY** Managing Department responsible for monitoring the **CONTRACT** shall establish the following, subject to review and approval by the SBEDA Program Manager:

CONSULTANT CONTRACT

- a. A SBEDA Utilization Goal for the extended period;
- b. A modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if **CONSULTANT** does not meet the SBEDA Utilization Goal; and
- c. The required minimum Good Faith Efforts outreach attempts that **CONSULTANT** shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the **CONTRACT** extension document. The **CONSULTANT** entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
 1. Subject **CONSULTANT** to any of the remedies listed above; and/or
 2. Result in rebid of the **CONTRACT** to be extended.

XXIV. GOVERNING LAW AND VENUE

24.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

24.2 Any legal action, claim, proceeding or dispute brought or maintained, directly or indirectly, as a result of this **CONTRACT** shall be heard and determined in the City of San Antonio, County of Bexar, Texas.

XXV. LEGAL AUTHORITY

25.1 The signer of this **CONTRACT** for **CONSULTANT** represents, warrants, assures and guarantees that he has full legal authority to execute this **CONTRACT** on behalf of **CONSULTANT** and to bind **CONSULTANT** to all of the terms, conditions, provisions and obligations herein contained.

XXVI. PARTIES BOUND

26.1 This **CONTRACT** shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives and successors, except as otherwise expressly provided for herein.

THIS CONTRACT

XXVII. GENDER

27.1 Words of any gender used in this **CONTRACT** shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVIII. CAPTIONS

28.1 The captions contained in this **CONTRACT** are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this **CONTRACT**.

XXIX. ACKNOWLEDGMENT

29.1 Each of the Parties acknowledges that it has read this **CONTRACT**, understands its contents and executes this **CONTRACT** voluntarily.

EXECUTED and **AGREED** to this the ____ day of _____, 2011.

CITY OF SAN ANTONIO

CONSULTANT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

Assistant City Attorney

ATTACHMENT A
REQUEST FOR PROPOSAL (RFP)

CONSULTANT CONTRACT

ATTACHMENT B

CONSULTANT'S PROPOSAL





CITY OF SAN ANTONIO

P. O. BOX 839966
SAN ANTONIO TEXAS 78283-3966

ADDENDUM I

SUBJECT: Request for Proposal ("RFP") for Arbitrage Rebate Compliance Services due December 10, 2010

FROM: Finance Department

DATE: November 22, 2010

Question 1: Who is currently providing these services to the City?

Response 1: The Bank of New York Mellon Trust Company, N.A. is currently providing Arbitrage Rebate Compliance Services to the City.

Question 2: Who is the City's Trustee(s) on its revenue bond issues?

Response 2: The Bank of New York Mellon Trust Company, N.A. serves as Trustee on the Municipal Facilities Corporation Lease Revenue Bonds. Wells Fargo Bank, N.A. serves as Trustee on the bonds related to the Convention Center Headquarters Hotel.

Question 3: How will data be transmitted – electronically or hard copy?

Response 3: Data will be transmitted electronically.

Question 4: Are any of the bond proceeds commingled?

Response 4: No. The City records proceeds from each issuance in a separate fund.

Question 5: Which issues have debt service reserve funds?

Response 5: As of September 30, 2010, below are the bond issues outstanding, which have debt service reserve funds and or surety policies:

\$17,795,000 Airport System Improvement Revenue Bonds, Series 2001 (AMT)
\$37,575,000 Passenger Facility Charge and Subordinate Lien Airport System Revenue Improvement Bonds, Series 2002 (AMT)
\$92,470,000 Airport System Revenue Improvement Bonds, Series 2002 (AMT)
\$50,230,000 Airport System Forward Refunding Revenue Bonds, Series 2003 (AMT)
\$38,085,000 Passenger Facility Charge and Subordinate Lien Airport System Revenue Improvement Bonds, Series 2005 (AMT)
\$17,850,000 Airport System Revenue Refunding Bonds, Series 2006 (AMT)
\$74,860,000 Passenger Facility Charge and Subordinate Lien Airport System Revenue Improvement Bonds, Series 2007 (AMT)
\$82,400,000 Airport System Revenue Improvement Bonds, Series 2007 (AMT)
\$182,012,481 Hotel Occupancy Tax Revenue Bonds, Series 1996
\$10,390,000 Hotel Occupancy Tax Subordinate Lien Revenue Refunding Bonds, Series 2004A
\$72,620,000 Hotel Occupancy Tax Subordinate Lien Revenue Refunding Bonds, Series 2006
\$135,000,000 Hotel Occupancy Tax Subordinate Lien Variable Rate Demand Revenue and Refunding Bonds, Series 2008
\$44,150,000 Municipal Drainage Utility System Revenue Bonds, Series 2003*
\$61,060,000 Municipal Drainage Utility System Revenue Bonds, Series 2005*
\$14,465,000 Municipal Facilities Corporation, Lease Revenue Bonds, Series 2001
\$9,090,000 Municipal Facilities Corporation, Lease Revenue Refunding Bonds, Series 2010
\$24,685,000 Starbright Industrial Development Corporation Contract Revenue Bonds, Series 2003 (Taxable) (Starbright Project)
\$129,930,000 Contract Revenue Empowerment Zone Bonds, Series 2005A (AMT)
\$78,215,000 Contract Revenue Bonds, Taxable Series 2005B

* The City has provided for the creation of a reserve fund, however, the City is not required to fund the reserve fund when revenues for each fiscal year are equal to at least 1.75 times the average annual debt service requirements. The City has met the coverage ratio requirement each year.

Question 6: Which issues have unspent proceeds?

Response 6: There are thirty (30) issues that have unspent proceeds, with eighty-eight (88) projects.

Question 7: Which issues have transferred proceeds?

Response 7: The City records proceeds from each issuance in a separate fund and transfers monies out of these funds into the respective work effort funds each month based on that month's expenditures.

Question 8: Identify which issues are variable rate.

Response 8: As of September 30, 2010, the following are variable rate issues:

\$135,000,000 Hotel Occupancy Tax Subordinate Lien Variable Rate Demand Revenue and Refunding Bonds, Series 2008
\$50,000,000 Sales Tax Revenue Commercial Paper Notes, Series A (2007)

Question 9: Are there any integrated swaps?

Response 9: The City does not have any integrated swaps.

Question 10: Which issues have rebate liability, if any?

Response 10: As of September 30, 2010, the following issues have rebate liability:

Hotel Occupancy Tax Revenue Bonds, Series 1996
General Improvement & Refunding Bonds, Series 1998
Sales Tax Revenue Commercial Paper Notes, Series A

Question 11: What date does the City use as a calculation date – anniversary of the issue, elected bond year, fiscal year end?

Response 11: The City uses a “Computation Year” as a calculation date, which represents a one-year period from the delivery date of the issue to the date that is one calendar year after the delivery date, and each subsequent one-year period thereafter.

Question 12: What accounting system does the City use to track bond proceeds?

Response 12: The City uses SAP to track bond proceeds. SAP is the City’s system of record for all financial data.

Question 13: Does the City manage investment of bond proceeds?

Response 13: The City monitors its bond proceeds in relation to arbitrage regulations, and “arbitrage rebate” is estimated and recorded in the government-wide and proprietary financial statements when susceptible to accrual, and in the governmental fund type when matured.

Question 14: As to Commercial Paper – does the City treat each draw as an issue?

Response 14: Yes. Commercial Paper Notes to be designated City of San Antonio, Texas Sales Tax Revenue Commercial Paper Notes, Series A are issued and sold and delivered from time to time in such principal amounts as determined in denominations of \$100,000 or in integral multiples of \$1,000 in excess thereof.

Question 15: As to Commercial Paper – does the City always meet the six month spending test?

Response 15: The City strives to spend Commercial Paper proceeds as expeditiously as possible, however, there are occasions in which the City does not meet the six month spending test.



CITY OF SAN ANTONIO

P. O. BOX 839966
SAN ANTONIO TEXAS 78283-3966

ADDENDUM II

SUBJECT: Request for Proposal (“RFP”) for Arbitrage Rebate Compliance Services due December 10, 2010

FROM: Finance Department

DATE: November 29, 2010

Question 1: Can you provide a current listing of bond issues in scope, noting the following relevant information:

- a. Variable or Fixed Rate (also please note any integrated hedges):
- b. Most recent calculation date:
- c. Arbitrage liability and next scheduled calculation date?
- d. Unspent proceeds (y/n)? Please note if only reserve fund or bona fide debt service fund remain.

Response 1:

- a. As of September 30, 2010, the following are variable rate issues:
\$135,000,000 Hotel Occupancy Tax Subordinate Lien Variable Rate Demand Revenue and Refunding Bonds, Series 2008
\$50,000,000 Sales Tax Revenue Commercial Paper Notes, Series A (2007)
- b. The most recent arbitrage rebate calculation was as of September 30, 2009.
- c. Arbitrage liability is currently being calculated as of September 30, 2010.
As of September 30, 2010, the following issues have rebate liability:
Hotel Occupancy Tax Revenue Bonds, Series 1996
General Improvement & Refunding Bonds, Series 1998
Sales Tax Revenue Commercial Paper Notes, Series A
- d. There are thirty (30) issues that have unspent proceeds, with eighty-eight (88) projects. All unspent proceeds are currently allocated to capital projects.

Question 2: Are there commingled funds? If yes, please provide the number and type of commingled funds (e.g. Reserve, Debt Service, etc.), the number of participants of each fund, and the current allocation method being used.

Response 2: No. The City records proceeds from each issuance in separate funds.

Question 3: What does the City currently pay to the existing provider for each annual calculation? Is this a fixed fee per issue, or does it vary depending upon attributes of each issue?

Response 3: Please see the fee schedule below as taken from the City’s current contract for Arbitrage Rebate Compliance Services:

Fee Schedule	
Description	Annual Fees Per Issue Per Computation Year
Base Fee Per Computation Year:	
General Obligation Bonds	\$1,700
Revenue Bonds	\$1,900
Additional Charges for Special Services Related to:	
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
Penalty Calculations – Semiannual fee for each issue of Bonds, regardless of issue size	\$ 750

- a. Computation Year. A “Computation Year” represents a one-year period from the delivery date of the issue to the date that is one calendar year after the delivery date, and each subsequent one-year period thereafter. Therefore, if a calculation is required that covers more than one “Computation Year,” the annual fee is multiplied by the number of computation years contained in the calculation being performed. For example, if the first calculation performed for an issue covers three computation years, the fee for that computation would be three times the annual fee stated above.

- b. Adjustments to Fee Base. In the event that any of the current or future Tax-Exempt Obligations fall within an exclusion to the computation requirements as defined by Section 148 of the IRS Code or related regulations, no fee will be charged for such issue. Fees for ‘Reduced Computational Complexities’ will be:

Fee Schedule	
Description	Fees Per Issue Per Computation Year
Proceeds expended in prior year. Liability updated and reported issued.	\$ 500
Debt Service calculation only.	\$1,000
Reserve Fund calculation only.	\$1,000
Escrow Fund only.	\$1,000
Rebate Fund only.	\$ 500
Yield Restriction/Yield Reduction computation only.	\$1,500

- c. Reduced Computational Complexities. “Reduced Computational Complexities” means work performed under this Contract for any issue of Tax-Exempt Obligations in which, due to the complete expenditure of certain funds of this issue, the extent of the calculation required is reduced.

Question 4: Does the City require annual reports for issues with significant negative arbitrage liabilities, or does it prefer updates only at filing dates (i.e. 5 year anniversaries)?

Response 4: The City requests annual reports for issues with significant negative arbitrage liabilities.

Question 5: Is there a standard language or form that we should use to obtain the Insurance Provider’s Letter (listed as required attachment)?

Response 5: The letter should be on your current insurance carrier’s letterhead. The insurance carrier should state that they are currently insuring your firm and would be willing to continue to insure your firm for the coverages and amounts listed in the RFP if awarded this contract.

Question 6: Regarding the listing of Audited Financial Statements as a required attachment, we are a closely-held business using the cash-basis method of accounting. As such, we are not in the practice of preparing audited financial statements. Are unaudited, internally prepared statements acceptable?

Response 6: In lieu of a copy of Respondent's most recent annual financial statements prepared in accordance with Generally Accepted Accounting Principles, audited by an independent Certified Public Accountant, a Respondent may submit a copy of its most recent unaudited annual financial statements and a complete copy of its most recent U.S. Income Tax Return (including all Schedules) as filed with the Internal Revenue Service.

Question 7: How should the Good Faith Effort Plan form be completed when the respondent is certified by the SCTRCA as WBE/SBE and no subcontractors will be used to fulfill the scope of work required in the RFP?

Response 7: All firms must complete, sign, and submit the Good Faith Effort Plan as part of their RFP response. Failure to do so may be cause to deem the proposal non-responsive. On the Good Faith Effort Plan form, a certified Respondent would answer "YES" to the question "Is your firm certified?" and then attach copies of their South Central Texas Regional Certification Agency certificates. A Respondent not utilizing any subcontractors/suppliers to perform on the contract would leave the table in Question 1 blank. Additionally, wherever one or more of the SBE/ MBE/ WBE/ AABE contracting goals are not met, it is recommended the Respondent complete Questions 2-9 to explain why.

Respondents and/or their agents are encouraged to contact the Small Business Office of the International and Economic Development Department for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact is Mr. Ram Srinivasan. Mr. Srinivasan may be reached by telephone at (210) 207-0071 or by e-mail at ram.srinivasan@sanantonio.gov. Contacting him or his office regarding this RFP after the proposal due date is not permitted.

ATTACHMENT B
CONSULTANT'S PROPOSAL

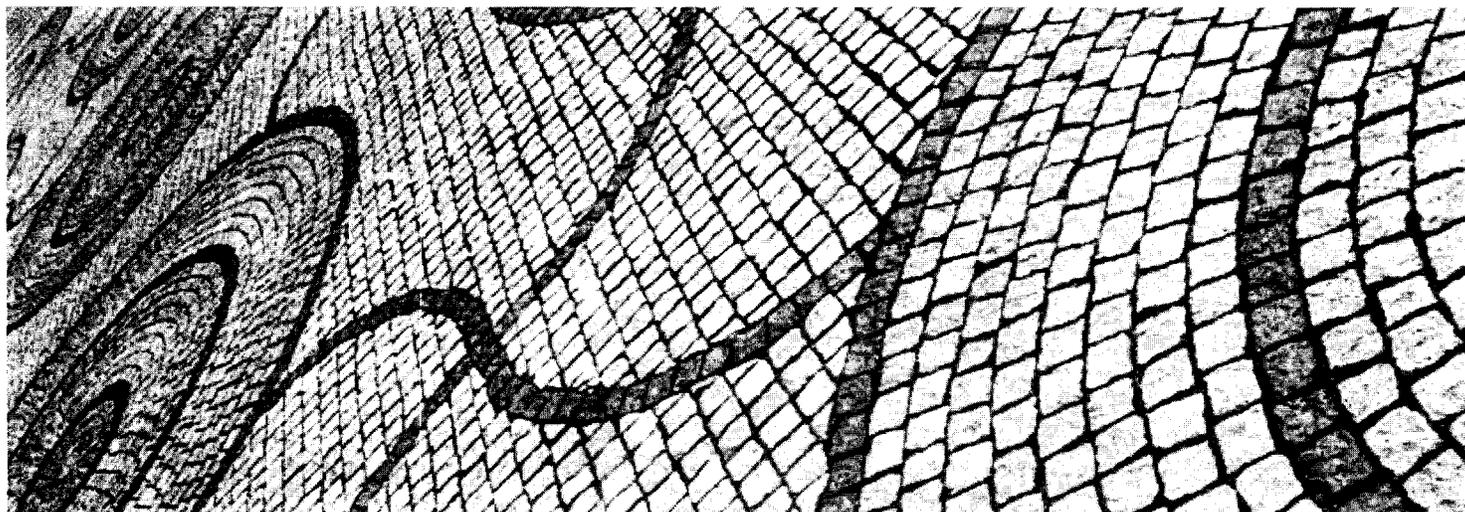
City of San Antonio, Texas

Proposal to provide Arbitrage Rebate Compliance Services

December 10, 2010

Submitted by:

BNY Mellon Trust Company, N.A.
13760 Noel Road, Suite 1040
Dallas, Texas 75240
Terence P. Burke, Managing Director
terry_burke@bnymellon.com



BNY MELLON
CORPORATE TRUST



BNY MELLON
CORPORATE TRUST

December 10, 2010

Ms. Debra Reyes
City of San Antonio
Contract Coordinator
Purchasing & General Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Dear Ms. Reyes:

The Bank of New York Mellon Trust Company, N.A. (“BNY Mellon”) is pleased to present its qualifications to provide Arbitrage Compliance Services to the City of San Antonio, Texas (the “City”). In the accompanying proposal, we describe in detail the benefits of selecting BNY Mellon as your arbitrage calculation agent.

Prior Experience with the City

For the past seven years, the professional staff at BNY Mellon has had the privilege to assist the City with its arbitrage compliance needs. Terence Burke, Rachel Gonzalez, and Brian Helming are all part of the client serving team for the City and have been since first engaged seven years ago. We have experienced no turnover and are able to offer continuity to the City. We have performed hundreds of calculation during the contract term, have assisted in City in applying for an overpayment refund, and have successfully completed an audits of several rebate calculations by the Internal Revenue Service. We also assisted the City with a special project to consolidate and expend old bond proceed balances, thereby completing additional projects and eliminating dozens of old project accounts.

Size and Strength of BNY Mellon Corporate Trust

As a result of the acquisition of Pinnacle Arbitrage Compliance LLC in 2009, BNY Mellon became the largest company providing arbitrage rebate compliance services in the United States. BNY Mellon Corporate Trust was ranked the number one trustee in the U.S. for 2009 by Thomson Reuters, a leading source of industry information for businesses and professionals. It has \$24.4 trillion in assets under custody and administration and \$1.14 trillion in assets under management, services \$12.0 trillion in outstanding debt and processes global payments averaging \$1.6 trillion per day. The company is the highest rated holding company among U.S. financial services firms with Moody’s (at Aa2), and second highest with Standard & Poor’s (AA).

Experience of our Professional Staff

The professional staff of BNY Mellon’s Arbitrage Compliance Group has been providing arbitrage compliance services for over 25 years. We have 16 people providing arbitrage rebate compliance on a full-time basis. We have provided arbitrage services to a diverse client base of over 600 issuers, including governmental issuers such as cities, counties, state agencies and school districts. We also have served health care issuers, single-family and multi-family housing issuers, universities, student loan issuers, and private activity bond issuers.



Contact Information:

Primary Contact: Terence P. Burke
Managing Director
The Bank of New York Mellon Trust Company, N.A.
13760 Noel Road, Suite 1040
Dallas, Texas 75240
terry.burke@bnymellon.com

Main Phone: (214) 580-1220

Direct Phone: (214) 580-1230

Thank you for the opportunity to present our qualifications. Should you require additional information or have any other questions, please do not hesitate to call Brian Helming at (214) 580-1234 or me directly at (214) 580-1230.

Very truly yours,

Terence P. Burke
Managing Director
(Authorized Officer)

Table of Contents

Document	Tab
Table of Contents	A
Arbitrage Rebate Compliance Questionnaire Form	B
References	C
Fee Schedule	D
Discretionary Contracts Disclosure Form	E
Litigation Disclosure Form	F
Good Faith Effort Plan Form	G
Proof of Insurability	H
Audited Financial Statements	I
Signature Page	J
Proposal Checklist	K

RFP ATTACHMENTS

RFP ATTACHMENT 1, PART 1

ARBITRAGE REBATE COMPLIANCE QUESTIONNAIRE FORM
To be submitted with Respondent's Proposal as TAB B

A. Respondent Background, Experience and Qualifications: Provide the following information regarding the Respondent.

1. Respondent Name: The Bank of New York Mellon Trust Company, N.A.
(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: 1 Wall Street

City: New York State: NY Zip Code: 10286

Telephone No. (214) 580-1220 Fax No: (214) 580-3400

Website address: www.bnymellon.com

Year established: 1784

Provide the number of years in business under present name: 3

Social Security Number or Federal Employer Identification Number: 95-3571558

Texas Comptroller's Taxpayer Number, if applicable: _____

(NOTE: This 11-digit number is sometimes referred to as the Comptroller's TIN or TID.)

DUNS NUMBER: 05-155-0713

Business Structure: Check the box that indicates the business structure of the Respondent.

Individual or Sole Proprietorship If checked, list Assumed Name, if any:

Partnership _____

Corporation If checked, check one: For-Profit Nonprofit

Also, check one: Domestic Foreign

Other If checked, list business structure: _____

Printed Name of Contract Signatory: Terence P. Burke

Job Title: Managing Director

2. Provide any other names under which Respondent has operated within the last 10 years and length of time under for each:

The last name change for the Bank of New York occurred in 2007 when it merged with Mellon Financial to become The Bank of New York Mellon ("BNY Mellon"). With respect to the arbitrage services, BNY Mellon began providing arbitrage calculation services in 2009 when it completed the acquisition of Pinnacle Arbitrage Compliance LLC. BNY Mellon's arbitrage professionals joined the firm as a result of the acquisition of Pinnacle Arbitrage Compliance. These professionals worked as a team together at Pinnacle Arbitrage Compliance from 2006 - 2009 and previously at Ernst & Young from 1984 - 2006.

3. Is Respondent authorized and/or licensed to do business in Texas?

Yes No If "Yes", list authorizations/licenses.

In addition to standard business licenses for our Texas locations, Terence Burke who manages the BNY Mellon Arbitrage Compliance Group is a licensed Certified Public Accountant in the State of Texas.

4. Explain changes that have occurred within the Firm over the last six (6) months regarding staffing, organizational structure, as well as future changes you expect may occur.

We are pleased to report that there has been no change in the leadership of the Corporate Trust division during the past six months, nor has there been any change in the leadership or structure of the Arbitrage Compliance Group. In addition, there is no pending change in control for BNY Mellon. BNY Mellon is the corporate brand of The Bank of New York Mellon Corporation. The Bank of New York Mellon Corporation is a publicly owned company whose stock ("BK") is traded on the New York Stock Exchange.

5. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes No If "Yes", state anticipated changes.

6. List the Firm's number of offices.

BNY Mellon has more than 47,000 employees world-wide, of which, over 35,000 are located in the United States. The company serves more than 100 markets through a global presence in 36 countries, establishing it as a truly global provider to a truly global clientele. Our headquarters are in New York City. The nearest Corporate Trust office to the City is located in Austin and the closest Arbitrage Compliance Group office is located in Dallas.

The following table provides information regarding the almost 600 employees of the Corporate Trust division. The Arbitrage Compliance Group is a department within Corporate Trust.

	National ¹ Corporate Trust Only	Texas ² Corporate Trust Only	Bexar County ³	San Antonio	Total
Indicate Headquarter Location (City, State)	24	4	0	0	N/A
Number of Offices in Area	N/A	4	0	0	4
Length of Time in Business From Office	N/A	N/A	Years: Months: 0	Years: Months: 0	N/A
Number of Full-time Employees at Office	505	66	0	0	571

¹ National data excludes Texas, Bexar County and San Antonio.

² Texas data excludes Bexar County and San Antonio.

³ Bexar County data excludes San Antonio.

7. Describe any actions taken against Firm, any of its directors, officers, or employees currently, or within the past three (3) years by any governmental regulatory body including State or Federal agencies relating to services provided.

The Arbitrage Compliance Group has not had any action taken against it by any governmental regulatory body during the more than 20 year history of this group at Ernst & Young, Pinnacle Arbitrage Compliance, or BNY Mellon.

The Bank of New York Mellon Corporation ("Company") is a publicly held financial holding company organized under the laws of the State of Delaware and supervised by the Board of Governors of the Federal Reserve System ("Federal Reserve"). As a public company, the Company files certain publicly available reports with the United States Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934. These reports describe, in general, any material pending legal or regulatory proceedings to which the Company or its subsidiaries is a party. The Company's filings are available on its website at www.bnymellon.com.

Like all major institutions, the Company and its subsidiaries are subject to various litigations, proceedings and investigations. There have been no litigations, proceedings or investigations during the last five years that would materially impair the ability of BNY Mellon to perform the services relevant to the City's Request for Proposals.



8. Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes No If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

9. Has the Respondent ever had a bond or surety canceled or forfeited?

Yes No If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

10. Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes No If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

11. Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations?

Yes No If "Yes", state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

The Arbitrage Compliance Group has never received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations during the more than 20 year history of this group at Ernst & Young, Pinnacle Arbitrage Compliance, or BNY Mellon.

12. Provide a brief history and background of the Firm and describe the Firm's experience, expertise and capabilities specific to providing the services as described in the Scope of Services, including resumes of key personnel.

Overview of BNY Mellon

BNY Mellon is the largest firm providing arbitrage rebate compliance and has some of the most experienced arbitrage compliance professionals of any firm in the nation. BNY Mellon is the corporate brand of the publicly held BNY Mellon Corporation (NYSE: BK). BNY Mellon is a global financial services company focused on helping clients manage and service their financial assets, operating in 36 countries and serving more than 100 markets. BNY Mellon is a leading provider of financial services for institutions, corporations and high-net-worth individuals, providing superior asset management and wealth management, asset servicing, issuer services, clearing services and treasury services through a worldwide client-focused team. It has \$24.4 trillion in assets under custody and administration and \$1.14 trillion in assets under management, services \$12.0 trillion in outstanding debt and processes global payments averaging \$1.6 trillion per day. BNY Mellon is the corporate brand of The Bank of New York Mellon Corporation. Additional information is available at www.bnymellon.com.

BNY Mellon's history of growth and outperformance spans 225 years. Founded in 1784, soon after the birth of the American republic, the company's history is inextricably woven into the broader history of the nation. Our company was the first corporate stock to be traded in 1792 when the New York Stock Exchange was formed, indelibly linking our history to that of the world's capital markets. The company was also the first financial institution to issue debt to the United States Government.

BNY Mellon was formed in July 2007 through a merger between The Bank of New York Company, Inc. and Mellon Financial Corporation creating the worldwide leader in asset management and securities servicing — a financial services growth company without peer. In its first year as a new company, The Bank of New York Mellon delivered the top total shareholder return among all large U.S. financial institutions, establishing a high standard for financial performance. Today, BNY Mellon has over 47,000 employees world-wide.

Arbitrage Compliance Services

BNY Mellon began providing arbitrage calculation services in 2009 when it completed the acquisition of Pinnacle. BNY Mellon currently performs arbitrage rebate compliance services out of three locations:

- ◆ Dallas, Texas
- ◆ Memphis, Tennessee
- ◆ Charlotte, North Carolina

BNY Mellon's arbitrage professionals joined the firm as a result of the acquisition of Pinnacle. These professionals performed arbitrage calculation both at Pinnacle from 2006 – 2009 and previously at Ernst & Young from 1984 – 2006. BNY Mellon's Arbitrage Compliance Services' current staff of 16 professionals have been providing arbitrage rebate compliance services since the requirement was first introduced for governmental issuers by the Tax Reform Act of 1986. We provide arbitrage rebate compliance services to a diverse client base. Not only has our staff provided arbitrage rebate compliance services to issuers in almost every state in the nation, we have also provided such services to almost every type of tax-exempt bond issuer. BNY Mellon's professionals perform

arbitrage rebate compliance services for governmental issuers such as counties, cities, state agencies and school districts. We also serve health care issuers, single-family and multi-family housing issuers, college and university issuers, and private activity bond issuers.

Members of our firm have appeared before the U.S. Treasury Department to provide consultation about the application of the rebate requirements and about specific matters, which were addressed in the Temporary Regulations issued in May 1989, amended in April 1991, and revised in May 1992, June 1993, and May 1997. We regularly attend national conferences sponsored by organizations such as the National Association of Bond Lawyers, the Practicing Law Institute and the Government Finance Officers Association, participating frequently as faculty for such conferences.

Experience of our Professional Staff

We believe that one of the most important factors distinguishing BNY Mellon's Arbitrage Compliance Group from competitors is the number of personnel with significant years of arbitrage compliance experience. The following table lists the individuals in our practice with ten or more years of arbitrage rebate compliance experience:

Name	Title	No. of Years Arbitrage Experience
Terry Burke, CPA	Managing Director	26
Samantha Duke	Vice President	23
Antoinette LaBarre	Vice President	17
Brian Helming	Vice President	16
Kristen Kalinowski, CPA	Vice President	16
Sally Johnson	Vice President	11
Rachel Gonzalez	Vice President	10

As discussed in greater detail in this proposal, the key professionals currently assigned to the City's arbitrage calculations are Terry Burke, Rachel Gonzalez, Antoinette LaBarre, Brian Helming, and James Hatfield.

Experience with the City of San Antonio

We are pleased to state that the professional staff at BNY Mellon has been performing the arbitrage calculations for the City's numerous bond issues for the past 7 years, while at Ernst & Young and Pinnacle Arbitrage Compliance LLC. Subsequently, when Pinnacle was acquired by BNY Mellon in October 2009, the same professional staff continued to perform the arbitrage calculations for the District under an assignment of the Pinnacle agreement.

Terence Burke, Rachel Gonzalez, Melissa Penix and Brian Helming have all been involved in the calculation and technical review of the City's bond issues since the City first engaged Ernst & Young to perform arbitrage rebate calculation services back in 2003. Antoinette LaBarre began working on the City's calculations when she joined our group in 2007. This historical knowledge of the City's bond issues and the calculation methodologies used to calculate the rebate amounts for each issue is invaluable to the City.

We are familiar with the complexities associated with the City's bond issues, including the many complexities such as numerous advance refundings, which resulted in transferred proceeds, and the allocation of the commingled project accounts on older bond issues. From prior experience with the City, we recognize the short timeframe required by the City to quantify the arbitrage liability in time for the annual audit. Our staff has committed necessary resources each year to meet this deadline. We have the resources, the experienced personnel, and unique knowledge of the complexities involved to allow for a prompt completion of the calculations for the City.

Arbitrage Calculation Experience

Experience with Complex Bond Structures

Because of our diverse client base and the extensive experience of our professionals, we are familiar with both simple and complex tax-exempt bond structures. Many of our clients' issues include complexities such as interest rate hedge transactions, commingled fund allocations, guaranteed investment contracts, and universal cap calculations. For variable rate issues, we determine the optimal yield on the bonds for rebate calculation purposes.

Fixed & Variable Rate Issues: BNY Mellon has extensive experience with both fixed rate and variable rate bond issues. Because our professional staff has computed thousands of bond yields for both fixed and variable yield issues, we are familiar with complex bond structures including serial bonds, term bonds, capital appreciation bonds, supplemental interest coupons, various modes of variable rate bonds, and even auction rate securities.

We have programmed our custom software to compute bond yields that involve the special "yield-to-call" calculations for fixed rate issues where it is necessary to perform potentially thousands of iterations to determine the lowest yield on the bonds as required by the Regulations. When an issue contains deep discount term bonds, we calculate the price, or yields, of each mandatory redemption and adjust the yield on the issue accordingly.

Most of the variable rate issues for our clients have qualified guarantee or letter of credit fees and a significant number of those issues involve hedges which must be accounted for in calculating the yield on the issue. We also have experience with accounting for the termination of hedge contracts with respect to bond yield calculations, and with the special treatment for converting auction rate securities.

BNY Mellon's Arbitrage Rebate Calculation System (ARCS) software has a special module designed to determine the optimal yield available under the regulations for a variable rate issue that minimizes the arbitrage amount due. For variable rate bond issues, we first determine the rebate amount using a composite bond yield, in accordance with the Treasury Regulations. If the Bonds have a positive rebate amount using the composite yield, it may be possible to recompute the rebate amount using alternate yield periods and reduce the rebate liability. Every possible combination of variable yield periods is examined to determine the combination that results in the lowest rebate amount. Using this approach, we frequently are able to significantly lower, or eliminate, the rebate amount. For some clients, we have been able to reduce the rebate amount by millions of dollars for a single bond issue.

Interim Financing Structures: Several of BNY Mellon's largest arbitrage rebate clients regularly issue commercial paper as interim financing on long-term projects. Most issuers of commercial

paper plan their draw downs of a commercial paper program to take advantage of the available arbitrage rebate spending exceptions.

The arbitrage regulations permit issuers to treat all draw downs of commercial paper sold during an 18-month period as a single issue for arbitrage rebate compliance. However, this rule is not always advantageous to issuers as it may severely limit the ability to meet a spending exception. Instead, commercial paper issuers will generally treat each separate new money draw from the program as a separate issue. Each separate issue within the program is eligible for the 18-month or possible the 24-month spending exception.

For clients with commercial paper programs, we begin by testing compliance with the arbitrage spending exceptions. In the event an issue does not satisfy a spending requirement, we perform the arbitrage rebate calculations for the portion of the commercial paper program which fails. This is accomplished by prorating the debt service from the entire program during the period when the subject portion is outstanding (generally until currently refunded). We then allocate the investments activity, if commingled, and perform the remainder of the calculations to determine the rebate amount.

Refundings: BNY Mellon's professionals have vast experience in all types of refundings, including current, advance and crossover, all of which have been partial or full refundings of the prior bonds. Refunding a bond issue can create complex tax issues, such as expiration of temporary periods, transferred proceeds, security valuation, universal cap and other allocations. Our experience in these areas is considerable, and we are able to serve our clients in the most complex of transactions.

We also determine the impact any refundings may have on the allocations as a result of transferred proceeds. Our firm has performed several hundred arbitrage calculations that involve the allocation of a commingled parity reserve fund for issues funded with proceeds from the sale of the bonds, revenues from the issuer, or a combination of both.

Commingled Funds: Our firm has performed hundreds of arbitrage calculations that involve the allocation of a commingled parity reserve fund for issues funded with proceeds from the sale of the bonds, revenues from the issuer, or a combination of both. The arbitrage regulations prescribe specific permitted methodologies for allocating a commingled parity reserve fund. We analyze the available allocation methods to determine which method results in the lowest amount of arbitrage earned. For reserve funds funded with proceeds of multiple bond issues, we trace the origin of each deposit to the reserve fund and allocate the reserve based upon each issues share of the deposits. We also determine the impact any refundings may have on the allocations as a result of transferred proceeds.

Investment Agreements: BNY Mellon has significant experience with complex Guaranteed Investment Contracts (GIC) used in various types of financings. We are experienced with both fixed and variable rate GICs, and have computed rebate associated with GICS in project funds, reserve funds, debt service funds, capitalized interest funds, forward purchase agreements, and escrow funds. Our experience includes GICs that involve an upfront payment of interest which must be amortized for the life of the contract, commingling of proceeds from multiple funds into one GIC which must be allocated to properly compute the yield on each fund, GICs with upfront payments and periodic interest receipts, and GICs that include proceeds of multiple bond issues.

Other Complexities: Over the past 20 years, our professional staff has encountered many challenging situations in which we were tasked with analyzing and preparing arbitrage rebate calculations for unusual and/or complex bond issues. We are frequently faced with calculations on bond issues where significant amounts of the underlying records on the investment and expenditure of a bond issue have been lost or destroyed. We employ a variety of approaches to recreating the missing records, including the use of the client's Comprehensive Annual Financial Report. We also frequently encounter issues where an issuer may qualify for a spending exception by reallocating project expenditures using rules provided in the arbitrage regulations.

IRS Audit Experience

Our arbitrage rebate professionals have experience interacting with the Internal Revenue Service. We have been involved in examinations of bond issues for clients; have been engaged to defend clients' positions with the IRS, and in entering into closing agreements for non-rebate related items, such as escrow reinvestment errors. The rebate reports generated by our ARCS software have been reviewed and accepted during IRS audits.

In addition to representing issuers in IRS audits, we have been very proactive in securing refunds of rebate payments previously made by issuers. Our approach to the recovery of overpayments is pursuant to the Regulations. Overpayments can only be recovered to the extent that recovery does not result in additional rebate as of the date requested. We will determine the maximum allowable refund, consult with you and offer to file a recovery request with supporting documentation.

IRS agents reviewing recovery requests must be satisfied the refund request is valid and it is not uncommon for them to have questions. Our involvement does not end with the submission of the request. We assist the issuers in resolving any rebate related questions that arise. We routinely include a Power of Attorney allowing us to deal directly with the IRS to expedite the recovery process. We are currently serving as the representative for the City on a pending refund request for over \$130,000 that was recently submitted to the Internal Revenue Service.

Approach to the Work

When BNY Mellon is engaged to perform arbitrage compliance services, we first review various bond documents relating to each bond issue. This review provides us with an understanding of the structure of the financing and the basis for determining, among other things, which funds are subject to the rebate requirement, whether any relevant elections were made or if any exceptions to the rebate requirement may apply.

BNY Mellon has comprehensive work programs and detailed review checklists to address the quality of the calculation process and make sure that all technical issues have been addressed. The checklists address available tax law elections so that we can determine which available methodology will result in the most advantageous results for our clients. Each calculation is subjected to a multi-level review process prior to issuance. The detailed preparer, an experienced technical reviewer, and a tax reviewer, each reviews the reports before they are released.

Our report is more than simply a schedule of cash flows with little or no explanation. It is a complete report containing a summary of computational information and assumptions used in the calculations, detailed bond yield calculation schedules, investment schedules, and rebate computation schedules. Our calculation methodology is pursuant to the Internal Revenue Code and related Treasury regulations. Prior experience has shown that our detailed rebate report is

complete enough to support an IRS audit or inquiry with little or no additional information required.

If a rebate amount is found to be due for a required filing date, we complete the necessary forms for filing with the Internal Revenue Service and prepare any necessary elections. We provide the issuer with the draft transmittal letter and filing instructions necessary for proper submittal of IRS Form 8038-T.

For annual calculations, we provide our calculations electronically on a CD and provide a summary of the arbitrage liability. Paper copies of our annual reports are also available at the client's request at no additional charge.

BNY Mellon also assists clients in filing for and obtaining refunds for overpayment of arbitrage. We prepare IRS Form 8038-R and prepare a bound refund package that contains all prior arbitrage calculations, IRS Forms 8038-G, 8038-T, and 8038-R. We will also obtain a Power of Attorney (Form 2848) which will allow us to discuss the refund request with the IRS agent.

IRS Deadline Tracking and Reporting

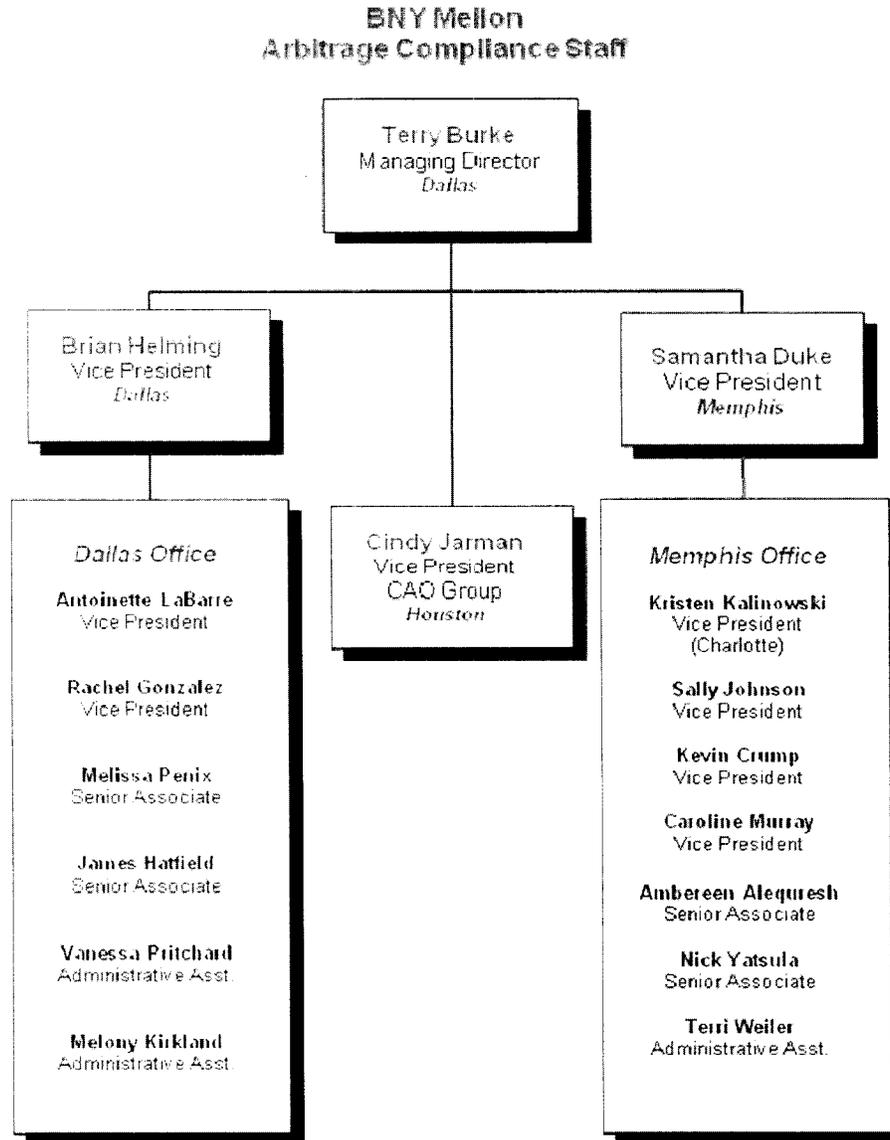
Tracking the IRS reporting deadlines for thousands of bond issues is a formidable task. To avoid late filing penalties and/or interest, it is necessary to ensure timely notification to clients that will allow sufficient time to complete calculations and submit the report to the IRS on or before the required deadline.

Recognizing the extreme importance of this responsibility, BNY Mellon has developed a sophisticated rebate management system to track IRS deadlines and other important data for each bond issue. We currently have the City's bond issues entered into our system and are tracking all IRS calculation deadlines. When a refunding occurs, we determine whether the early redemption of bonds accelerates the required final arbitrage computation for the refunded issue.

This database is used to track critical information to assure timely compliance and IRS reporting. Our consultants monitor reports constantly so that notification of pending IRS calculations can be sent to our clients in a timely manner. When a required IRS filing date is reached, we notify the client in writing of the upcoming deadline and request the information necessary to complete the calculation. As soon as the information needed to update the calculation is received, BNY Mellon proceeds with diligence to meet the required 60-day filing period.

Experience and Qualifications of Key Individuals

BNY Mellon's Arbitrage Compliance group is organized in two main offices and two telecommuting offices to serve our national client base. The structure of our group is illustrated below.



The Dallas professional staff performs the calculations for the City. Terry Burke, a certified public accountant registered in Texas, serves as the overall contact for the City and assists the City's staff in addressing technical questions that arise related to arbitrage. Rachel Gonzalez coordinates all aspects of the City's numerous calculations and performs the arbitrage calculations for dozens of the City's bond issues. Antoinette LaBarre performs the calculations on the City's lease obligations and performs detailed reviews of the City's calculations performed by Rachel Gonzalez, Melissa Penix, and James Hatfield. Brian Helming performs the final tax review on all calculations before the reports are released.

Resumes of the Personnel Assigned to the City



Rachel Gonzalez
Vice President

Rachel Gonzalez serves as a project director for several large Dallas clients and performs data entry and analysis of information necessary to perform the arbitrage rebate calculations. She has ten years of experience in performing arbitrage rebate calculations. Rachel is involved in the gathering, entry and reconciliation of data for calculations performed by the Dallas office. She has experience preparing calculations involving swaps; commingled fund allocations; transferred proceeds allocations; universal cap allocations; yield restriction analyses; spending exception calculations; and reserve fund allocation analyses.

Rachel devotes approximately 50% of her time to the City of San Antonio account, and has for the past seven years. She tracks all of the City's calculations in our Arbitrage Rebate Calculation Software and monitors IRS required deadlines. Rachel is also responsible for coordinating the request for the data necessary to perform the annual calculations for the City. She analyzes each bond issue to determine which funds still have proceeds remaining and need to be included the current fiscal year's calculation. Once the fund detail is electronically received, Rachel applies the custom macro programs we have developed to prepare the data for upload into our calculation system. She then uploads each fund into their respective bond issue. Finally, Rachel coordinates the work on the more than 50 calculations for the City with several other project directors who assist Rachel in performing the calculations necessary to provide the arbitrage liability estimate in time for the annual audit.

Rachel worked at Ernst & Young from June 2002 through December 2006. Prior to joining Ernst & Young in 2002, Rachel served as a legal assistant at a local law firm and as an arbitrage rebate consultant for First Southwest Company.



Antoinette LaBarre
Vice President

Antoinette LaBarre is a seasoned professional in the field of arbitrage rebate compliance. She has 17 years of experience in all aspects of arbitrage rebate compliance and has been involved in the calculation or technical review of thousands of rebate calculations. Prior to joining BNY Mellon, Antoinette was a Director at Pinnacle Arbitrage Compliance and a Vice President with First Southwest Company's Arbitrage Rebate Group.

In addition to her experience in preparing and reviewing arbitrage rebate engagements, she also has experience with computing commingled fund allocations, preparing yield restriction analyses, determining transferred proceeds allocations, and preparing spending exception calculations. She has also assisted in obtaining refund requests from the Internal Revenue Service for clients.

Antoinette graduated from the University of Texas at Arlington with a Bachelors of Science degree in Mathematics.

Brian Helming
Vice President



Brian is a Vice President and Team Leader in the Dallas office. He was a member of the Ernst & Young Arbitrage Rebate division for over twelve years where he served as Project Director for hundreds of arbitrage rebate engagements. Brian works closely with issuers, their bond counsel and trustees to determine their arbitrage rebate liabilities, compliance with yield restriction requirements and strategies to maximize the amount of interest earnings our clients can keep. He has prepared hundreds of arbitrage rebate, spending exception and yield restriction reports for clients. He supervises the Dallas practice personnel, coordinates completion of reports, and performs the detailed review on arbitrage rebate engagements in the Dallas office.

Brian currently serves as the Relationship Manager for several large issuers. As such, he supervises all aspects of the calculation work, is available to answer technical questions as they arise, attends meetings as requested, and would be involved in any examinations by the IRS should they occur. Brian also performs the detailed technical review of approximately 200 calculations annually.

Before joining Pinnacle, Brian worked at Ernst & Young from 1994 to 2006 with previous experience from Prudential and Dean Witter. Brian received degrees in Accounting and Finance from the University of Arizona.

Melissa Penix
Senior Associate



Melissa Penix is a project director in our Dallas location and is responsible for preparing numerous rebate calculations for a wide variety of clients, including authorities, cities, school districts and pooled financing issues. In addition to her experience preparing arbitrage rebate engagements, Melissa also has experience with computing commingled fund allocations, preparing yield period election analyses for variable rate bond issues, determining transferred proceeds allocations, preparing yield restriction analyses, and preparing spending exception and penalty calculations.

Melissa joined Pinnacle Arbitrage Compliance when it was established in December 2006. Prior to joining Pinnacle, she worked in Ernst & Young Arbitrage Rebate Department from April 2004 through December 2006. Prior to joining Ernst & Young, Melissa was office manager for Pappadeaux Restaurant in Dallas, Texas while attending college. She obtained a Bachelor of Business Administration from University of Texas at Dallas.



James Hatfield
Senior Associate

James Hatfield serves as a project director in our Dallas office and is responsible for preparing numerous rebate calculations for a variety of BNY Mellon clients. His calculation experience includes computing yield on variable yield bonds with qualified swaps, commingled fund allocations, determining transferred proceeds allocations, yield restriction analyses, and spending exception calculations. James has clients located throughout the country and has worked on complicated financings for both fixed rate and variable rate bond issues.

James joined BNY Mellon in April 2010. Prior to joining Pinnacle, he worked in the Arbitrage Rebate Department for First Southwest Company from 2007 through 2010. James has a Bachelor of Science Degree in Finance from University of Texas at Dallas and he is currently working on his Masters Degree in Finance.

B. Lead Arbitrage Rebate Compliance Experience and Availability

1. Identify the Lead Arbitrage Rebate Compliance Consultant for the Respondent who would be involved in potential engagements with the City and provide contact information in the following format:

Name: Terence P. Burke

Address: 13760 Noel Road, Suite 1040

City: Dallas State: TX Zip Code: 75240

Telephone Number: (214) 580-1230 Fax Number: (214) 580-3400

Mobile Number: (214) 478-9464 Email Address: terry.burke@bnymellon.com

2. Provide a brief biography to include background, experience, expertise and capabilities specific to providing the services as described in the Scope of Services.



Terence P. Burke
Managing Director - Arbitrage Compliance Services
BNY Mellon Corporate Trust

Terence P. Burke is the Managing Director responsible for the BNY Mellon's Arbitrage Compliance Services. Prior to joining BNY Mellon, Terry founded Pinnacle Arbitrage Compliance LLC where he served as President and Chief Executive Officer from 2006 - 2009. Terry also established the arbitrage rebate services for both Ernst & Young and First Southwest Company. He has over 26 years experience with the arbitrage regulations related to the investment of bond proceeds and authored the Government Finance Officers Association's publication entitled "Guide to Arbitrage Requirements for Governmental Bond Issues" which sold over 4,000 copies to governmental entities during its publication.

In May 2001, Terry was appointed by the Secretary of the United States Treasury to serve as a founding member of the Internal Revenue Service Tax-Exempt Advisory Committee. This committee was formed to provide public input to the Internal Revenue Service in the development of tax policy and regulations that affect tax-exempt entities, including entities that issue tax-exempt bonds. Terry was one of only two committee members providing expertise to the IRS in the area of tax-exempt bonds.

Terry is also the former President and Chief Operating Officer of First Southwest Asset Management, an investment advisory affiliate of the financial advisory firm of First Southwest Company. During his thirteen years at First Southwest, Terry developed their arbitrage rebate compliance services, public funds investment services, and local government investment pool services. Terry served on the Board of Advisors of the Texas Tech University Southwest School of Governmental Finance for over 15 years. He is a former advisor to the Government Finance Officers Association Debt and Fiscal Policy Committee and the Cash Management Committee. Terry graduated from Arizona State University with a Bachelor of Science degree in Accounting and is a licensed CPA in Texas and Arizona.

Experience on the IRS Advisory Committee

We believe Terry Burke's appointment to the IRS Advisory Committee for Tax-Exempt and Governmental Entities recognizes his national reputation as an expert in the field of arbitrage compliance. Terry was one of only two committee members providing expertise to the IRS in the area of tax-exempt bonds. He served two terms on the Committee and was the Vice-Chair of the Government Entities Subcommittee during his second term.

While serving on the IRS Advisory panel, Terry developed a project report recommending the IRS establish special rules for the retention of records related to tax-exempt bond financings. That report was published by the IRS in 2005 and record retention rules are being developed by the IRS with the current Advisory Committee. The project on record retention that Terry initiated has been quoted by the National Association of Bond Lawyers, the Government Finance Officers Association and the Internal Revenue service in subsequent seminars and articles on the need for specialized record retention rules for tax-exempt bond issuers.

Nationally Recognized Speaker

For over 25 years, Terry Burke has been a frequent speaker at conference throughout the country. He has served as a speaker for several Government Finance Officers Association (GFOA) national conferences, serving on panels with members of the IRS and Treasury Department, as well as bond attorneys from throughout the country. In addition to authoring the 1993 GFOA arbitration guide, Terry has taught the GFOA one-day course entitled "Understanding and Calculating Arbitrage Rebate" since 1991. A sample of the organizations for which Terry has served as a speaker include:

- National Association of State Treasurers
- National Government Finance Officers Association
- GFOA of Texas
- GFOA of Arizona
- Treasury Institute for Higher Education
- National Association of Bond Lawyers Tax Seminar
- Texas Association of School Business Officials
- Texas Tech University Southwest School of Governmental Finance

In addition, over the past 20 years, Terry has put together and taught two-day detailed arbitration compliance courses sponsored by his firms. Most recently, he has provided educational courses in several cities to discuss the arbitration requirements associated with Build America Bonds and other direct pay bonds. Finally, Terry has also published several articles on arbitration compliance throughout his lengthy career.

3. Provide a statement of availability to the City.

The City of San Antonio is the largest client served by the Dallas office and is a premier client of our firm. As previously discussed, we have assigned Rachel Gonzalez to the City's account for the past seven years. When the annual calculations are started each November, our Dallas staff meets to determine which bond issues require calculations as of September 30. We allocate the work amongst several experienced project directors in order to perform this large volume of work in the short time period until the City's annual audit begins.

The professional staff at BNY Mellon have a long tenure in providing arbitration services to clients and we are proud that we have very little turnover in our professional staff. Our personnel are assigned to a client for the long term and are not rotated off each year. All of the personnel assigned to the City seven years ago are still working on the City's calculations.

We make ourselves available whenever questions concerning the impact the arbitration rules will have on situations that arise in the normal course of accounting for bond proceeds. Clients often call with unique questions such as how transferring certain funds from one account to another may impact the arbitration calculations. We encourage clients to call us with ongoing questions to avoid making a decision that may have negative implications to arbitration compliance.

Since joining BNY Mellon in late 2009, our arbitration practice has grown rapidly. Because quality service is paramount to our success, we have added three additional staff during 2010. We are currently in the process of filling five new positions in the Arbitration Compliance Group. Two new arbitration professionals are being added to the Dallas practice and one additional professional in our Memphis practice. In addition, effective January 1, 2011, Our Arbitration Compliance Group will begin preparing all Form 8038-CPs for BNY Mellon clients that have engaged the firm as the

Calculation Agent for filing for subsidy payments from the Treasury Department on their direct pay bond issues. This change is in response to a new IRS requirement that any person preparing a tax return for pay must be registered with the IRS and must obtain a Personal Tax Identification Number (PTIN). All of the professionals in the Arbitrage Compliance Group will be registered with the IRS as tax return preparers.

Terry Burke, along with the entire staff, takes great pride in providing quality service to his clients. He makes himself accessible to clients at all levels, from finance directors to staff accountants. He enjoys responding to clients questions and resolving technical issues that arise. Although Terry travels frequently, he is constantly available by e-mail and cell phone. Our staff is always instructed to contact Terry if a client needs to talk to him. Terry's business card contains his cell phone number so that clients can reach him should he be traveling. In addition, Terry will travel to the City to attend any meetings the Finance Department requests. During the past seven years, Terry has made several trips to San Antonio to attend meetings with staff, bond counsel, and even City Council meetings. As we have in the past, we commit to being available to the City as needed.

C. Technical and Quantitative Expertise and Availability

1. Include a description of your Firm's quantitative expertise and capabilities, including type of financial software utilized and other technical tools utilized.

Quantitative Expertise and Capabilities

The BNY Mellon Arbitrage Compliance Group is fortunate to have a team of seasoned arbitrage compliance veterans. With 15 – 20 years of calculation experience for several of our team members, we have a great deal of quantitative expertise. Since the inception of this group over 25 years ago, we have prepared and issued in excess of 20,000 arbitrage rebate and/or yield restriction reports. We have significant experience analyzing the impact of refundings transactions on bond issues subject to rebate, as well as swap transactions, universal cap allocations, and variable yield optimization.

Our staff frequently develops spreadsheet applications to perform certain non-standard calculations, such as the allocation of commingled funds. For example, when our staff first began preparing arbitrage calculations for the City, project funds contained deposits from multiple bond issues as well as non-bond proceeds. We developed spreadsheets to allocate the expenditures for each of these commingled funds on using a first-in, first-out method whereby we allocated expenditures within a given project fund to the oldest issue with a balance in the fund. When the oldest issue was spent, expenditures were then allocated to the next oldest issue. Because each of these commingled funds had a different mix of deposits, we developed a separate spreadsheet for each commingled fund.

Special Project Analyses

We are periodically asked to assist clients in analyzing unusual transactions. We were very pleased to be asked to assist the City two years ago with their mission to identify and utilize unused balances from old bond issues. The books and records of the City contained dozens of accounts with balances remaining even though the projects had been completed. In most instances, the remaining balance represented interest earned on bond proceeds that were not needed to complete projects. The City combined all of the unexpended balances that were not

designated to a known project into a single commingled fund. This allowed the City to eliminate a significant number of open accounts.

We participated in numerous conference calls with the City's staff, investment advisor, and bond counsel to develop methodology for expending the remaining balances in a manner that satisfied both state and federal law requirements. The BNY Mellon staff was responsible for reconciling the balances as shown in the City's ledgers to the balances shown in the arbitrage rebate calculations for each issue.

The analyses was further complicated by the fact that, due to commingled project funds in prior years, the balances computing using a FIFO expenditure basis did not agree to the balances as computed in the arbitrage calculations or because certain balances became "transferred proceeds" as a result of a refunding transaction. Therefore, BNY Mellon developed spreadsheets to determine the amount of remaining proceeds for each issue and reconcile it to the City's records. We then determine the allocation of the new commingled fund and, for arbitrage calculation purposes, un-commingled the balances so they would be allocated back to the issue they originated from.

Proprietary Calculation Software

BNY Mellon has invested significant resources in its custom arbitrage rebate calculation system. It was developed while the staff was at Ernst & Young and was transitioned to BNY Mellon when Ernst & Young exited the business. BNY Mellon acquired the rights to the software as part of the acquisition of BNY Mellon. This system allows for quick turnaround time in preparing rebate calculations and provides a straightforward meaningful report. Reliability was a major design factor, as evidenced by back-up facilities at every level including hardware, software, data and people.

The Arbitrage Rebate Calculation System (ARCS) is modified to reflect the ongoing changes to the arbitrage regulations. As regulations changed, additional modules were added to reflect the nuances of each particular rule change. In this manner, the system performs the calculations differently depending upon which set of regulations were in effect at the time a particular bond issue was delivered. The latest version employs a Microsoft SQL Server database and Microsoft .Net technology.

BNY Mellon's arbitrage calculation software is designed to handle all of the complexities associated with the arbitrage regulations. The system has separate modules for different bond structures. In addition to performing calculations using the future value method as required by the Regulations, the software also contains modules for calculating transferred proceeds associated with a refunding issue, allocation of commingled reserve funds, application of the universal cap rules, and other commingled fund allocations. Finally, the software calculates the yield on the entire investment portfolio as well as the yield on individual investments.

The following are sample screens from our system:

ARCS | Issues - Search Results - Microsoft Internet Explorer provided by The Bank of New York Mellon

Arbitrage Rebate Calculation System

BNY MELLON

Back

Client Name: San Antonio, City of (TX) 19540

Complexity:

Interim Type:

Status:

Active:

Inactive:

8036-CP Active:

8036-CP Inactive:

WIP:

Prospective:

8036-CP WIP:

Begin Date: _____ End Date: _____

Need By:

Next:

IRS:

Expected:

Last:

Final:

SEARCH RESULTS

Issue ID	Status	Issue Description	Client
08420005	Active	Series 1999 Airport S.s Imp Rev. Bonds	San Antonio, City of (TX)
08420006	Active	Series 2001 Airport S.s Imp Rev. Bonds	San Antonio, City of (TX)
08420007	Active	Series 2002 Airport S.s Revenue Improvement Bonds	San Antonio, City of (TX)
08420008	Active	Series 2002 Passenger Fac. Char & Sup. Lien Rev. Imp. Bonds	San Antonio, City of (TX)
08420009	Active	Series 2003 Airport S.s Forward Ref. Rev. Bonds	San Antonio, City of (TX)
08420011	Active	Series 2002 General Imp. Refunding Bonds	San Antonio, City of (TX)
08420012	Active	Series 2001 Municipal Fac. Corp. Lesse Rev. Bonds	San Antonio, City of (TX)
08420016	Active	Series 1999 Hotel Occupancy Tax Revenue Bonds	San Antonio, City of (TX)
08420024	Active	Series 1999 Gen Imp. & Ref. Bonds	San Antonio, City of (TX)
08420025	Active	Series 1999* Comb. Tax & Ref. CO	San Antonio, City of (TX)

Next

Local intranet 100%

ARCS | Issue - Microsoft Internet Explorer provided by The Bank of New York Mellon

Arbitrage Rebate Calculation System

BNY MELLON

Back

08480691 Series 2008 V.R. Demand Revenue & Refdg Bonds | San Antonio, City of (TX)

Details | Comments | Contacts | Assumptions | MPA | Data Request | Rebate History | Roles | Tomstones | Zero Escrow | Details

Series: Series 2008 Hotel R Refunding & Rev | Add

Issue Name: Series 2008 V.R. Demand Revenue & Refdg Bonds

Complexity: High

Issue Status: Active

Issue Status Date: 11/02/2009

Reop: 1833

Total Par: 132,000,000.00

Issue Type: Variable

Issue Basis: 20.350

Estimated Fees: 1,800.00

Conversion: Conversion Checked:

Level of Effort: 10 Override: _____

Storage: _____

Ship To: _____

WIP Status: _____

WIP Date: 02/08/2010

WIP Comments: Current Rtdg & New S. refunds remainin O/S debtor for 2004B Hotel Issue. Transferred Proceeds on 8/15/2008 from Reserve Fund and funded Common Hotel Reserve Fund (RC)

Url Directory: 08480691

Deliv. Dates	Interim Dates	Comp Dates	Assignments
Delivery: 07/11/2008	Interim: Interim FVE	Next: 09/30/2010	Project Director: _____ 2nd Project Director: _____
Maturity: 06/15/2034	Interim Freq: 03/30/2009	Last: 02/30/2008	Contact: Rachel
First Bond Year: 07/12/09	Need By: 12/31/10	IRS: 07/11/2013	Associate: _____
Over-Ride Bond Year: 12/31/10	Expected Delivery: 12/31/10	Final: 06/15/2034	Detailed Reviewer: _____
		Override: _____	HSI/ing: Brian
			Partner/Principal: _____
			Burke: Tom

Local intranet 100%

The system calculates the yield on the bonds, which serves as a verification of the yield presented in the Form 8038 filed at the time of the issue. The system will automatically determine whether the bond requires a special "yield-to-call" calculation and, if so, performs the thousands of iterations to determine the lowest yield on the bonds as required by the Regulations. When an issue contains deep discount term bonds, our program automatically calculates the price, or yields, of each mandatory redemption and adjusts the yield on the issue accordingly. For variable rate issues, the system determines the optimal yield on the bonds for rebate calculation purposes.

The latest version of our ARCS software allows our staff to generate electronic versions of our reports in Acrobat Adobe (PDF format), allowing us to quickly provide clients with the results of the calculation and, if they desire, provide a CD-ROM containing the BNY Mellon arbitrage reports for each issue conveniently on one electronic media.

2. Provide a statement of availability to the City.

BNY Mellon will provide technical and quantitative support to the City as part of this service. The individual who developed the ARCS system used in computing arbitrage joined BNY Mellon as part of the acquisition and still maintains and upgrades the system as part of her primary duties.

3. Describe the training resources available to the City to include materials available and/or on-site training provided by your Firm.

BNY Mellon is very active in education to municipal clients. We strongly believe that educational seminars increase clients' knowledge of the complex arbitrage regulations and results in improved compliance. For almost two-decades, Terry Burke has developed and taught a two-day training class on arbitrage compliance. This seminar examines the arbitrage compliance rules in detail to provide participants with a greater understanding of the basics of arbitrage rebate and yield restriction. During 2010, BNY Mellon presented a two-hour Thought Leadership session on the arbitrage requirements associated with Build America Bonds and other direct pay bonds.

The arbitrage compliance professionals at BNY Mellon are frequent speakers at conferences all over the country. Terry Burke, Brian Helming, Samantha Duke, and Kristen Kalinowski have all served as instructors for various governmental organizations in the past year, including the Government Finance Officers Association, Treasury Institute for Higher Education, Government Treasurer's Organization of Texas, Virginia GFOA, South Carolina GFOA, and many other organizations.

Terry Burke has taught the one-day "Understanding and Calculating Arbitrage Rebate" course for the Government Finance Officers Association for almost 15 years. This training is targeted to tax-exempt issuers and covers the basics of the arbitrage rebate regulations, yield restriction rules, investment rules and calculation methodology. Finally, for many of our large clients over the years, we have developed a custom seminar to train the finance personnel and user departments on the basics of arbitrage compliance. We would welcome an opportunity to teach a training class for the City's staff.

4. Provide any other information that your team may deem applicable to the Arbitrage Rebate Compliance Services that the City may utilize but has not been directly requested in this RFP.

No additional items are provided.

RFP ATTACHMENT 1, PART 2

REFERENCES

To be submitted with Respondent's Proposal as TAB C

Provide three (3) references that Respondent has provided services to within the past three (3) years. The contact person named should be familiar with the day-to-day management of the contract and **be willing to respond to questions** regarding the type, level, and quality of service provided.

Reference No. 1:

Firm/Company Name: Texas Water Development Board
Contact Name: Ms. Piper Montemayor Title: Director of Debt & Portfolio Management
Address: 1700 North Congress Avenue
City: Austin State: Texas Zip Code: 78711-3231
Telephone No. (512) 475-2117 Fax No: (512) 475-2053
Email: _____piper.montemayor@twdb.state.tx.us
Date and Type of Service(s) Provided: Arbitrage calculations since 2007

Reference No. 2:

Firm/Company Name: Scottsdale Healthcare
Contact Name: Mr. Todd LaPorte Title: Sr. VP and CFO
Address: 731 East Osborn Road
City: Phoenix State: Arizona Zip Code: 85251
Telephone No. (480) 882-4904 Fax No: (480) 882-6814
Email: _____tlaporte@shc.org
Date and Type of Service(s) Provided: Arbitrage calculations since 2000

Reference No. 3:

Firm/Company Name: Lower Colorado River Authority
Contact Name: Janet L. Holland Title: Funds Manager, Corporate Finance
Address: 3700 Lake Austin Blvd.
City: Austin State: Texas Zip Code: 78767
Telephone No. (512) 473-3341 Fax No: (512) 473-4003
Email: _____Janet.Holland@lcra.org
Date and Type of Service(s) Provided: Arbitrage calculations since 1991

FEE SCHEDULE

BNY Mellon's proposed fees are as follows:

Fee Schedule	
Description	Annual Fees Per Issue Per Computation Year (**)
General Obligation Bonds	\$1,300
Certificates of Obligation	\$1,300
Tax Notes	\$1,300
Build America Bonds (BABs)	\$1,300
Airport System Revenue Improvement Bonds	\$1,400
Airport Special Facilities Revenue Bonds	\$1,400
Airport Passenger Facility Charge Revenue Bonds	\$1,400
Municipal Drainage Utility System Revenue Bonds	\$1,300
Municipal Facilities Corporation Lease Revenue Bonds	\$1,300
Convention Center Revenue Bonds	\$1,400
Contract Revenue Bonds	\$1,400
Tax-Exempt Commercial Paper	\$1,500
Conduit Financings	\$1,300
Variable/Floating Rate Bonds	\$1,500
Multi-use Community Facility Bonds	\$1,300
Other Financings	\$1,300

(**) The annual fees quote above are based upon an issue with five project funds or less. An additional charge of \$100 for each project fund in excess of five would be added each year until the number of active funds reduces to five or less. For example, a bond issue with 7 project funds would be charged an additional \$200 annually until expended.

Additional Charges, as applicable:

The structure and complexity of certain bond issues may require or benefit from additional services for which additional fees will be charged. The following table indicates situations that require additional calculations and increases the amount of work necessary to complete the report. In these instances, additional fees would be charged for that issue.

Description	Note	Annual Fees Per Issue Computation Year (1)
<i>Additional Charges for Special Services Related to:</i>		
Commingled Fund Allocations per fund	(2)	\$250
Transferred proceeds transactions due to refundings (per refunding)	(3)	\$250

Description	Note	Annual Fees Per Issue Computation Year (1)
Yield Restriction Analysis/Yield Reduction Computation on Non-Purpose Investments	(4)	\$250
Alternate Yield Period Calculations for Variable Rate Issues	(5)	\$1,500
Refund Requests	(6)	\$3,000

- (1) A “**Computation Year**” represents a one-year period from the delivery date of the bonds and each subsequent anniversary date of the delivery of the bonds or shorter period if selected by the issuer. Fees are quoted separately for each bond year.
- (2) **Commingled Funds:** In the event funds containing bond proceeds are commingled with funds from other sources, including other bond issues, it is necessary to perform an allocation of the commingled fund to determine the interest earnings associated with the portion of the commingled fund that relates to the bond issue in question. An additional fee is charged to perform the necessary allocations for commingled funds.
- (3) **Transferred Proceeds:** When an issuer refinances (refunds) an existing bond issue, any unexpended proceeds from the issue(s) being refunded become “transferred proceeds” of the refunding bonds. Under the arbitrage regulations, as the escrow established with refunding bond proceeds pays principal of the refunded bonds, a pro-rata share of unexpended proceeds from the refunded bonds is no longer treated as proceeds of the refunding bonds, but becomes subject to rebate and yield restriction as part of the refunding bond issue calculation. In the event proceeds of the refinanced bond issue become transferred to the refunding bonds for calculation purposes, it will be necessary to perform the transferred proceeds calculations.
- (4) **Yield Restriction/Yield Reduction:** In addition to the arbitrage rebate requirement imposed by Section 148(f)(2) of the Internal Revenue Code, issuers must also comply with separate yield restriction rules imposed by the Code. Arbitrage earned after permitted “temporary periods” defined in the Code may not be retained and may not be offset against negative arbitrage earned during the temporary periods. If proceeds remain after the permitted temporary periods, calculations must be performed to determine if any yield reduction payment is required.
- (5) **Variable Rate Issues & Qualified Hedges:** The computation of the bond yield for a variable rate issue differs from that of a fixed rate issue. Fixed rate issues can generally be computed only once and used for all arbitrage calculations. The yield on a variable rate issue changes as the rates change and must be updated each time a calculation is performed. The arbitrage regulations permit the use of an alternate yield period methodology might decrease the rebate liability.
- (6) **Refund Requests:** In the event the City is entitled to a refund for overpayment of a prior arbitrage liability, we will prepare the IRS Form 8038-R and supporting documentation necessary for an agent to process the request. We will answer any questions the agent may have regarding the calculations or the request.

* = Required fields



City of San Antonio Discretionary Contracts Disclosure

Office of the
City Clerk

Please fill out this form online, print completed form and submit with proposal to originating department. All questions must be answered.

For details on use of this form, see Section 2-59 through 2-61 of the City's Ethics Code.

*This is a New Submission or Correction or Update to previous submission.

***1. Name of person submitting this disclosure form.**

First: Terence M.I. P Last: Burke Suffix: _____

***2. Contract information.**

a) Contract or project name: Arbitrage Rebate Compliance Services
b) Originating department: Finance

***3. Name of individual(s) or entity(ies) seeking a contract with the city (i.e. parties to the contract).**

The Bank of New York Mellon Trust Company, N.A.

***4. List any business entity(ies) that is a partner, parent, or subsidiary business entity(ies) of the individual or entity listed in Question 3.**

Not applicable. Contracting party(ies) does not have partner, parent, or subsidiary business entities.
 Names of partner, parent, or subsidiary business entities:
The Bank of New York Mellon (parent)

***5. List any individuals or entities that will be subcontractors on this contract.**

Not applicable. No subcontractors will be retained for this contract.
 Subcontractors may be retained, but have not been selected at the time of this submission.
 List of subcontractors:

***6. List any attorneys, lobbyists, or consultants retained by any individuals listed in Questions 3, 4, or 5 to assist in seeking this contract.**

Not applicable. No attorneys, lobbyists, or consultants have been retained to assist in seeking this contract.
 List of attorneys, lobbyists, or consultants retained to assist in seeking this contract:



City of San Antonio Discretionary Contracts Disclosure

Office of the
City Clerk

***7. Disclosure of political contributions.**

List any campaign or officeholder contributions made by the following individuals in the past 24 months totaling more than \$100 to any current member of City Council, former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections:

- a) any individual seeking contract with the city (Question 3)
- b) any owner or officer of entity seeking contract with the city (Question 3)
- c) any individual or owner or officer of an entity listed above as a partner, parent, or subsidiary business (Question 4)
- d) any subcontractor or owner/officer of subcontracting entity retained for the contract (Question 5)
- e) the spouse of any individual listed in response to (a) through (d) above
- f) any attorney, lobbyist, or consultant retained to assist in seeking contract (Question 6)

Not applicable. No campaign or officeholder contributions have been made in preceding 24 months by these individuals.

List of contributions:

Updates on Contributions Required

Information regarding contributions must be updated by submission of a revised form from the date of the submission of this form, up through the time City Council takes action on the contract identified in response to Question 2 and continuing for 30 calendar days after the contract has been awarded.

Notice Regarding Contribution Prohibitions for "High-Profile" Contracts

Under Section 2-309 of the Municipal Campaign Finance Code, the following listed individuals are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10th business day after a contract solicitation has been released until 30 calendar days after the contract has been awarded:

- a) Legal signatory of a high-profile contract
- b) Any individual seeking a high-profile contract
- c) Any owner or officer of an entity seeking a high-profile contract
- d) The spouse of any of individual listed in response to (a) through (c) above
- e) Any attorney, lobbyist, or consultant retained to assist in seeking a high-profile contract

Penalty. A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the contribution "black-out" period, which is the 10th business day after a solicitation has been released until 30 calendar days after the contract has been awarded.

***8. Disclosure of conflict of interest.**

Are you aware of any fact(s) with regard to this contract that would raise a "conflict of interest" issue under Sections 2-43 or 2-44 of the City Ethics Code for any City Council member or board/commission member that has not or will not be raised by these city officials?

I am not aware of any conflict(s) of interest issues under Section 2-43 or 2-44 of the City Ethics Code for members of City Council or a city board/commission.

I am aware of the following conflict(s) of interest:

***Acknowledgements**

Updates Required

I understand that this form must be updated by submission of a revised form if there is any change in the information before the discretionary contract is the subject of action by the City Council, and no later than 5 business days after any change has occurred, whichever comes first. This includes information about political contributions made after the initial submission and up until 30 calendar days after contract has been awarded.



City of San Antonio Discretionary Contracts Disclosure

Office of the
City Clerk

No Contact with City Officials or Staff during Contract Evaluation

I understand that a person or entity who seeks or applies for a city contract or any other person acting on behalf of that person or entity is prohibited from contacting city officials and employees regarding the contract after a Request for Proposal (RFP), Request for Qualification (RFQ), or other solicitation has been released.

This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If contact is required with city officials or employees, the contact will take place in accordance with procedures incorporated into the solicitation documents. Violation of this prohibited contacts provision set out in Section 2-61 of the City Ethics Code by respondents or their agents may lead to disqualification of their offer from consideration.

***Contribution Prohibitions for "High-Profile" Contracts**

- This is not a high-profile contract.
- This is a high-profile contract.

***Conflict of Interest Questionnaire (CIQ)**

Chapter 176 of the Local Government Code requires contractors and vendors to submit a Conflict of Interest Form (CIQ) to the Office of the City Clerk.

- I acknowledge that I have been advised of the requirement to file a CIQ form under Chapter 176 of the Local Government Code.

***Oath**

- I swear or affirm that the statements contained in this Discretionary Contracts Disclosure Form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.

Your Name: Terence P. Burke Title: Managing Director

Company Name or DBA: The Bank of New York Mellon Trust Company, N.A. Date: 12/09/2010

Please fill this form out online, print completed form and submit with proposal to originating department. All questions must be answered.

If necessary to mail, send to:
Purchasing
P.O. Box 839966
San Antonio, Texas 78283-3966

LITIGATION DISCLOSURE

Respond to each of the questions below by checking the appropriate box. 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?

Yes No

2. Have you or any member of your Firm or Team to be assigned to this engagement 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?

Yes No

3. Have you or any member of your Firm or Team to be assigned to this engagement 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?

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.

Good Faith Effort Plan

BNY Mellon Arbitrage Compliance Group

All services described in BNY Mellon's proposal will be performed entirely by the firm's internal professional staff. Due to the complexities associated with the hundreds of pages of federal arbitrage regulations, the ability to subcontract portions of the calculations is difficult. The penalties associated with an error in the calculation are significant (50% of the error plus interest) and only professional staff trained in arbitrage compliance will work on the engagement.

However, supplier diversity is an important component of BNY Mellon's corporate business strategy. Through our Vendor Development Program, we continue to take positive steps in building and maintaining a diverse supplier base. We work closely with our existing minority and women-owned suppliers to expand their opportunities with BNY Mellon, providing our guidance and support as needed to prepare them to bid on new business with us. We collaborate with organizations focuses on the economic development and growth, learning and leadership, to promote the full potential of individuals, their companies and the communities in which we live and work. This commitment to the economic growth and development of minority and women-owned businesses has the full support of our corporate leadership.

Through our participation in the minority supplier organizations, as well as our attendance at trade shows and other business events, we actively look to identify new sources of qualified minority suppliers. In addition, we are continuously assessing our performance against industry best practices, and we often work with our major suppliers to identify joint venture opportunities, as well as mentor minority suppliers with whom we hope to work in the future. Supplier diversity not only makes good business sense at BNY Mellon, it's our policy, our commitment and our corporate responsibility.

The Priority Vendor Program was established in 1994 by BNY Mellon to promote the use and develop a recordkeeping process to document the use of minority, women, disabled veteran, veteran of the Vietnam Era, and other certain qualifying small business enterprises throughout the Bank. The program was renamed The Vendor Development Program in 2001. BNY Mellon currently has approximately 2,500 priority vendors, 500 are minority and women owned businesses that qualify as priority vendors that provide the following: advertising/marketing, binding reports, cleaning services, computer equipment/supplies, consulting, courier service, printing, duplicating, graphic art-work, human resource services, legal services, maintenance/janitorial services, moving/storage services, office furniture/supplies, paper, technology and training.

Priority Spending - FY 12/31/08 Information		
Description	Amount Spent by BNY Mellon	% of Total BNY Mellon Spending
Amount spent with Priority Suppliers	\$103.0 million	19.09%
Amount spent with women and minority owned companies	\$62.0 million	11.50%

BNY Mellon is committed to Texas and last year alone, spent almost \$185 million to vendors. Of that amount, \$8.5 million were spent with small, women and minority owned companies in Texas, which represents 4.6% of the dollars spent by BNY Mellon in Texas. BNY Mellon also supports the economy in San Antonio, even though we do not currently have a Corporate Trust office located in the city. Our firm purchased over \$2 million in goods and services from companies located in San Antonio, as summarized below.

Texas Spending - FY 12/31/09		
Description	Total in Texas	Total in San Antonio
Total BNY Mellon spending	\$184.9 million	\$2.4 million
Amount spent with small, women and minority owned companies in Texas	\$8.5 million	Not Available

Small and diverse businesses – such as those owned and operated by women, minorities, veterans, and the disabled – play a critical role in helping BNY Mellon achieve its objectives as a leading financial institution. These firms supply the quality products and services that allow us to remain efficient and innovative in our business and the global marketplace. We value their contributions and are committed to continuing our support for minority firms that wish to participate in our procurement process.

Through our Vendor Development Program, we offer diverse firms a level playing field upon which to compete with bigger and more established companies for a slice of our business. The program represents our ongoing effort to integrate and promote shared values with our clients, shareholders, employees, and business associates. We believe communities with an array of thriving local businesses tend to offer their residents greater economic, housing, employment, and other freedoms.

BNY Mellon is affiliated with the following organizations:

- *The New York and NJ Supplier Development Council*
- *The National Minority Business Council*
- *Department of Commerce – Minority Business Development Council*
- *Asian Women in Business*
- *National Hispanic Business Group*
- *National Association of Women Business Owners*
- *Workshops in Business Opportunities*
- *NYC Department of Small Business Services, and the NYC Department of Housing, Preservation and Development*



To learn more about BNY Mellon's Supplier Development Program, contact Ms. Claire Scanlon, Vice President and SDP manager.

Ms. Claire P. Scanlon
Vice President
BNY Mellon
101 Barclay Street, 15E
New York, NY 10286
(212) 815-6006
claire.scanlon@bnymellon.com

GOOD FAITH EFFORT PLAN
(Page 1 of 4)

NAME OF PROJECT: Arbitrage Rebate Compliance Services

BIDDER/PROPOSER INFORMATION:

Name of Bidder/Proposer: The Bank of New York Mellon Trust Company, N.A.

Address: 13760 Noel Road, Suite 1040

City: Dallas State: TX Zip Code: 75240

Telephone: (214) 580-1230 E-mail Address: terry.burke@bnymellon.com

Is your firm certified? Yes No (If yes, please submit Certification Certificate.)

1. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE-SBE CERTIFICATION NUMBER
No subcontractors will be used for this contract. Please see attached explanation.			

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Small Business Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

GOOD FAITH EFFORT PLAN
(Page 2 of 4)

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 International and Economic Development and Director of the appropriate contracting department (through the proposal of the Request for Approval of Change to Original Affirmed 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.

No subcontractors will be used for this contract. Please see attached explanation.

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

No subcontractors will be used for this contract. Please see attached explanation.

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

No subcontractors will be used for this contract. Please see attached explanation.

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

No subcontractors will be used for this contract. Please see attached explanation.

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

No subcontractors will be used for this contract. Please see attached explanation.

GOOD FAITH EFFORT PLAN

(Page 3 of 4)

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

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION
No subcontractors will be used for this contract. Please see attached explanation.		

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.
- _____
- _____
10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

GOOD FAITH EFFORT PLAN
(Page 4 of 4)

GOOD FAITH EFFORT PLAN AFFIRMATION

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN 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

Managing Director

TITLE OF OFFICIAL

12/10/10

(214) 580-1230

DATE

PHONE

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval _____ Denial _____

Action Taken: Approved _____ Denied _____

Director of International and Economic Development



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/09/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA, Inc. 1166 Avenue of the Americas New York, NY 10036 Attn: NewYork.certs@Marsh.com Fax: 212-948-0500 018363-all-CAS-10-11	CONTACT NAME: PHONE (A/C, No. Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #:	FAX (A/C, No.):													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Federal Insurance Company</td> <td>20281</td> </tr> <tr> <td>INSURER B : Great Northern Insurance Company</td> <td>20303</td> </tr> <tr> <td>INSURER C : N/A</td> <td>N/A</td> </tr> <tr> <td>INSURER D : N/A</td> <td>N/A</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Federal Insurance Company	20281	INSURER B : Great Northern Insurance Company	20303	INSURER C : N/A	N/A	INSURER D : N/A	N/A	INSURER E :		INSURER F :
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : Federal Insurance Company	20281														
INSURER B : Great Northern Insurance Company	20303														
INSURER C : N/A	N/A														
INSURER D : N/A	N/A														
INSURER E :															
INSURER F :															

COVERAGES **CERTIFICATE NUMBER:** NYC-005140709-01 **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC		7499-60-88	04/01/2010	04/01/2011	EACH OCCURRENCE	\$ 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 2,000,000
						MED EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 2,000,000
						GENERAL AGGREGATE	\$ 4,000,000
						PRODUCTS - COMP/OP AGG	\$ 4,000,000
							\$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		7352-68-74	04/01/2010	04/01/2011	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
							\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$					EACH OCCURRENCE	\$
						AGGREGATE	\$
							\$
							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A			WC STATUTORY LIMITS	OTHER
						E.L. EACH ACCIDENT	\$
						E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 RE: Agreement RFP-010-011 between The Bank of New York Mellon/Arbitrage and City of San Antonio.
 Certificate holder, its officers, officials, employees, volunteers and elected representatives are included as Additional Insured ATIMA.

CERTIFICATE HOLDER City of San Antonio Attn: Finance Dept P O Box 839966 San Antonio, TX 78283-3966	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Ricki Fitzsimmons
--	--



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/09/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA, Inc. 1166 Avenue of the Americas New York, NY 10036 018363-BONYM-BPL-10-11	CONTACT NAME: PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ PRODUCER CUSTOMER ID #: _____																					
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>Houston Casualty Company</td> <td>42374</td> </tr> <tr> <td>INSURER B:</td> <td></td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Houston Casualty Company	42374	INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:	
INSURER(S) AFFORDING COVERAGE		NAIC #																				
INSURER A:	Houston Casualty Company	42374																				
INSURER B:																						
INSURER C:																						
INSURER D:																						
INSURER E:																						
INSURER F:																						
INSURED The Bank of New York Mellon Corporation One Wall Street - 32nd Floor New York, NY 10266																						

COVERAGES **CERTIFICATE NUMBER:** NYC-005141059-02 **REVISION NUMBER:** 4

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$																
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$																
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$																
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<table border="1"> <tr> <td><input type="checkbox"/></td> <td>WC STATUTORY LIMITS</td> <td><input type="checkbox"/></td> <td>OTHER</td> </tr> <tr> <td></td> <td>E.L. EACH ACCIDENT</td> <td></td> <td>\$</td> </tr> <tr> <td></td> <td>E.L. DISEASE - EA EMPLOYEE</td> <td></td> <td>\$</td> </tr> <tr> <td></td> <td>E.L. DISEASE - POLICY LIMIT</td> <td></td> <td>\$</td> </tr> </table>	<input type="checkbox"/>	WC STATUTORY LIMITS	<input type="checkbox"/>	OTHER		E.L. EACH ACCIDENT		\$		E.L. DISEASE - EA EMPLOYEE		\$		E.L. DISEASE - POLICY LIMIT		\$
<input type="checkbox"/>	WC STATUTORY LIMITS	<input type="checkbox"/>	OTHER																				
	E.L. EACH ACCIDENT		\$																				
	E.L. DISEASE - EA EMPLOYEE		\$																				
	E.L. DISEASE - POLICY LIMIT		\$																				
A	Bankers Professional Liability			24-MGU-10-A10441	12/01/2010	12/01/2011	\$15,000,000 Limit																

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RFP-010-011
CERTIFICATE HOLDER
City of San Antonio
Attn: Finance Dept
P O Box 839966
San Antonio, TX 78283-3966
CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.
Jill Sulkes *Jill Sulkes*

© 1988-2009 ACORD CORPORATION. All rights reserved.



BNY MELLON

Current Insurance Coverage

The following insurance coverage is maintained. All coverage is continually renewed prior to expiration dates. Please note that our policies are stand-alone policies and loss limits are not combined.

Financial Institutions Bond/Computer Crime Includes Safe Deposit Box Coverage	
Per Loss Limit:	\$150,000,000
Carrier:	Lloyd's of London
Coverage Type:	a) Dishonesty of Employees b) Forgery of securities, checks, drafts or other written instruments c) Loss or destruction of cash or securities
Expiration:	12/1/10
Excess J-Form and Transit All Risk Money and Securities Coverage (On premises and in transit) Excess of the F. I. Bond	
Per Loss Limit:	\$850,000,000
Carrier:	Lloyd's of London
Coverage Type:	Loss or destruction of cash or securities on or off premises (including securities of others held in custody).
Expiration:	12/1/10
Mail Insurance (per envelope limit)	
Per Envelope Limit:	\$100,000,000 non-negotiable \$10,000,000 negotiable
Carrier:	Chubb Group of Insurance Companies
Coverage Type:	All risk of physical loss of property sent by registered mail or overnight courier.
Expiration:	Continuous
Bankers Professional Liability (E & O)	
Per Loss Limit:	\$75,000,000
Carrier:	Houston Casualty, XL, Ace, Axis & BNY Trade Ins Ltd
Coverage Type:	Losses due to errors or omissions
Expiration:	12/1/10
Directors and Officers Liability	
Per Loss Limit:	Corporate: \$30,000,000 Individual: \$30,000,000
Carrier:	XL and HOUSTON CASUALTY
Coverage Type:	Coverage for wrongful acts in respective capacities of Directors or Officers of the Company
Expiration:	12/1/10
Primary General Liability / Automobile Liability	
Per Loss Limit:	\$2,000,000 (separate limit for each)
Carrier:	Federal Insurance
Coverage Type:	3 rd party bodily injury / property damage
Expiration:	4/1/11

Excess / Umbrella Liability	
Per Loss Limit:	\$25,000,000
Carrier:	AIG
Coverage Type:	Liability coverage in excess of primary coverage
Expiration:	4/1/11
Property	
Per Loss Limit:	\$800,000,000
California Earthquake	\$50,000,000
Carrier:	AIG ,Chubb, Ace, & Various Other Carriers
Coverage Type:	Coverage includes Data Processing, Business Interruption, Boiler and Machinery Service Interruption / Extra Expense, Earthquake / Flood, Fine Arts
Expiration:	6/1/10
Workers Compensation/ Employers Liability	
Carrier:	AIG
Coverage Type:	Job related injuries. Statutory
	\$1,000,000 Limit for Employers Liability
Expiration:	4/1/11
Enterprise Privacy Liability	
Carrier:	Lloyd's of London, & AIG
Limit:	\$30,000,000 Limit
Coverage:	Privacy Breach and Internet Liability
Expiration:	12/1/10

The insurance coverage listed provides protection for The Bank of New York Mellon Corporation and all other corporations, companies, firms, enterprises, or entities which are subsidiaries of, or affiliated with it, and in which the named insured has more than 50% ownership. All carriers are rated A- or better by A.M. Best.



BNY MELLON

BNY Mellon

2009 Annual Report

STRENGTH. GLOBALLY.

FINANCIAL HIGHLIGHTS

The Bank of New York Mellon Corporation (and its subsidiaries)

FINANCIAL RESULTS	2009	2008
Income (loss) from continuing operations <i>(in millions)</i>	\$ (813)	\$ 1,455
Income (loss) from discontinued operations, net of tax <i>(in millions)</i>	(270)	14
Extraordinary (loss) on consolidation of commercial paper conduit, net of tax <i>(in millions)</i>	—	(26)
Net income (loss) <i>(in millions)</i>	(1,083)	1,443
Net (income) loss attributable to noncontrolling interests, net of tax <i>(in millions)</i>	(1)	(24)
Redemption charge and preferred dividends <i>(in millions)</i>	(283)	(33)
Net income (loss) applicable to common shareholders of The Bank of New York Mellon Corporation <i>(in millions)</i>	\$ (1,367)	\$ 1,386
Earnings per common share - diluted ^(a)		
Continuing operations	\$ (0.93)	\$ 1.21
Discontinued operations, net of tax	(0.23)	0.01
Extraordinary (loss), net of tax	—	(0.02)
Net income (loss) applicable to common stock	\$ (1.16)	\$ 1.20
CONTINUING OPERATIONS - KEY DATA		
Total revenue <i>(in millions)</i>	\$ 7,687	\$ 13,573
Total expenses <i>(in millions)</i>	9,563	11,523
Fee and other revenue as a percentage of total revenue - GAAP	62%	79%
Non-GAAP adjusted ^(b)	78%	79%
Percent of non-U.S. fee revenue and net interest revenue	32%	33% ^(c)
Assets under management at year end <i>(in billions)</i>	\$ 1,115	\$ 928
Assets under custody and administration at year end <i>(in trillions)</i>	\$ 22.3	\$ 20.2
Capital ratios at Dec. 31 ^(d)		
Tier 1 capital ratio	12.1%	13.2%
Tier 1 common to risk-weighted assets ratio ^(e)	10.5	9.4
Total (Tier 1 plus Tier 2 capital ratio)	16.0	16.9
Common shareholders' equity to assets ratio ^(e)	13.7	10.6
Tangible common shareholders' equity to tangible assets ratio - Non-GAAP ^(e)	5.2	3.8

(a) Diluted earnings per share for 2009 was calculated using average basic shares. Adding back the dilutive shares would be anti-dilutive.

(b) See Supplemental Information beginning on page 74 for a calculation of these ratios.

(c) Excluding the SIFIL/LLLO charges, the percentage of non-U.S. fee and net interest revenue was 32 percent for 2008.

(d) Includes discontinued operations.

The Bank of New York Mellon Corporation (and its subsidiaries)

Financial Summary

(dollar amounts in millions, except per common share amounts and unless otherwise noted)

	2009	2008	2007 (a)	2006 (b)	2005 (b)
Year ended Dec. 31					
Fee revenue	\$ 10,141	\$ 12,342	\$ 9,254	\$ 5,337	\$ 4,693
Investment securities gains (losses)	(5,369)	(1,628)	(201)	2	22
Net interest revenue	2,915	2,859	2,245	1,499	1,340
Total revenue	7,687	13,573	11,298	6,838	6,055
Provision for credit losses	332	104	(11)	(20)	(7)
Noninterest expense	9,563	11,523	8,094	4,675	4,078
Income (loss) from continuing operations before income taxes	(2,208)	1,946	3,215	2,183	1,984
Provision (benefit) for income taxes	(1,395)	491	987	694	635
Income (loss) from continuing operations	(813)	1,455	2,228	1,489	1,349
Income (loss) from discontinued operations, net of tax	(270)	14	10	1,371	228
Extraordinary (loss) on consolidation of commercial paper conduits, net of tax	-	(26)	(180)	-	-
Net income (loss)	(1,083)	1,443	2,058	2,860	1,577
Net (income) loss attributable to noncontrolling interests, net of tax	(1)	(24)	(19)	(13)	(6)
Redemption charge and preferred dividends	(283)	(33)	-	-	-
Net income (loss) applicable to common shareholders of The Bank of New York Mellon Corporation	\$ (1,367)	\$ 1,386	\$ 2,039	\$ 2,847	\$ 1,571
Earnings per diluted common share (c):					
Income (loss) from continuing operations	\$ (0.93)	\$ 1.21	\$ 2.35	\$ 2.04	\$ 1.84
Income (loss) from discontinued operations, net of tax	(0.23)	0.01	0.01	1.91	0.31
Extraordinary (loss), net of tax	-	(0.02)	(0.19)	-	-
Net income (loss) applicable to common stock	\$ (1.16)	\$ 1.20	\$ 2.17	\$ 3.93 (d)	\$ 2.15
At Dec. 31					
Securities	\$ 56,049	\$ 39,435	\$ 48,698	\$ 21,106	\$ 27,218
Loans	36,689	43,394	50,931	37,793	32,927
Total assets	212,224	237,512	197,656	103,206	102,118
Deposits	135,050	159,673	118,125	62,146	49,787
Long-term debt	17,234	15,865	16,873	8,773	7,817
Preferred (Series B) stock	-	2,786	-	-	-
Common shareholders' equity	28,977	25,264	29,403	11,429	9,876

(a) Results for 2007 include six months of BNY Mellon and six months of legacy The Bank of New York Company, Inc.

(b) Results for 2006 and 2005 include legacy The Bank of New York Company, Inc. only. All legacy The Bank of New York Company, Inc. earnings per share and share-related data are presented in post merger share count terms.

(c) Diluted earnings per common share for the year ended Dec. 31, 2009 was calculated using average basic shares. Adding back the dilutive shares would result in anti-dilution.

(d) Does not foot due to rounding.

Financial Summary (continued)

(dollar amounts in millions, except per common share amounts and unless otherwise noted)

	2009	2008	2007 (a)	2006 (b)	2005 (b)
Selected data					
Return on common equity (c)(d)	N/M	5.0%	11.0%	27.6%	16.6%
Non-GAAP adjusted (c)(d)	8.3%	14.3	13.7	28.7	16.7
Return on tangible common equity (c)(d)	N/M	20.7	29.3	50.7	29.4
Non-GAAP adjusted (c)(d)	28.7	48.9	33.7	52.0	29.1
Return on assets (d)	N/M	0.67	1.49	2.67	1.55
Continuing operations basis:					
Pre-tax operating margin (c)	N/M	14	28	32	33
Non-GAAP adjusted (c)	31	39	36	35	33
Fee and other revenue as a percent of total revenue (c)	62	79	80	78	78
Non-GAAP adjusted (c)	78	79	80	78	78
Fee revenue per employee (based on average headcount) (in thousands)	\$ 242	\$ 290	\$ 291	\$ 262	\$ 240
Percent of non-U.S. fee revenue and net interest revenue	32%	33% (f)	32%	30%	30%
Net interest margin (on fully taxable equivalent basis) (e)	1.82	1.89 (f)	2.05	2.01	2.02
Cash dividends per common share (b)	\$ 0.51	\$ 0.96	\$ 0.95	\$ 0.91	\$ 0.87
Common dividend payout ratio	N/M	80.00%	43.58%	23.10%	40.28%
Dividend yield	1.8%	3.4	1.9	2.2	2.6
Closing common stock price per common share (b)	\$ 27.97	\$ 28.33	\$ 48.76	\$ 41.73	\$ 33.76
Market capitalization (in billions)	33.8	32.5	55.9	29.8	24.6
Book value per common share (b)(c)	23.99	22.00	25.66	16.03	13.57
Tangible book value per common share – Non-GAAP (b)(c)	7.90	5.18	8.00	7.73	7.90
Employees (continuing operations)	42,200	42,500	41,200	22,400	19,900
Year-end common shares outstanding (in thousands) (b)	1,207,835	1,148,467	1,145,983	713,079	727,483
Average common equity to average assets	12.8%	13.4%	13.6%	9.7%	9.3%

At Dec. 31

Assets under management ("AUM") (in billions)	\$ 1,115	\$ 928	\$ 1,121	\$ 142	\$ 115
Assets under custody and administration ("AUC") (in trillions)	22.3	20.2	23.1	15.5	11.4
Cross-border assets (in trillions)	8.8	7.5	10.0	6.3	3.4
Market value of securities on loan (in billions) (g)	247	326	633	399	311

Capital ratios at Dec. 31 (h)

Tier 1 capital ratio	12.1%	13.2%	9.3%	8.2%	8.4%
Tier 1 common equity to risk-weighted assets ratio (c)	10.5	9.4	7.6	6.7	6.9
Total (Tier 1 plus Tier 2) capital ratio	16.0	16.9	13.2	12.5	12.5
Leverage capital ratio	6.5	6.9	6.5	6.7	6.6
Common shareholders' equity to assets (c)	13.7	10.6	14.9	11.1	9.7
Tangible common shareholders' equity to tangible assets – Non-GAAP (c)	5.2	3.8	5.2	5.7	5.9

(a) Results for 2007 include six months of BNY Mellon and six months of legacy The Bank of New York Company, Inc.

(b) Results for 2006 and 2005 include legacy The Bank of New York Company, Inc. only. All legacy The Bank of New York Company, Inc. earnings per share and share-related data are presented in post merger share count terms.

(c) See Supplemental Information beginning on page 74 for a calculation of these ratios.

(d) Calculated before the extraordinary losses in 2008 and 2007.

(e) Prior periods are calculated on a continuing operations basis, even though the prior period balance sheets, in accordance with GAAP, have not been restated for discontinued operations.

(f) Excluding the SILO/LILO charges, the percentage of non-U.S. fee and net interest revenue was 32% and the net interest margin was 2.21% for the year ended Dec. 31, 2008.

(g) Represents the securities on loan, both cash and non-cash, managed by the Asset Servicing segment.

(h) Includes discontinued operations.

The Bank of New York Mellon Corporation (and its subsidiaries)

Consolidated Income Statement

<i>(in millions)</i>	Year ended Dec. 31,		
	2009	2008	2007 <i>(a)</i>
Fee and other revenue			
Securities servicing fees:			
Asset servicing	\$ 2,573	\$ 3,370 <i>(b)</i>	\$2,376 <i>(b)</i>
Issuer services	1,463	1,685	1,560
Clearing services	962	1,065 <i>(c)</i>	1,187 <i>(c)</i>
Total securities servicing fees	4,998	6,120	5,123
Asset and wealth management fees	2,639	3,218	2,153
Foreign exchange and other trading activities	1,036	1,462	786
Treasury services	519	514	346
Distribution and servicing	397	421	212
Financing-related fees	215	186	216
Investment income	226	207 <i>(c)</i>	207 <i>(c)</i>
Other	111	214 <i>(c)</i>	211 <i>(c)</i>
Total fee revenue	10,141	12,342	9,254
Net securities gains (losses) – including other-than-temporary impairment	(5,552)	(1,628)	(201)
Noncredit related losses on securities not expected to be sold (recognized in OCI)	183	-	-
Net securities gains (losses)	(5,369)	(1,628)	(201)
Total fee and other revenue	4,772	10,714	9,053
Net interest revenue			
Interest revenue	3,507	5,524	5,670
Interest expense	592	2,665	3,425
Net interest revenue	2,915	2,859	2,245
Provision for credit losses	332	104	(11)
Net interest revenue after provision for credit losses	2,583	2,755	2,256
Noninterest expense			
Staff	4,700	5,189 <i>(d)</i>	4,126 <i>(d)</i>
Professional, legal and other purchased services	1,017	1,021 <i>(d)</i>	760 <i>(d)</i>
Net occupancy	564	570	447
Distribution and servicing	426	517	268
Software	367	331	280
Sub-custodial and clearing	320	335 <i>(b)</i>	406 <i>(b)</i>
Furniture and equipment	309	323	266
Business development	214	278	189
Other	837	1,822 <i>(e)</i>	634
Subtotal	8,754	10,386	7,376
Amortization of intangible assets	426	473	314
Restructuring charges	150	181	-
Merger and integration expenses:			
The Bank of New York Mellon Corporation	233	471	355
Acquired Corporate Trust Business	-	12	49
Total noninterest expense	9,563	11,523	8,094
Income			
Income (loss) from continuing operations before income taxes	(2,208)	1,946	3,215
Provision (benefit) for income taxes	(1,395)	491	987
Income (loss) from continuing operations	(813)	1,455	2,228
Discontinued operations:			
Income (loss) from discontinued operations	(421)	28	13
Provision (benefit) for income taxes	(151)	14	3
Income (loss) from discontinued operations, net of tax	(270)	14	10
Extraordinary (loss) on consolidation of commercial paper conduits, net of tax	-	(26)	(180)
Net income (loss)	(1,083)	1,443	2,058
Net (income) loss attributable to noncontrolling interests, net of tax	(1)	(24)	(19)
Redemption charge and preferred dividends	(283)	(33)	-
Net income (loss) applicable to common shareholders of The Bank of New York Mellon Corporation	\$ (1,367)	\$ 1,386	\$2,039

The Bank of New York Mellon Corporation (and its subsidiaries)

Consolidated Income Statement (continued)

Earnings per common share applicable to the common shareholders' of The Bank of New York Mellon Corporation (in dollars)	Year ended Dec. 31,		
	2009	2008	2007 (a)
<i>Basic:</i>			
Income (loss) from continuing operations	\$ (0.93)	\$ 1.21	\$ 2.37
Income (loss) from discontinued operations, net of tax	(0.23)	0.01	0.01
Extraordinary (loss), net of tax	-	(0.02)	(0.19)
Net income (loss) applicable to common stock (f)	\$ (1.16)	\$ 1.20	\$ 2.19
<i>Diluted: (g)</i>			
Income (loss) from continuing operations	\$ (0.93)	\$ 1.21	\$ 2.35
Income (loss) from discontinued operations, net of tax	(0.23)	0.01	0.01
Extraordinary (loss), net of tax	-	(0.02)	(0.19)
Net income (loss) applicable to common stock (f)	\$ (1.16)	\$ 1.20	\$ 2.17

Average common shares and equivalents outstanding (in thousands)	Year ended Dec. 31,		
	2009	2008	2007 (a)
Basic	1,178,907	1,142,239	923,199
Common stock equivalents	-	10,383	11,505
Participating securities	-	(4,264)	(4,028)
Diluted	1,178,907 (g)	1,148,358	930,676
Anti-dilutive securities (h)	98,112	83,763	67,171

Reconciliation of net income (loss) from continuing operations applicable to the common shareholders' of The Bank of New York Mellon Corporation (in millions)	Year ended Dec. 31,		
	2009	2008	2007 (a)
Income (loss) from continuing operations	\$ (813)	\$ 1,455	\$ 2,228
Net (income) loss attributable to noncontrolling interests, net of tax	(1)	(24)	(19)
Income (loss) from continuing operations attributable to The Bank of New York Mellon Corporation	(814)	1,431	2,209
Redemption charge and preferred dividends	(283)	(33)	-
Income (loss) from continuing operations applicable to common shareholders of The Bank of New York Mellon Corporation, net of tax	(1,097)	1,398	2,209
Income (loss) from discontinued operations, net of tax	(270)	14	10
Extraordinary (loss), net of tax	-	(26)	(180)
Net income (loss) applicable to the common shareholders of The Bank of New York Mellon Corporation	\$ (1,367)	\$ 1,386	\$ 2,039

(a) Results for 2007 include six months of BNY Mellon and six months of legacy The Bank of New York Company, Inc.

(b) In 2009, global sub-custodian out-of-pocket expense related to client reimbursements was reclassified from sub-custodian expense to asset servicing revenue. This reclassification totaled \$22 million in 2008 and \$23 million in 2007.

(c) In 2009, fee revenue associated with equity investments was reclassified from clearing services revenue and other revenue to investment income. Fee revenue associated with an equity investment previously recorded in clearing services revenue was \$22 million in 2008 and \$5 million in 2007. Fee revenue associated with an equity investment previously recorded in other revenue was \$32 million in 2008 and \$53 million in 2007. Prior periods have been reclassified.

(d) In 2009, certain temporary/consulting expenses were reclassified from professional, legal and other purchased services to staff expense. This reclassification totaled \$100 million in 2008 and \$19 million in 2007.

(e) Includes support agreement charges of \$894 million in 2008.

(f) Basic and diluted earnings per share under the two-class method were calculated after deducting earnings allocated to participating securities of \$- million in 2009, \$9.7 million in 2008 and \$17.3 million in 2007.

(g) Diluted earnings per share for the year ended Dec. 31, 2009, was calculated using average basic shares. Adding back the dilutive shares would be anti-dilutive.

(h) Represents stock options, restricted stock, restricted stock units, participating securities and warrants outstanding that are not included in the computation of diluted average common shares because their effect would be anti-dilutive.

See accompanying Notes to Consolidated Financial Statements.

The Bank of New York Mellon Corporation (and its subsidiaries)

Consolidated Balance Sheet

	Dec. 31,	
	2009	2008
<i>(dollar amounts in millions, except per share amounts)</i>		
Assets		
Cash and due from:		
Banks	\$ 3,732	\$ 4,889
Interest-bearing deposits with the Federal Reserve and other central banks	7,362	53,270
Other short-term investments – U.S. government-backed commercial paper, at fair value	-	5,629
Interest-bearing deposits with banks	56,302	39,126
Federal funds sold and securities purchased under resale agreements	3,535	2,000
Securities:		
Held-to-maturity (fair value of \$4,240 and \$6,333)	4,417	7,371
Available-for-sale	51,632	32,064
Total securities	56,049	39,435
Trading assets	6,001	11,102
Loans	36,689	43,394
Allowance for loan losses	(503)	(415)
Net loans	36,186	42,979
Premises and equipment	1,602	1,686
Accrued interest receivable	639	619
Goodwill	16,249	15,898
Intangible assets	5,588	5,856
Other assets (includes \$863 and \$1.870 at fair value)	16,737	15,023
Assets of discontinued operations	2,242	-
Total assets	\$212,224	\$237,512
Liabilities		
Deposits:		
Noninterest-bearing (principally domestic offices)	\$ 33,477	\$ 55,816
Interest-bearing deposits in domestic offices	32,944	32,386
Interest-bearing deposits in foreign offices	68,629	71,471
Total deposits	135,050	159,673
Borrowing from Federal Reserve related to asset-backed commercial paper, at fair value	-	5,591
Federal funds purchased and securities sold under repurchase agreements	3,348	1,372
Trading liabilities	6,396	8,085
Payables to customers and broker-dealers	10,721	9,274
Commercial paper	12	138
Other borrowed funds	477	755
Accrued taxes and other expenses	4,484	4,052
Other liabilities (including allowance for lending related commitments of \$125 and \$114, also includes \$610 and \$721, at fair value)	3,891	4,618
Long-term debt	17,234	15,865
Liabilities of discontinued operations	1,608	-
Total liabilities	183,221	209,423
Equity		
Preferred stock – par value \$0.01 per share; authorized 100,000,000 shares;		
issued – shares and 3,000,000 shares	-	2,786
Common stock – par value \$0.01 per common share; authorized 3,500,000,000 common shares;		
issued 1,208,861,641 and 1,148,507,561 common shares	12	11
Additional paid-in capital	21,917	20,432
Retained earnings	8,912	10,225
Accumulated other comprehensive loss, net of tax	(1,835)	(5,401)
Less: Treasury stock of 1,026,927 and 40,262 common shares, at cost	(29)	(3)
Total The Bank of New York Mellon Corporation shareholders' equity	28,977	28,050
Noncontrolling interests	26	39
Total equity	29,003	28,089
Total liabilities and equity	\$212,224	\$237,512

See accompanying Notes to Consolidated Financial Statements.

The Bank of New York Mellon Corporation (and its subsidiaries)

Consolidated Statement Of Cash Flows

<i>(in millions)</i>	Year ended Dec. 31,		
	2009	2008	2007 <i>(a)</i>
Operating activities			
Net income (loss)	\$ (1,083)	\$ 1,443	\$ 2,058
Net income attributable to noncontrolling interests, net of tax	(1)	(24)	(19)
Income (loss) from discontinued operations, net of tax	(270)	14	10
Extraordinary (loss), net of taxes	-	(26)	(180)
Income (loss) from continuing operations attributable to The Bank of New York Mellon Corporation	(814)	1,431	2,209
Adjustments to reconcile net income (loss) to cash provided by (used for) operating activities:			
Provision for credit losses	332	104	(11)
Depreciation and amortization	711	878	820
Deferred tax (benefit) expense	(1,970)	(1,257)	(146)
Securities losses and venture capital income	5,387	1,659	141
Change in trading activities	(636)	(368)	1,949
Pension plan contribution	(394)	(80)	(29)
Change in accruals and other, net	1,192	513	(927)
Net effect of discontinued operations	(27)	34	(36)
Net cash provided by operating activities	3,781	2,914	3,970
Investing activities			
Change in interest-bearing deposits with banks	(9,635)	(13,973)	(10,625)
Change in interest-bearing deposits with the Federal Reserve and other central banks	45,908	(53,270)	-
Change in margin loans	(680)	1,233	(43)
Purchases of securities held-to-maturity	(114)	-	-
Paydowns of securities held-to-maturity	643	267	228
Maturities of securities held-to-maturity	280	238	233
Purchases of securities available-for-sale	(28,665)	(11,561)	(30,398)
Sales of securities available-for-sale	3,204	114	2,600
Paydowns of securities available-for-sale	6,361	4,950	4,862
Maturities of securities available-for-sale	2,001	5,468	16,023
Sale of Grantor Trust Series A senior tranche	771	-	-
Net principal received from (disbursed to) loans to customers	4,948	4,660	(2,201)
Sales of loans and other real estate	851	334	52
Change in federal funds sold and securities purchased under resale agreements	(1,545)	6,095	(2,603)
Change in seed capital investments	(8)	56	136
Purchases of premises and equipment/capitalized software	(318)	(303)	(313)
Acquisitions, net cash	(364)	(511)	1,431
Dispositions, net cash	-	310	-
Proceeds from the sale of premises and equipment	6	41	1
Other, net	(987)	(171)	1,234
Net effect of discontinued operations	431	48	(2,191)
Net cash provided by (used for) investing activities	23,088	(55,975)	(21,574)
Financing activities			
Change in deposits	(24,774)	48,780	17,667
Change in federal funds purchased and securities sold under repurchase agreements	2,602	(660)	(711)
Change in payables to customers and broker-dealers	1,447	1,696	313
Change in other funds borrowed	(5,717)	5,596	(772)
Change in commercial paper	(126)	(3,941)	(295)
Net proceeds from the issuance of long-term debt	3,350	2,647	4,617
Repayments of long-term debt	(1,882)	(4,082)	(1,131)
Proceeds from the exercise of stock options	16	182	475
Issuance of common stock	1,371	40	20
Tax benefit realized on share-based payment awards	4	14	55
Treasury stock acquired	(28)	(308)	(113)
Common cash dividends paid	(599)	(1,107)	(884)
Series B preferred stock issued/(repurchased)	(3,000)	2,779	-
Common stock warrant issued/(repurchased)	(136)	221	-
Preferred dividends paid	(73)	(22)	-
Net effect of discontinued operations	(428)	(82)	2,227
Net cash provided by (used for) financing activities	(27,973)	51,753	21,468
Effect of exchange rate changes on cash	(53)	(438)	(69)
Change in cash and due from banks			
Change in cash and due from banks	(1,157)	(1,746)	3,795
Cash and due from banks at beginning of period	4,889	6,635	2,840
Cash and due from banks at end of period	\$ 3,732	\$ 4,889	\$ 6,635
Supplemental disclosures			
Interest paid	\$ 682	\$ 2,682	\$ 3,521
Income taxes paid	2,392	2,455	1,390
Income taxes refunded	664	65	147

(a) Results for 2007 include six months of BNY Mellon and six months of legacy The Bank of New York Company, Inc.

See accompanying Notes to Consolidated Financial Statements.

The Bank of New York Mellon Corporation (and its subsidiaries)

Consolidated Statement of Changes in Equity

The Bank of New York Mellon Corporation shareholders'									
<i>(in millions, except per share amounts)</i>	Preferred stock	Common stock	Additional paid-in capital	Retained earnings	Accumulated other comprehensive income (loss), net of tax	Treasury stock	ESOP loan	Non-controlling interests	Total equity
Balance at Dec. 31, 2006	\$ -	\$10	\$10,035	\$ 9,255	\$ (292)	\$(7,576)	\$(3)	\$ 171	\$11,600 <i>(a)</i>
Adjustments for the cumulative effect of applying ASC 740 and ASC 840, net of taxes of \$(214)	-	-	-	(416)	-	-	-	-	(416)
Adjusted balance at Jan. 1, 2007	-	10	10,035	8,839	(292)	(7,576)	(3)	171	11,184
Distributions paid to noncontrolling interest	-	-	-	-	-	-	-	(7)	(7)
Comprehensive income:									
Net income	-	-	-	2,039	-	-	-	19	2,058
Other comprehensive income, net of tax:	-	-	-	-	(231)	-	-	(1)	(232)
Reclassification adjustment	-	-	-	-	(26)	-	-	-	(26)
Total comprehensive income	-	-	-	2,039	(257)	-	-	18	1,800
Dividends on common stock at \$0.95 per share	-	-	-	(884)	-	-	-	-	(884)
Repurchase of common stock	-	-	-	-	-	(113)	-	-	(113)
Common stock issued under employee benefit plans	-	-	25	-	-	2	3	-	30
Common stock issued in settlement of share repurchase agreements with broker-dealer counterparties	-	-	(35)	-	-	35	-	-	-
Stock awards and options exercised	-	-	644	-	-	69	-	-	713
Retirement of treasury stock	-	(3)	(7,541)	-	-	7,544	-	-	-
Merger with Mellon	-	4	16,846	-	-	-	-	-	16,850
Other	-	-	16	(4)	-	-	-	-	12
Balance at Dec. 31, 2007	\$ -	\$11	\$19,990	\$ 9,990	\$ (549)	\$ (39)	\$ -	182	\$29,585 <i>(a)</i>
Adjustments for the cumulative effect of applying ASC 715 and ASC 825, net of taxes of \$24	-	-	-	(57)	-	-	-	-	(57)
Adjusted balance at Jan. 1, 2008	-	11	19,990	9,933	(549)	(39)	-	182	29,528
Purchase of subsidiary shares from non-controlling interest	-	-	-	-	-	-	-	(148)	(148)
Distributions paid to noncontrolling interest	-	-	-	-	-	-	-	(7)	(7)
Comprehensive income:									
Net income	-	-	-	1,419	-	-	-	24	1,443
Other comprehensive income, net of tax:	-	-	-	-	(5,824)	-	-	(12)	(5,836)
Reclassification adjustment	-	-	-	-	972	-	-	-	972
Total comprehensive income	-	-	-	1,419	(4,852)	-	-	12	(3,421)
Dividends on common stock at \$0.96 per share	-	-	-	(1,107)	-	-	-	-	(1,107)
Dividends on preferred stock at \$8.75 per share	-	-	-	(26)	-	-	-	-	(26)
Repurchase of common stock	-	-	-	-	-	(308)	-	-	(308)
Common stock issued under employee benefit plans	-	-	12	(3)	-	58	-	-	67
Common stock issued under direct stock purchase and dividend reinvestment plan	-	-	-	(1)	-	31	-	-	30
Series B preferred stock issued	2,779	-	-	-	-	-	-	-	2,779
Amortization of preferred stock discount	7	-	-	(7)	-	-	-	-	-
Stock awards and options exercised	-	-	200	-	-	249	-	-	449
Warrant issued in connection with TARP	-	-	221	-	-	-	-	-	221
Other	-	-	9	17	-	6	-	-	32
Balance at Dec. 31, 2008	\$2,786	\$11	\$20,432	\$10,225	\$(5,401)	\$ (3)	\$ -	\$ 39	\$28,089 <i>(a)</i>

The Bank of New York Mellon Corporation (and its subsidiaries)

Consolidated Statement of Changes in Equity (continued)

The Bank of New York Mellon Corporation shareholders'									
<i>(in millions, except per share amounts)</i>	Preferred stock	Common stock	Additional paid-in capital	Retained earnings	Accumulated other comprehensive income (loss), net of tax	Treasury stock	ESOP loan	Non-controlling interests	Total equity
Balance at Dec. 31, 2008	\$ 2,786	\$ 11	\$ 20,432	\$ 10,225	\$(5,401)	\$ (3)	\$ -	\$ 39	\$ 28,089 <i>(a)</i>
Adjustments for the cumulative effect of applying ASC 320, net of taxes of \$470	-	-	-	676	(676)	-	-	-	-
Adjusted balance at Jan. 1, 2009	2,786	11	20,432	10,901	(6,077)	(3)	-	39	28,089
Purchase of subsidiary shares from noncontrolling interest	-	-	(74)	-	-	-	-	(11)	(85)
Distributions paid to noncontrolling interest	-	-	-	-	-	-	-	(7)	(7)
Comprehensive income:									
Net income	-	-	-	(1,084)	-	-	-	1	(1,083)
Other comprehensive income, net of tax	-	-	-	-	926	-	-	4	930
Reclassification adjustment	-	-	-	-	3,316	-	-	-	3,316 <i>(b)</i>
Total comprehensive income	-	-	-	(1,084)	4,242	-	-	5	3,163
Dividends on common stock at \$0.51 per share	-	-	-	(599)	-	-	-	-	(599)
Dividends on preferred stock at \$24.58 per share	-	-	-	(69)	-	-	-	-	(69)
Repurchase of common stock	-	-	-	-	-	(28)	-	-	(28)
Repurchase of Series B preferred stock	(3,000)	-	-	-	-	-	-	-	(3,000)
Repurchase of common stock warrant	-	-	(136)	-	-	-	-	-	(136)
Common stock issued in public offering	-	1	1,346	-	-	-	-	-	1,347
Common stock issued in connection with acquisitions and investments	-	-	85	-	-	-	-	-	85
Common stock issued under employee benefit plans	-	-	49	-	-	2	-	-	51
Common stock issued under direct stock purchase and dividend reinvestment plan	-	-	19	-	-	-	-	-	19
Amortization of preferred stock discount and redemption charge	214	-	-	(214)	-	-	-	-	-
Stock awards and options exercised	-	-	197	-	-	-	-	-	197
Other	-	-	(1)	(23)	-	-	-	-	(24)
Balance at Dec. 31, 2009	\$ -	\$ 12	\$ 21,917	\$ 8,912	\$(1,835)	\$(29)	\$ -	\$ 26	\$ 29,003 <i>(a)</i>

(a) Includes total common shareholders' equity of \$11.429 million at Dec. 31, 2006, \$29,403 million at Dec. 31, 2007, \$25,264 million at Dec. 31, 2008 and \$28,977 million at Dec. 31, 2009.

(b) Includes \$3,348 million (after tax) related to OTTI which was reclassified to net securities gains (losses) on the income statement.

See accompanying Notes to Consolidated Financial Statements.

SIGNATURE PAGE

The undersigned certifies that (s) he is authorized to submit this proposal on behalf of the entity named below:

The Bank of New York Mellon Trust Company, N.A.

Respondent Entity Name

Terence P. Burke

Signature: _____

Printed Name: Terence P. Burke

Title: Managing Director

(NOTE: If proposal is submitted by Co-Respondents, an authorized signature from a representative of each Co-Respondent is required. Add additional signature blocks as required.)

Co-Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

By signature(s) above, Respondent(s) agrees to the following:

1. If awarded a contract in response to this RFP, Respondent will be able and willing to execute a contract in the form shown in the RFP, as attached and set out in RFP Exhibit 4, with the understanding that the scope and compensation provisions will be negotiated and included in the final document.
 2. If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.
 3. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in RFP Exhibits 2 & 3.
 4. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's proposal and during Proposal process.
 5. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
 6. Respondent agrees to fully and truthfully submit a Respondent Questionnaire and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.
 7. To comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is posted as a City Council agenda item.
-

PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and that they are properly tabbed and appear in the correct order.

Tab in Proposal	Document	Initial to Indicate Document is Attached to Proposal
A	Table of Contents	TB
B	Arbitrage Rebate Compliance Questionnaire Form (RFP Attachment 1, Part 1)	TB
C	References (RFP Attachment 1, Part 2)	TB
D	Fee Schedule (RFP Attachment 2)	TB
E	* Discretionary Contracts Disclosure Form (RFP Attachment 3) (complete attached form)	TB
F	Litigation Disclosure Form (RFP Attachment 4)	TB
G	* Good Faith Effort Plan Form (RFP Attachment 5) and associated Certificates, if applicable	TB
H	Proof of Insurability <ul style="list-style-type: none"> • Insurance Provider's Letter • Copy of Current Certificate of Insurance 	TB
I	Audited Financial Statements	TB
J	* Signature Page (RFP Attachment 6)	TB
K	Proposal Checklist (RFP Attachment 7)	TB
	* One (1) original signed in ink and ten (10) copies	

***Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**