

June 14, 2010

Date

AFFIRMING HEARING OFFICER'S REPORT ON APPEAL OF RFP EVALUATION AND SELECTION COMMITTEE RECOMMENDATION FOR AWARD OF CONTRACT FOR THE PROVISION OF AUTOMATED ELECTRONIC SPEED & RED LIGHT ENFORCEMENT CAMERAS & CITATION PROCESSING SERVICES TO GATSO USA, INC., ACCEPTING PROPOSAL OF GATSO USA, INC., AND APPROVING AWARD OF CONTRACT TO GATSO USA, INC., AND AUTHORIZING THE POLICE DEPARTMENT TO NEGOTIATE, AND THE CITY MANAGER TO EXECUTE, A CONTRACT FOR THE PROVISION OF SAME

WHEREAS, on November 13, 2009, the Finance Department Procurement Division issued an RFP to solicit Automated Electronic Speed & Red Light Enforcement Cameras & Citation Processing Services (No. V10-041) ("the RFP") and received four proposals; and

WHEREAS, an Evaluation and Selection Committee comprised of Police Department and Engineering Department Traffic and Transportation Division staff members reviewed the proposals and recommended the selection of GATSO USA, Inc. (Andrew Noble, President), 900 Cummings Ctr 321-U, Beverly, MA 01915, as the highest scorer based on the weighting criteria described in the RFP; and

WHEREAS, an appeal of the Evaluation and Selection Committee's recommendation was filed by a proposer whose proposal was not recommended by the Committee, Redflex Traffic Systems, Inc., 23751 N. 23<sup>rd</sup> Avenue, Phoenix, Arizona 85085 ("Redflex"); and

WHEREAS, the Deputy City Manager, the Hearing Officer appointed by the City Manager, reviewed such appeal, a hearing was held on the appeal on April 21, 2010, and a report has been made overruling the objections of Redflex, pursuant to the RFP appeal process under Sec. 2-756 of the Procurement Ordinance and the RFP provisions.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the City Council hereby affirms the report of the Hearing Officer overruling the objections of Redflex stated in its appeal.

BE IT FURTHER RESOLVED that the City Council hereby accepts and approves the proposal submitted by GATSO USA, Inc. for Automated Electronic Speed & Red Light Enforcement Cameras & Citation Processing Services and the Police Department is authorized to negotiate an agreement with GATSO USA, Inc. to provide such services for a period of three years with one three year renewal, subject to the review and approval as to form by the Legal Department, and the City Manager is authorized and directed to execute said agreement for and on behalf of the City of Des Moines, and the City Clerk is authorized to attest to his signature, and the Police Chief is authorized to execute one three year renewal option, subject to approval as to form by the Legal Department.

(Council Communication No. 10-310 ) Moved by \_\_\_\_\_ to adopt.

Approved as to form: Ann DiDonato Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED APPROVED

\_\_\_\_\_  
Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk

April 29, 2010

**Report to City Council Re: Administrative Hearing on Appeal of Redflex Traffic Systems, Inc. from Evaluation and Selection Committee Recommendation as to Selection of Best Proposal for Request for Proposals for Automated Electronic Speed & Red Light Enforcement Cameras & Citation Processing Services (No. V10-041)**

Redflex Traffic Systems, Inc., 23751 N. 23<sup>rd</sup> Avenue, Phoenix, Arizona 85085 (“Redflex”), filed a written appeal, dated March 11, 2010 and timely received by the Procurement Administrator on March 11, 2010, to the Notice of Intent to Award issued by the Procurement Administrator informing the proposers of the Evaluation and Selection Committee’s (“Committee”) recommendation to be made to the City Council to award the Automated Electronic Speed & Red Light Enforcement Cameras & Citation Processing Services for the City of Des Moines Police Department to GATSO USA, Inc (“GATSO”). A Redflex supplemental appeal letter dated March 23, 2010 was also timely received by the Procurement Administrator. The supplemental appeal letter was allowed because Redflex did not receive a complete copy of the GATSO proposal and presentation documents made pursuant to their Iowa Code Chapter 22 request for records until March 16. This delay was due to the fact that GATSO had marked portions of its proposal and all of its presentation materials as “confidential” and the process outlined in section 8 of the Standard Provisions and Requirements section of the RFP. In response to this appeal, a notice of hearing was sent to all four proposers and to the Committee members. Deputy City Manager Merrill Stanley was selected by the City Manager to be the hearing officer. The hearing was held on April 21, 2010 at 2:30 pm in the City Council Chambers.

This appeal is guided primarily by sections 13 and 14 of the Standard Provisions and Requirements section of the RFP and sections 2-755 and 2-756 of the Des Moines Municipal Code:

**13. Evaluation and Selection Committee; Procedure for Evaluation and Recommendation as to Selection of Best Proposal.**

- (a) Competing proposals submitted in response to the RFP shall be evaluated by an evaluation and selection committee appointed by the director of the department sponsoring the RFP. The evaluation and selection committee shall, at the department director's discretion, be composed of city staff members, consultant representatives if a consultant was utilized in formulating the RFP, and other persons deemed knowledgeable of the goods and/or services being procured. The evaluation and selection committee ("committee") will utilize the evaluation criteria and scoring methodology set forth in this RFP in making its determination as to the best proposal.
- (b) Upon completing its evaluation and the scoring of competing proposals, the committee shall make a written report of its determination and recommendation as to the selection of the best proposal. The report will be filed with the department director and Procurement Administrator, and the report and Notice of Intent to Award will be provided to all competing proposers by ordinary mail, FAX or e-mail at the address, FAX number or e-mail address shown in their proposals at least 5 days prior to the appeal deadline set forth in the Notice of Intent to Award.

**14. Appeal of Evaluation and Selection Committee Recommendation - Proposer Objections to be Submitted in Writing - Resolution of Proposer Objections.**

(a) Opportunity for Proposers to Appeal Evaluation Committee Recommendation as to Selection of Best Proposal - Required Submission in Support of Objection.

A proposer who is aggrieved by the evaluation and selection committee's determination and recommendation as to the selection of the best proposal, as set forth in the committee's report, may appeal such determination and recommendation by filing a written objection thereto with the Procurement Administrator within the appeal deadline set forth in the Notice of Intent to Award. Such objections may be filed in person or by mail, FAX or e-mail. In its written objection, the appealing proposer shall set forth all of its objections to the committee's recommendation and all arguments in support thereof, and shall attach thereto all documentation supporting its objections which it intends to rely on in making its appeal. The appealing proposer may request a hearing on its appeal, but the determination whether to hold a hearing or to determine the appeal on the basis of the record made in the written objection shall be discretionary with the City Manager. Alternatively, the City Manager may, after the issuance of an RFP, authorize use of the alternative appeal procedure provided in section 2-757 of the Des Moines Municipal Code where it is determined that use of the appeal procedure provided in this section will unduly delay the City's procurement of necessary goods and/or services. The City Manager's decision, made after the issuance of an RFP, to utilize this alternative appeal procedure shall be communicated to all proposers prior to or contemporaneously with the provision of the report of the evaluation and selection committee and Notice of Intent to Award.

(b) City Manager or Hearing Officer to Review Proposer's Objections; Hearing Optional.

Upon the timely filing of a written objection by an aggrieved proposer as above provided, the City Manager shall review such objection and determine if a hearing will be held to assist in determining the appeal. The City Manager shall likewise determine if the appeal will be determined by the City Manager or if it will be determined by an appeal officer selected by the City Manager. If the City Manager decides that the appeal will be decided pursuant to an appeal hearing, the City Manager shall set the time, date, and place of a hearing on such objection, and shall cause written notification of the hearing to be provided to the appealing proposer and all proposers. The City Manager may set for hearing at the same time, date, and place the objections of two or more proposers. Upon the request of an objecting proposer, the hearing may for good cause shown be rescheduled, provided that the hearing is held not more than 10 days after the filing of the written objection. In the appeal, the burden of persuasion shall be upon the appealing proposer. If a hearing is held, the appealing proposer shall be required to present its evidence first, and shall be entitled to examine the chair of the evaluation and selection committee, or such other member as may then be available. The hearing shall be electronically recorded, and upon the prior approval of the City Manager or appeal officer, the appealing proposer may at its expense cause the proceedings to be reported and transcribed. A transcription of the proceedings shall be made available to the City at no cost. For purposes of this appeal provision, the Deputy City Manager may act in the absence or unavailability of the City Manager.

(c) Report of City Manager or Hearing Officer to City Council and to Appealing Proposer

Upon completing the review of the appealing proposer's written objection, or upon the conclusion of the hearing, the City Manager or the designated hearing officer shall make a written report setting forth the determination of the appeal. All objections made by the appealing

proposer shall either be affirmed or overruled. The report shall immediately be forwarded to the appealing proposer.

If an appealing proposer's objection is affirmed, the City Manager or hearing officer shall reject the recommendation of the evaluation and selection committee, and shall direct the committee to reconvene to reevaluate the proposals submitted in response to the RFP. In conducting its reevaluation, the committee shall consider all objections affirmed by the City Manager or hearing officer. Upon completing its reevaluation, the committee shall make a written report of its determination and recommendation as the selection of the best proposal, and shall file the report with the City Manager and mail same to competing proposers. Such determination and recommendation shall be subject to appeal as herein provided.

If an appealing proposer's objection is overruled, the City Manager's or hearing officer's report shall be forwarded to the City Council, and the appealing proposer and all competing proposers shall be given written notification of the date of the Council meeting at which said report and the recommendation of the evaluation and selection committee will be considered by the City Council.

(d) City Council's Consideration of City Manager's / Hearing Officer's Report and of the Appealing Proposer's Objections.

When the City Manager's or hearing officer's report comes before the City Council for consideration, the City Council may affirm or overrule the findings and determination of the City Manager or appeal officer as set forth in said report. The City Council may, in its discretion, hear presentations by the appealing proposer and by competing proposers with respect to the appealing proposer's objections, and with respect to the findings and determination of the City Manager or hearing officer. If the City Council agrees to hear such presentations, it may limit the length of such presentations, and all proposers will be given an equal opportunity to speak. The City Council's decision shall be considered final.

If the City Council votes to overrule the report of the City Manager or hearing officer, the recommendation of the evaluation and selection committee shall be considered rejected, and the City Council may direct the committee shall reconvene to reevaluate the proposals submitted in response to the RFP, or the City Council may award the contract as it determines appropriate.

If the City Council votes to affirm the report of the City Manager or hearing officer, it shall then take up and consider the recommendation of the evaluation and selection committee.

(e) The City Council's decision shall be considered final.

### **RFP Background**

On November 13, 2009, the City of Des Moines Procurement Division issued an RFP for Automated Electronic Speed & Red Light Enforcement Cameras & Citation Processing Services (No. V10-041) ("the RFP"). An Addendum #1 was issued on November 30, 2009. The deadline for proposal submission was December 23, 2009. Three proposals were received: From Reflex, GATSO and Affiliated Computer Services, Inc. The RFP evaluation criteria are as follows:

#### **5.0 PROPOSAL EVALUATION CRITERIA**

Proposals will be opened at the date and time specified and each company will be recorded as a respondent. All proposals will become the property of the City and the proposer shall

identify any part of its proposal deemed to be confidential proprietary information per section 8 of the Standard Provisions and Requirements section of this RFP.

Proposals will be reviewed by an Evaluation and Selection Committee that will evaluate each proposal according to the selection criteria outlined below.

5.1 Company experience	30 points
5.2 Confirmation of references and reference information	20 points
5.3 Ability of the company to provide resources to the project	15 points
5.4 Successful systems installed	10 points
5.5 Revenue/cost (See attachment 8)	25 points
5.6 Local Preference	1 point

6.0 INTERVIEW AND SELECTION PROCESS

After the initial review of the submitted proposals, interviews may be requested with one or more of the proposers responding to the RFP. All costs associated with preparing a response or attending an interview are the responsibility of the proposer.

If interviews are conducted, the proposals will be evaluated by the Evaluation and Selection Committee according to the criteria outlined below

6.1 Company experience	30 points
6.2 Confirmation of references and reference information	10 points
6.3 Ability of the company to provide resources to the project	10 points
6.4 Successful systems installed	5 points
6.5 Company interview and presentation	20 points
6.6 Revenue/cost sharing plan (see attachment 8)	25 points
6.7 Local Preference	1 point

On March 4, 2010, the Procurement Administrator sent a notice to all proposers that the Committee had selected the proposal of GATSO and would make this recommendation to the City Council at the April 26 Council meeting. The proposers also received the Committee’s recommendation, or scoring summary sheet. The Committee’s scoring sheet indicated that GATSO had received a total of 96.4 points and that Redflex received a total of 92.4 points.

**Hearing**

The record in the hearing consisted of the RFP, including Addendum No. 1, the Redflex and GATSO proposals, including presentation materials, the Committee’s Final Report and Recommendation, the Redflex March 11, 2010 appeal letter and March 23, 2010, supplemental appeal letter, the Redflex Supplemental Appendix in Support of March 11,2010 Appeal and March 23, 2010 Supplement, and the Des Moines Municipal Code.

The following persons were present at the hearing: Hearing Officer/Deputy City Manager Merrill Stanley; Committee chair Captain Douglas Harvey; Committee members Vince Carter, Max Halverson, Scott Baker, and City Traffic Engineer Gary Fox; Redflex representative Mark Escott and

attorney Rebecca A. Brommel representing Redflex; GATSO representatives Richard Kosina and Paul Bazzano; and CMA General Counsel Don Wahl; Procurement Administrator Mike Valen; and Assistant City Attorney Doug Philip, and Assistant City Attorney Ann DiDonato.

The hearing was electronically recorded. Redflex and the Committee were each given 15 minutes to make opening and closing statements. The Hearing Officer questioned Redflex's representative. Redflex was given the opportunity to ask questions directed to all who testified and to the present Committee members and did direct questions to the Committee chair. The GATSO representative and CLA attorney also presented argument on behalf of the Committee recommendation.

### **Findings and Decision on Objections Raised by Redflex**

In determining this appeal, it must first be decided what are the "objections" and "arguments in support thereof" which may be considered in this appeal. As stated on the first page of this report, section 14 of the Standard Provisions and Requirements section of the RFP and section 2-756(a) of the Municipal Code provides in relevant part that:

In its written objection, the appealing proposer shall set forth **all of its objections** to the committee's recommendation **and all arguments in support thereof**, and shall attach thereto all documentation supporting its objections which it intends to rely on in making its appeal.

I consider below each of Redflex's objections raised in its appeal. Redflex has the burden of proving its objections by a preponderance of the evidence. Based on this standard and upon review of the written appeal materials, the written record, and hearing evidence including the testimony and arguments presented at the hearing, I hereby overrule Redflex's objections:

- 1) Reflex has more experience than GATSO USA. GATSOMETER has been in business since 1958, and produced the first speed camera in 1960. GATSO USA was established as a subsidiary of GATSO in 2007. Redflex asserts that only the experience of GATSO USA should be considered since the proposal was submitted under the GATSO USA name. I find that, based upon the statements of the committee chair and the GATSO proposal, the experience of GATSOMETER will reasonably carry over to GATSO USA and is relevant to the City of Des Moines contract. Redflex additionally argues that most of GATSO installations involve the now outdated wet film technology rather than digital cameras. The Committee chair testified that the Committee considered it reasonable for most of a company's experience to be with the older technology since it had been around for many more years. This objection is overruled.
- 2) Redflex has more successful installs in the United States. Ruling: Redflex asserts that Redflex should have received a perfect 5.0 out of 5.0 possible points in the category of "Successful Installs" since they had no unsuccessful installs and that they have a greater number of successful installs than GATSO. GATSO received a score of 5.0 in this category. Redflex is correct that they have more installs than GATSO in the USA. However, the Committee believes the Redflex technology used in the installs is not up to the standards that GATSO utilizes. So, the question is more installs vs. more successful installs.

I find that the Committee was reasonable in determining that better technology will lead to a more successful install. This objection is overruled.

3) Redflex should have scored higher in the revenue category.

Redflex asserts that the Committee may have estimated GATSO revenue projections based on an expanded program while keeping the Redflex estimate at the amount stated in their proposal. This was not the case. Estimated revenues from both proposers were calculated using amounts provided in their respective proposals. In addition, the City's Procurement Administrator verified that the points awarded to each proposer for this criteria were calculated using the correct formula. Redflex's further apparent argument that the GATSO technology will result in a lower number of citations being issued was without support in the record. This objection is overruled.

4) Redflex has significantly higher ability to provide resources to the project.

This assertion is based on the fact that Redflex employs individuals to conduct tasks that GATSO outsources and that Redflex has more employees in the USA than GATSO. The RFP indicates no preference for the provision of services within one company vs. through outsourcing arrangements. The Committee chair stated that the Committee was aware that GATSO had less employees and felt that the company providing the processing services, CMA, was an experienced company. On a second point, Redflex asserts that GATSO does not have sufficient access to motor vehicle registration data. However, the Committee chair testified that the Committee had reviewed this matter and is confident that GATSO has adequate access to motor vehicle registration data using NLETS through their strategic partner, CMA. On a third point, Redflex asserts that they have more financial capacity and ability to assist in legal challenges than GATSO. While GATSO may have more financial resources, the Committee Chair testified that the Committee felt that the financial capabilities of GATSO were adequate and the City was protected by the insurance required in the RFP. The Committee also felt that Redflex's assistance defending legal challenges was of benefit to their clients, but was more directly a case of them protecting their own income stream and was a benefit that would cost the City additional money to use. This objection is overruled.

5) Redflex technology is better than that offered by GATSO USA.

For the technology question I rely on the expertise that resides in the Committee. The Committee chair testified that the Committee has reviewed the technology used by the Redflex and GATSO systems and they prefer GATSO. Redflex did not meet its burden of proof that the Redflex technology was superior to GATSO technology. This objection is overruled.

6) Based upon available information, Redflex believes that GATSO USA will not directly provide the services requested by the City's RFP.

Redflex asserts that GATSO USA will not directly provide requested services, meaning GATSO will not provide the services with their own employees. This is the case as is stated in the GATSO proposal. Redflex states that GATSO was less than forthcoming with this fact by only mentioning it once on page 49 of their proposal. GATSO, in fact, stated that CMA would be their strategic partner handling Violation Processing Subcontracting on page

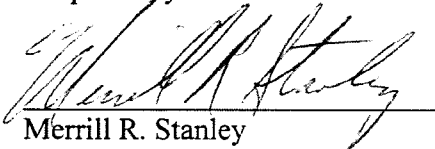
76 of their proposal. The City is interested only that the services be provided. There is no requirement that the services be provided entirely by one company. The Committee chair testified that the Committee was aware of the extent of the services to be provided by CMA in making their scoring decision. This objection is overruled.

7) Redflex has more relevant experience in North America than GATSO USA. This assertion is a subset of assertion number 2 above. This objection is overruled.

8) GATSO technology has been the subject of a losing court case. Redflex asserts that a court case lost in 2001 in California suggests the GATSO systems are questionable as far as reliability and trustworthiness. As stated by Assistant City Attorney, Doug Philip, the California case involved wet film technology vs. the digital technology being proposed by GATSO, and the City was found to have not followed the State Code in their handling of the case. I believe this issue to be irrelevant to this RFP process. This objection is overruled.

This appeal report shall be forwarded to the City Council along with the Committee's recommendation. The City Council may affirm or overrule the findings and determinations in this report.

Respectfully Submitted:



Merrill R. Stanley  
Deputy City Manager

CC:

Mark Etzbach, Redflex Traffic Systems, Inc.  
Paul Bazzano, GATSO USA  
Jason Stergion, Affiliated Computer Services  
Greg Parks, American Traffic Solutions  
Richard A. Clark, City Manager  
Judy Bradshaw, Police Chief  
Attorney Rebecca A. Brommel, Brown Winick  
Captain Douglas Harvey, Evaluation and Selection Committee Chair  
Mike Valen, Procurement Administrator