

Date..... July 12, 2010.....

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. 23rd 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; and

WHEREAS, on June 14, 2010 by Roll Call No. 10-994, the City Council continued consideration of this RFP appeal report and award of contract to the July 12 City Council meeting.

Date..... July 12, 2010


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- 436)

Moved by _____ to adopt.

Approved as to Form:



 Ann DiDonato
 Assistant City Attorney

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

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.

MOTION CARRIED

APPROVED

 Mayor

 City Clerk

10-994
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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. 23rd 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

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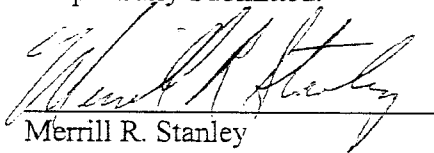
76 of their proposal. The City is interested only that the services be provided. There is no requirement that the services be provided entirely by one company. The Committee chair testified that the Committee was aware of the extent of the services to be provided by CMA in making their scoring decision.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

7) Reflex 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. Reflex 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, Reflex 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

" WITHDRAWN "

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★ Roll Call Number
10.995

Agenda Item Number
85A

Date June 14, 2010

Communication from Redflex Traffic Systems, Inc., c/o Brown Winick Law Firm.

Moved by _____ to receive, file and

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

10-995
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Rauh, Diane I.

From: website@dmgov.org
Sent: Monday, June 07, 2010 8:41 AM
To: CouncilSpeak
Cc: CityClerk
Subject: Request to Speak Before the City Council - form submission

Full Name: Redflex Traffic Systems, Inc. c/o BrownWinick Law Firm
Address: 666 Grand Avenue, Suite 2000
City: Des Moines, IA
State: IA
Zip: 50309
Phone: (515)242-2400
Email: beltrame@brownwinick.com
Speaker(s): Marc Beltrame
Meeting Date: Monday, June 28, 2010
Regarding: FOR JUNE 14, 2010 MEETING

10-995



Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C.

666 Grand Avenue, Suite 2000
Ruan Center, Des Moines, IA 50309-2510

June 7, 2010

direct phone: 515-242-2452
direct fax: 515-323-8552
email: brommel@brownwinick.com

Mayor Frank Cownie and
Members of the Des Moines City Council
c/o City Clerk
400 Robert D. Ray Drive
Des Moines, IA 50309

**Re: June 14, 2010 Council Meeting
Agenda Item: RFP V10-041 (Enforcement Cameras)**

FILED
CITY CLERK
DES MOINES, IOWA
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Dear Mayor and Members of the Council:

At your June 14, 2010 meeting, you will be considering the Report of Deputy City Manager Merrill R. Stanley, which was issued on April 29, 2010, related to RFP V10-041 ("the Report"). The Report affirmed the Selection Committee's selection of GATSO USA ("GATSO"). For a number of reasons, the City should reject such Report and the recommendation of the Selection Committee and select Redflex Traffic Systems, Inc. ("Redflex") as the provider of enforcement cameras for the City of Des Moines.

In order to analyze the decision of the Selection Committee and the Report of the Deputy City Manager, we believe it is necessary for you to understand exactly who will be providing all of the required services. The City's enforcement camera program will only be as good and successful the the technology, the support services and the back office processing provided by the outside company. Redflex, who is a pioneer of the fully turnkey digital enforcement camera program the City seeks, is the largest and longest provider of such services. In comparison, GATSO has little experience and in fact, does not even directly provide a number of the services that are vitally important to a successful program.

There are two fundamental problems with GATSO, the entity recommended by the Selection Committee. First, GATSO did not satisfy the minimum requirements the City clearly stated in its RFP. GATSO did not show that it or its "strategic partner" CMA Consulting, Inc. ("CMA") had the required two years minimum experience in automated electronic traffic control and citation processing. Furthermore, the Committee did virtually no research regarding CMA or its background, yet this is the company who will be providing the City with virtually 100 percent of the "back office" processing, which includes the following: obtaining photos of violations, reviewing violations, retrieving motor vehicle information from the secure source, printing citations, mailing citations, storing and retrieving all violations, collecting payments and responding to citizen inquiries. As will be described more fully below, CMA has issues in its

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background that should be questioned, especially when it will be the entity actually providing the bulk of the services. In addition to this clear deficiency, GATSO also failed to timely provide the required financial statement, and absolutely no financial statement or information was obtained from CMA.

Second, the "formula" used by the Selection Committee to determine the points awarded in the Revenue category was based upon the number of citations produced by Redflex in Clive. In other words, the Committee used Redflex's results to analyze the proposal of a competing provider. It is wholly inappropriate to use Redflex's results to analyze the revenue to be produced under GATSO's proposal, because GATSO has a substantially lower success rate for violations that actually result in citations (14 percent compared to Redflex's 66 percent). In addition to the inaccurate formula used by the Committee, there are a number of other important factors that lead to the clear conclusion that Redflex is the best choice. Each of these issues will be addressed more fully below.

I. GATSO Did Not Meet the Minimum Requirements of the RFP.

GATSO failed to satisfy two minimum requirements of the RFP. Section 3.0 of the RFP states that the "successful contractor *must* have the following *minimum* business experience" and provides the following items that are relevant here:

3.1 The contractor must have at least two years minimum experience in automated electronic traffic control and citation processing. ...

3.4 The contractor must be able to prove fiscal stability to the City by providing an annual budgetary report or positive financial statement from a reliable bank or accounting firm. The City must be confident that any contractor hired by the City for an extended period of time has the fiscal capability to maintain their service.

A. GATSO and its "Strategic Partner" CMA do not have the required two years minimum experience in automated electronic traffic control and citation processing.

With regard to the Section 3.1 requirement, GATSO has yet to provide information that CMA, who is generally described by GATSO as their "strategic partner", has the required two years of experience in automated traffic control and citation processing. As indicated in Redflex's letters of appeal, CMA is only mentioned in GATSO's application and presentation materials and no specific information was given regarding the number of years CMA has been involved in automated traffic control and citation processing. Even when CMA and GATSO had the opportunity to provide specific information regarding their experience at the April 21, 2010 hearing, they did not do so. CMA's representative only generally discussed its experience in other types of processing, but did not provide any specific information regarding its experience in traffic control and citation processing. Because GATSO has only been offering and providing

a full turn key operation, which includes the processing from violation to citation and collection, for short period of time in the United States, it is clear that neither CMA nor GATSO has the required minimum two years of experience.

As admitted by the Committee Chair, the “back office processing” is vitally important. See Transcript, p. 33. Back office processing includes identifying the registered owner of the vehicle, processing the citations, mailing the citations, and accepting and processing payment of the citations. These processes also include training and interacting with City officials to review and approve any violations before citations are issued, as well as providing supporting testimony to establish a chain of custody as to the processing of the photographs into citations. In short, there is no photo enforcement program and thus, no revenue, without standardized and valid processing of the photos and subsequent citations. These are all services that CMA, not GATSO, will provide.

When asked details about CMA and its role in GATSO’s proposal, the Committee Chair admitted the Committee did virtually no investigation. See Transcript, p. 28. They did not inquire as to CMA’s photo enforcement experience, did not inquire into CMA’s other “processing” experience, and did not investigate CMA’s financial stability. See Transcript, pp. 28-29. The Committee also did not inquire into the relationship between CMA and GATSO. Nothing specific about the length, nature, expected term or any other details about this relationship have been revealed. See Transcript, p. 37. In fact, CMA cannot even identify how much of its revenue comes from its partnership with GATSO other than to describe it as “limited.” See Transcript, p. 50.

Although CMA will be providing a very important and substantial part of the services under GATSO’s proposal, the Committee left it up to CMA to describe at the hearing whether they could meet requirements such as processing data, initial mailings, and ability to accept payments on line or through a lock box. See Transcript, p. 24. These are items that the Committee should have been certain of when selecting GATSO. CMA was not even present at GATSO’s presentation to the City, submitted no information regarding their processes and even at the April 21, 2010 hearing did not address these issues. See Transcript, p. 29.

Neither the Committee nor the Report addressed the questionable background of CMA, whose CEO was indicted on federal charges and was involved in inappropriately paying a New York legislator to secure legislation that directly favored their company. See March 23, 2010 Supplemental Appeal letter, p. 4, Exhibit P. These are issues that should not be taken lightly when entering a relationship where CMA will serve an important role.

B. GATSO did not satisfy the requirements related to financial statements.

With regard to the Section 3.4 requirement relating to proof of financial stability, Addendum #1 to the RFP further clarified that annual financial statement must be certified by an independent, third party accounting firm. GATSO failed to timely satisfy this requirement as to its own

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financial statement and provided no information regarding CMA's financial stability. Thus, GATSO should have been disqualified.

The deadline for applying for the RFP was December 23, 2009. In documents that were disclosed to Redflex *after* the hearing in front of the Deputy City Manager, GATSO clearly did not provide the required information before December 23, 2009. GATSO produced an email and admitted in court proceedings¹ that it had not submitted the required financial statement on or before December 23, 2009. It was only after being contacted by Vince Carter on January 7, 2010 that GATSO provided the required financial statement. While this fifteen (15) day delay may not seem significant, it is important for two reasons. First, GATSO was given an opportunity to correct its submission in order to meet the minimum requirements. There is no basis for allowing them additional time to comply with clearly stated requirements. Second, the RFP rules clearly state that the Procurement Administrator or his/her designee will serve as the "sole point of contact for questions, objections, *informational requests* and requests for clarification or interpretation during the RFP process."² The purpose of this rule is to "ensure an open process and the provision of equal knowledge and opportunity to all potential proposers." (Standard Provisions and Requirements for RFPs, ¶ 3). The informational request was never routed through the City's Procurement Administrator, and it is clear that the Procurement Administrator did not designate Mr. Carter as his designee. Michael Valen, as the Procurement Administrator, stated at the hearing that he had not seen or received GATSO's financial statement.

In addition to this untimely disclosure, there has been absolutely no information provided to the Committee regarding CMA's financial stability. As stated above, CMA is providing a significant and vital portion of the services required under the RFP, yet the Committee did no research into CMA's financial stability. Although the Committee Chair attempted to sweep the financial stability requirement under the rug by asserting that GATSO had the required insurance, the insurance requirement is irrelevant. As the City's own attorney stated in Court, the financial stability requirement was separate and distinct. The insurance required was for general liability, not a bond type insurance requirement, and the purpose of requiring financial statements was to ensure that the company performing the work had the necessary financial resources to complete the project. The Committee could not have fully analyzed the financial stability of GATSO without analyzing the financial stability of CMA, the party providing a majority of the RFP's requirements.

¹ GATSO filed a proceeding in Polk County District Court to enjoin the release of its financial statement under Iowa Code chapter 22. The information regarding the date of GATSO's submission of their financial statement was in an email attached as Exhibit A to an Affidavit of Andrew Noble, GATSO's President, and its counsel also specifically stated on the record that GATSO did not submit the financial statement until after it was contacted by the City in January, 2010. A copy of the Andrew Noble Affidavit and the email between GATSO and Vince Carter is provided with this letter.

² In addition to this requirement, the City's Municipal Code states that it shall be the responsibility of the Procurement Administrator to determine if all RFP requirements have been met and if all required submittals have been made by proposers. See Mun. Code § 2-755(c).

