

For Immediate Release  
September 6, 2011

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## **HARRISBURG CITY CONTROLLER UNCOVERS WASTE and ABUSE in MAYOR'S SELECTION of CONTRACT BID**

Harrisburg, PA – Mayor Linda Thompson ignored Finance Director Robert Kroboth's evaluation and recommendation and selected Maximus Consulting Services to complete a study of the fees the city charges for services at a cost of \$59,800. The selection of Maximus Consulting Services more than doubles the price of the study and will cost Harrisburg an additional \$35,000 to \$42,500 compared to the bids of two other competing firms. Cost Plans Plus and Wildan Financial Services bid \$17,300 and \$24,915 respectively.

The purpose of the fee study is to evaluate and increase fees charged by the city in an effort to enhance general fund revenue.

The professional services contract was bid out by the administration which avoided having it approved by City Council. (The city code specifically states that no-bid professional service contracts in excess of \$10,000 must be approved by council.) According to PA statutes, once a contract is bid the municipality is required to select the "lowest responsible bidder". Six bids were received. The 3 highest bids were eliminated (presumably due to cost). The three remaining bids were evaluated by the Finance Director based upon the 9 components in the RFP. They were scored as follows:

Cost Plans Plus	20
Wildan Financial Services	27
Maximus Consulting Services	24

In the evaluation, none were deemed to be "not responsible". Regarding Wildan and Maximus the Finance Director wrote, "both proposals were outstanding in every aspect of my review, with Wildan slightly better."

All contracts must be signed by the City Controller. After reviewing these facts Controller, Dan Miller, felt waste, abuse or both were present and refused to sign the contract. He asked for documentation demonstrating a full and careful investigation of all bids and substantiating the final selection of Maximus Consulting Services. No documentation was received, only a brief email from the Purchasing Manager supporting the selection.

Miller's refusal to sign the contract caused Assistant Solicitor, Jason Hess, to write the following in an email dated August 11, 2011:

"Your discretion in relation to this contract is to verify that funds exist in the budget. Please consider this as a legal opinion that you must sign the contract with vendor chosen by the Purchasing office."

Hess also stated in a meeting with Miller that the remedy for inappropriately awarding a contract to someone other than the "lowest responsible bidder" is for a taxpayer to challenge the contract award.

Based upon Hess's legal opinion and consultation with other knowledgeable attorneys, Miller's office signed the contract on September 1, 2011.

Miller is encouraging interested city residents to review the facts and consider taking action.

Miller also plans to address the issue with City Council in the event they want to reduce the amount of funds budgeted for this study to less than \$30,000 and force the Mayor to select a less expensive consultant.


Documentation related to this issue is posted on the City Controller website at [www.HarrisburgCityController.com](http://www.HarrisburgCityController.com)

Miller will be available to comment tomorrow, Sept 7 at 10am at his office at 701 N 2<sup>nd</sup> St.

**Bureau of Financial Management  
City of Harrisburg**

**Inter-Office Memorandum**  
April 27, 2011

**TO:** Mayor Linda D. Thompson

**FROM:** Robert F. Kroboth, CGFM   
Finance Director

**SUBJECT:** City-wide Fee Study RFP Responses

Mayor, attached are the six proposals received as a result of our public bid process to hire a professional firm/consultant to analyze the full cost to the City of administering each of its 100+ fees for service across all departments and to develop a resulting fee study designed to offset the cost of services in the operating departments.

All proposals were evaluated on the completeness of their content and responses to all aspects of the City's RFP (attached) taken as a whole, with particular focus on: the governmental cost analysis experience of the firm in general as well as the individual staff persons who would be assigned to the project; the cost of the engagement; the deliverables; and the amount of time necessary to complete the engagement to provide the deliverables.

As you can see from the attached bid-opening tally sheet, fees ranged from NTE \$17,300 up to \$196,030. Since the City only has available to it \$60,000 from the EIP – Phase II Grant contract award to fund these fees, I have eliminated the highest three quotes from award consideration.

None of the remaining three firms are City-based, with Maximus having the only regional office in our area, while Cost Plans Plus maintains an office in Thurmont, Maryland, with Willdan Financial Services located in New York City. All three firms appear to meet the minimal level of governmental experience needed.

Cost Plans Plus had the lowest bid at \$17,300, but is the smallest of the firms bidding which could be a concern getting the job done sooner rather than later. Also, their bid responses to our RFP were much less detailed than their other two competitors, did not reflect that they had adequate knowledge of the City and its structure, and did not appear to respond to all of the critical items included in the Scope of Work. Their proposal was not as well prepared either.

As for Maximus and Willdan Financial Services, both proposals were outstanding in every aspect of my review, with Willdan's slightly better. The major difference came down to price, with Willdan's quote of NTE \$24,915 less than half of Maximus' quote of \$59,800.

I respectfully recommend Willdan Financial Services to be awarded this project.

Cc: City-wide Fee Study File

Review of Fee Study Proposals  
 April 26, 2011  
 (Rating 0-3, w/ 3 being the highest)

1. Medwinco - N.T.E. #59,800 Harrisburg, PA

7.1 - 3	<u>Additional Notes:</u> 1. I don't really understand the program 2. Incl. to dev. of a full cost plan that meets H.W. standards. 3. Very familiar w/ the city. 4. Excellent proposal w/ information 5. Full cost plan in 30-45 days following Fee Analysis - would take 12 weeks including this program 6. Medwinco Inc. Education noted re: Limit of Liability.
7.2 - 3	
7.3 - 3	
7.4 - 3	
7.5 - 3	
<u>SUBTOTAL 14</u>	
8.1 - 3	
8.2 - 3	
8.3 - 2 (12 weeks)	
8.4 - 2 (NTE 59,800)	
<u>TOTAL 24</u>	

2. Willdon Financial Services - <sup>New York, NY</sup> ~~Tomball, TX~~ <sup>California</sup>

7.1 - 3	<u>Additional Notes:</u> 1. They prepare face-based models <sup>non-propositional</sup> 2. He has experience <sup>of 13</sup> <sup>of many of them</sup> <sup>of hundreds of cities</sup> 3. Willdon will prepare the <sup>limited</sup> <sup>cost</sup> <sup>model</sup> <sup>using</sup> <sup>the</sup> <sup>data</sup> . 4. Willdon will determine all <sup>most</sup> <sup>common</sup> <sup>fees</sup> <sup>by</sup> <sup>each</sup> <sup>dept</sup> <sup>w/</sup> <sup>5</sup> <sup>neighboring</sup> <sup>and</sup> <sup>or</sup> <sup>similar</sup> <sup>juris</sup> 5. <sup>Project</sup> <sup>schedule</sup> <sup>complete</sup> <sup>7</sup> <sup>weeks</sup> 6. Willdon has <sup>N.E.</sup> <sup>discretion</sup> <sup>to</sup> <sup>set</sup> <sup>fees</sup> .
7.2 - 3	
7.3 - 3	
7.4 - 3	
7.5 - 3	
<u>SUBTOTAL 15</u>	
8.1 - 3	
8.2 - 3	
8.3 - 3 (7 weeks)	
8.4 - 3 (NTE 24,905)	
<u>TOTAL 29</u>	

(over) →

3. Cost Plans Plus LLC - NTE 17,300 Thousand, MD.

- |   |   |
|---|---|
| 7.1 - 1 (Not available)                   | Additional Note: 1. id the specimens  |
| 7.2 - 3                                   | 2. Pg 2. Did not receive from Environmental   |
| 7.3 - 3                                   | 3. Will provide on-going technical  |
| 7.4 - 2 (7mm - exact - furnished without) | assurances for up to one year   |
| 7.5 - 3                                   | 4. Did not follow the Scope of work   |
| <u>Subtotal</u> 12                        | in the RFP (i.e. no inventory of test items)  |
| 8.1 - 1                                   | 5. No examples of how they will submit their report.  |
| 8.2 - 1                                   |   |
| 8.3 - 3 (30-45 days)                      | 6. Completion timelines not provided, but indicates they will be done in 30-45 day timeframe. |
| 8.4 - 3                                   |   |
| <u>TOTAL</u> <u>20</u>                    |   |

## **5.6 Conflict of Interest**

Each proposal shall include a conflict of interest statement indicating whether or not any principals in the company, their spouse, or their child is employed by the City, and whether or not the company or any individuals working on the contract has a possible conflict of interest, and, if so, the nature of that conflict.

To preserve the integrity of City employees and elected officials and to maintain public confidence in the RFP process, the City prohibits the solicitation or acceptance of anything of value by a City employee or elected official from any person seeking to initiate or maintain a business relationship with City departments, boards, commissions, and agencies.

## **Section 6 – Content of Proposals and Required Submissions**

- 6.1** All proposals must be typed or neatly completed in pen. Any erasures or other changes in the bid unit prices or total price must be explained or noted over the signature of the bidder and failure to do so may result in the rejection of your bid.
- 6.2** All proposals shall contain sections which organize the information that bidders are required to submit, as provided below. Each section shall be clearly delineated with quick reference dividers.
- 6.3** The first section of the proposal shall contain information on the services to be provided by the bidder relative to the services to be provided under this RFP. The successful bidder shall demonstrate that it has the capacity to provide the services required herein for the duration of the term of the contract.
- 6.4** The second section of the bid proposal shall contain a completed copy of each of following: 1) the non-collusion affidavit, 2) the price proposal sheet, 3) the signature sheet, and 4) a statement which clearly identifies any and all deviations or exceptions that the bidder may be taking to the RFP.
- 6.5** The next section of the bid proposal shall contain information relative to the availability of the insurances.
- 6.6** The final section of the bid proposal shall contain any additional information that the bidder believes is relevant and should be considered by the City. This may include, but is not limited to, a qualification statement demonstrating Bidder's experience in similar jobs.

## **Section 7 - Evaluation Criteria and Process**

- 7.1** Financial stability of the Bidder.
- 7.2** Compliance with the essential minimum experience and qualifications of the Bidder.

7.3 Compliance with the essential minimum experience and qualifications of the project team members.

7.4 Evidence of sufficient levels of insurance coverage.

7.5 Particular attention will be given to experience with governmental employers.

## **Section 8 - Scope of Work**

### **8.1 Cost of services shall include the following:**

The City of Harrisburg desires a cost of service analysis to determine the actual cost to the City of administering each of its 100+ fees for service across all departments in the City. A full cost allocation plan is desired to determine the actual cost of current City operations, develop the full cost of administrative services, and indicate fee changes that might be necessary to offset the cost of services in the operating departments.

Proposals should include, but not be limited to, a cost of service analysis and fee study which includes the following:

- Prepare an inventory of fees and permits
- Compile a database of fee information
- Conduct interviews of fee administrators and subject matter experts
- Determine the labor allocation for fees
- Calculate cost loading charges for fringe benefits, supplies and equipment, administrative overhead and central service charges
- Identify potential new fees
- Provide a recommended fee schedule and report with supporting data (including market rates for fees)
- Implementation timeline and expected revenue from each recommendation (may include multi-year recommendation)

### **8.2 Deliverables**

The deliverables should include the inventory of fees and permits, database of fee information, cost allocation model, and recommended fee schedule with implementation dates and expected yields. The proposal should be clear on how and when these and other deliverables will be furnished to the City.

### **8.3 Timing**

RFPs will be reviewed and evaluated immediately after the due date and work must proceed quickly to help inform the Act 47 plan. A report and all deliverables are desired within 30-45 days of contract award. The contractor should include in the proposal their best estimate of the timeframe necessary to complete the work.

#### **8.4 Pricing**

The proposal should be priced with a not-to-exceed amount that is inclusive. No additional expenses or costs will be paid beyond the not-to-exceed amount.

**Dan Miller**

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**From:** Leinberger, William [WLeinberger@cityofhbg.com]  
**Sent:** Monday, August 01, 2011 9:27 AM  
**To:** Dan Miller  
**Subject:** FW: Contract for RFP #02-2011 - Fee Study

**From:** Fera, Mattea  
**Sent:** Monday, August 01, 2011 8:58 AM  
**To:** Leinberger, William  
**Cc:** Kroboth, Robert F  
**Subject:** FW: Contract for RFP #02-2011 - Fee Study

Bill,

Professional Service Contracts are not awarded solely on price thus the phrase "lowest responsible bidder". Our goal is to award a contract to the bidder that presented the best total package for the best overall cost which will not necessarily be the "lowest" price.

Maximus was chosen due to their locality to the City (suburban Harrisburg), their all-inclusive NTE fee, and high level of working knowledge of the City's operations since they have been preparing our Federal and Full Cost Allocation Plans annually for years.

Willdan Financial Services of New York, whose NTE fixed fee, while lower than Maximus' all-inclusive fee, only covered direct personnel expenses (see pg. 20 of their proposal), not indirect expenses such as travel (hotels, transportation, meals, etc.), supplies, and the like. Also, Willdan has no prior working knowledge of the City. Additionally, their proposed project scope severely limited the amount of on-site meeting time throughout the engagement, which would explain their lower direct personnel costs proposal. Maximus would be on-site most every day, as they were for our traditional annual Federal and Full Cost Plans development.

As for Cost Plans Plus, they did have the lowest bid price of \$17,300.00, however they were the smallest firm to bid and there is a concern that they would not be able to provide the services necessary in a short amount of time. Also their bid responses to our RFP were much less detailed than the other proposals received. They did not reflect that they had adequate knowledge of the City and its structure and did not appear to respond to all the critical items included in the Scope of Work.

If you have any further questions or concerns, contact me.

Thank you,

*Mattea*

**INTEROFFICE MEMO**

**CITY OF HARRISBURG**

August 1, 2011

**TO:** Mattea Fera, Purchasing Manager  
Bureau of Financial Management

**FROM:** Dan Miller, Controller  
Office of the Controller

**SUBJECT:** Maximus Inc. Contract for Fee Study

Thank you for the timely response to our memo dated July 21, 2011 (see attached), regarding the award of the City's request for proposal #02-2011 (Fee Study) to Maximus Inc. While this office does see some merit to your justification, it is not sufficient based on the large price differential between the bids. Our own analysis of the bid responses would also agree with the analysis performed by the Bureau of Financial Management and consequently award the contract to Wildan Financial Services as the "lowest responsible bidder."

Therefore, we are unable to sign the related contract, and the original contract documents are being returned to the Purchasing Office. You may of course seek City Council approval of this contract and a copy of this correspondence is also being sent to their attention.

Thank you.

cc: City Council Members, via Kirk Petroski, Acting City Clerk

Dan:

I understand that you are refusing to sign the contract for Maximus to perform the fee study because you believe it has not been awarded to the lowest responsible bidder.

Please be advised that the discretion to choose the lowest responsible bidder does not reside with the Office of the Controller. Determining the lowest responsible bidder is a matter for the sound discretion of the municipal officials responsible for administering a centralized purchasing system. *Berryhill v. Dugan*, 491 A.2d 950, 952 (Pa.Cmwth. 1985). Under the Third Class City Charter Law, Mayor-Council Plan A, the Department of Administration, "under the direction and supervision of the Mayor, shall ... (2) administer a centralized purchasing system." 53 P.S. section 41416. Indeed, the purchasing office of the City of Harrisburg IS within the Department of Administration, and it is the purchasing office, under the supervision of the Mayor, who is vested under the City's charter with the discretion of determining who the lowest responsible bidder is.

Furthermore, the inquiries made by your office to one of the losing bidders regarding their fees after a determination was made, but before a contract has been signed with the successful bidder was highly irresponsible and careless. The only office who should be making inquiries after bids have been submitted is the Purchasing Office and only if such inquiry is to seek clarification of what was submitted in the bid. See *Rainey v. Borough of Derry*, 641 A.2d 698 (Pa.Cmwth. 1994). Any improper communications by your office could have the effect of invalidating the whole bidding process, as occurred in regards to a waste disposal contract in Berks County where county officials were determined to have had improper contact with bidding parties before a contract had been awarded. See *Stapleton v. Berks County*, 593 A.2d 1323 (Pa.Cmwth. 1991). Your communications with a losing bidder could also have the adverse effect of encouraging that party to bring a legal action against the City to nullify a contract with the successful bidder.

In regards to the contract for a fee study, the purchasing office reviewed the bids and decided to select Maximus as the lowest responsible bidder. As you well know, the lowest responsible bidder is not necessarily the lowest bidder in dollars, and that discretionary determinations may be made to include, "financial responsibility, integrity, efficiency, industry, experience, promptness and ability to successfully carry out the particular undertaking." *Kratz v. City of Allentown*, 155 A. 116, 117 (Pa. 1931). The important thing to remember is that the discretion lies with the Purchasing Office and not the Controller. You do not have the authority to refuse to sign a contract because you would have exercised the discretion differently than the office with whom the discretion lies.

Your discretion in relation to this contract is to verify that funds exist in the budget. Please consider this as a legal opinion that you must sign the contract with vendor chosen by the Purchasing office. You do not have the authority to insist on City Council approval of a contract which was awarded through public bid. I expect to hear that this contract is being signed by your office by the end of the week. If not, the City will take whatever recourse it has at its disposal to ensure compliance by your office.

Sincerely,

Jason M. Hess, Acting City Solicitor  
City of Harrisburg  
10 North Second Street, Suite 402  
Harrisburg, PA 17101

an award of a municipal contract to one not the lowest responsible bidder. To obtain such relief, the party challenging the award must have standing to do so and must meet the standard for obtaining the extraordinary relief of an injunction.

#### A. Standing to Challenge Award of the Contract

Although a municipality must award a contract to the lowest responsible bidder, only a taxpayer of the municipality awarding the contract has standing to challenge a contract award. n132 A disappointed bidder, in contrast, has "no claim of entitlement to a public contract based on the requirement that the contract be [\*535] awarded to the lowest responsible bidder, since in Pennsylvania, that requirement is solely for the protection of the taxpayers." n133

In Pennsylvania, a disappointed bidder has sustained no injury which entitles him to redress in court, even if the public official who refuses to award him the contract has a statutory obligation to award it to the lowest bidder. Although those statutory provisions requiring competitive bidding give the public in a taxpayer's suit the right to demand that the lowest responsible bidder be awarded the contract, such provisions do not vest a cause of action for breach of damage in the lowest bidder. n134

One alternative for a disappointed bidder is to review its roster of employees to determine whether any is a resident of the municipality bidding the contract. If so, the employee may challenge the award, even if the employer funds the cost of the litigation. The employee's affiliation with the disappointed bidder does not in any way preclude the employee from having standing as a taxpayer to challenge the award. n135 Indeed, a disappointed bidder has standing to challenge a contract award if the bidder is a taxpayer of the municipality awarding the contract. n136

A party may waive standing as a defense, in which case the disappointed bidder may participate in the lawsuit even if it is not a taxpayer of the municipality. n137 Counsel should consider whether there are any tactical advantages to having the disappointed bidder be a party to the action. Possible advantages might include easier discovery and the opportunity to assert that the bidder made binding admissions during discovery that may not be available if the bidder were a non-party. [\*536]

#### B. The Standard for Injunctive Relief

Assuming there is standing to challenge the award, the taxpayer-plaintiff must satisfy five criteria to obtain injunctive relief:

- (1) Immediate and irreparable harm will occur in the absence of injunctive relief.
- (2) Greater injury will result from a refusal of the injunction than from a grant of it.
- (3) Injunctive relief will restore the parties to their status as existing immediately prior to the alleged wrongful conduct.
- (4) Injunctive relief is appropriate to abate the Township's conduct.
- (5) Plaintiffs have a clear right to relief. n138

These requirements are addressed in order.

To demonstrate irreparable harm, a taxpayer need prove only that the contract was awarded in violation of a statute. "Statutory violations are sufficiently injurious to constitute irreparable harm, and a preliminary injunction may be upheld based upon the violation of competitive bidding requirements." n139 Township "supervisors are public officers of limited authority and their right to contract is statutory. Hence, contracts entered into by them in violation of a statute are void, and a contract in violation of the statute cannot be enforced although not expressly made void." n140