



REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA

OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

October 11, 2012

The Honorable Ted Ziemann
Mayor, City of Milan
P.O. Box 162
Milan, Minnesota 56262-0162

Dear Mayor Ziemann:

The Office of the State Auditor ("OSA") received concerns about the City of Milan ("City"). More specifically, we received concerns about the City's contracting with a business owned by a City Council Member, the City's billing practices for rubbish hauling, water, and sewer services, and the timeliness of utility deposits. This letter will provide the City with the OSA's recommendations regarding these issues.

City Contracts with Business Owned by City Council Member

From time to time during 2012, the City contracted for services with Hilden Digging, a business owned by a City Council Member. Prior to contracting with the business, the City Council approved a motion accepting an Affidavit of Interested Officer submitted by the Council Member.¹

Under Minnesota's general conflict of interest provision, "a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom."² However, by unanimous vote, a city council may contract for goods or services with an interested officer if the contract is one for which competitive bids are not required by law and if certain procedures are followed.³

First, the city council must "authorize the contract in advance of its performance by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere."⁴

¹ See City of Milan Council Meeting Minutes, January 3, 2012. See also Affidavit of Interested Officer of the City of Milan, January 3, 2012. The Clerk/Treasurer informed the OSA that the Affidavit was an annual document covering all claims submitted by the business for 2012.

² See Minn. Stat. § 471.87.

³ See Minn. Stat. §§ 471.88, subs. 1 and 5, and 471.89. As of September 14, 2012, the City had paid \$1,734.08 to the Council Member's business in 2012. That amount is below the competitive bidding threshold. See Minn. Stat. § 471.345.

⁴ See Minn. Stat. § 471.89, subd. 2.

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Second, before a claim is paid on the contract, the interested officer must file an affidavit with the city clerk that states, among other things, "that to the best of the officer's knowledge and belief the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources."⁵

According to the City Council's January 3, 2012, meeting minutes, the City used a motion, rather than a resolution, to accept the Affidavit of Interested Officer document.⁶ The document did not state that the contract price was as low as, or lower than, the price at which the commodity or services could be obtained elsewhere.⁷ In addition, the minutes noted that the interested officer abstained, but the minutes did not record whether the vote was unanimous.

The OSA recommends that, when hiring a business owned by a Council Member, the statutorily-required language be included in a resolution adopted by the City Council and in the affidavit submitted by the Council Member.⁸ We also recommend that the City Council meeting minutes document whether the City Council vote was unanimous.

Billing Practices

Tostenson, Inc. has a contract with the City, to provide rubbish hauling services in the community.⁹ Tostenson apparently pays the City \$100 per month to handle the billings for the rubbish hauling services, although the amount is not stated in the written contract the City provided to the OSA.¹⁰ Generally, the City sends out monthly bills to customers, collects payments, and forwards the funds to Tostenson. However, earlier this year, the City fell behind in providing these billing services.¹¹ The Clerk/Treasurer informed the OSA that rubbish hauling billings are now current.

Similarly, the City bills residents for municipal water and sewer services. The City also fell behind in these billings, although the Clerk/Treasurer informed the OSA that these billings are also now current. According to the Clerk/Treasurer, the City Council authorized the hiring of

⁵ See Minn. Stat. § 471.89, subd. 3. The affidavit must also state: (a) the name of the officer and the office held by the officer; (b) an itemization of the commodity or services furnished; (c) the contract price; (d) the reasonable value; and (e) the interest of the officer in the contract. *Id.*

⁶ For additional information on the difference between motions and resolutions, see the League of Minnesota Cities (LMC) Handbook for Minnesota Cities, Chapter 7 – Meetings, Motions, Resolutions, and Ordinances, page 26, available on LMC's website, www.lmc.org.

⁷ The Affidavit accepted by the City Council also contained an incorrect statutory citation.

⁸ Additional guidance on these requirements and sample forms may be found in the LMC's Research Memorandum *Official Conflict of Interest*, available on LMC's website (sample forms are found on pages 39-41 of the document). If the City has any additional questions about contracting with an interested official, we recommend that the City consult with LMC or the City Attorney.

⁹ See Municipal Rubbish and Garbage Disposal Agreement in effect from January 1, 2008, through December 31, 2012.

¹⁰ Telephone conversation with the City Clerk/Treasurer.

¹¹ As a result, in July 2012, the City issued a check in the amount of \$11,561.39 to Tostenson.

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a temporary employee to help with utility billings, but as of September, the temporary position had not been filled.

The OSA recommends that the City take the steps necessary to remain current on billings for rubbish hauling, water, and sewer services. We also encourage the City to implement procedures that will improve segregation of duties within the billing function.¹² In addition, we recommend that any billing services the City performs for rubbish hauling services, including the amount the City charges for any billing services, be reflected in the City's contract with the hauler.

Utility Deposits

The OSA was also informed that the City makes utility deposits on a monthly basis. We recommend that the City make more frequent utility deposits. Failing to make timely deposits increases the risk of error and the risk of misappropriation of funds. In addition, by not making frequent deposits, a city is missing out on interest that could be earned if the deposits were made in a timely fashion.

Conclusion

We hope the City finds this information to be helpful. If you have any questions, please feel free to contact me at (651) 297-7108 or by email at Terrilyn.Diamond@osa.state.mn.us.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor

cc: The Honorable Heidi Hanson, City Council
The Honorable Merle Hilden, City Council
The Honorable Roy Delgehausen, City Council
The Honorable Todd Erickson, City Council
Ms. Christine Kleven, City Clerk/Treasurer
Dana F. Cole & Company, LLP, City's Auditor

¹² See also City's response to City audit finding 2011-2 ("The City will work towards implementing procedures to improve segregation of duties within the bookkeeping, billing and accounting functions, within the constraints of existing time and cost considerations and will continue to review the situation and make improvements."). Finding 2011-2 was also a finding in 2010. The LMC has additional information on utility billing practices that the City may find helpful. See LMC's Research Memorandum *Securing Payment of Utility Charges* (January 2012), available on LMC's website. It contains, for example, best practices for billing (pages 11 – 12) and a sample water and sewer ordinance that contains a section on billing (Appendix C).