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November 22, 2013

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**VIA HAND DELIVERY, FACSIMILE, AND E-MAIL**

Carl Crain  
Senior Contract Services Officer  
9660 Ecology Lane  
Sacramento, CA 95827

**Re: Protest of Notice of Intent To Award for Request for Proposal #8041, Red Light Photo Enforcement System Dated November 7, 2013**

Dear Mr. Crain:

**I. Introduction to Protest**

This Bid Protest ("Protest") is respectfully submitted on behalf of American Traffic Solutions, Inc. ("ATS"). The Protest relates to the County of Sacramento, Department of General Services, Contract and Purchasing Services Division's ("County") November 7, 2013, Notice of Intent to Award for Request for Proposal #8041, Red Light Photo Enforcement System ("Notice of Intent").<sup>1</sup>

**II. Protest Preliminary Requirements**

Pursuant to the County's Protest Procedures concerning awards governing contracts for goods and services, ATS submits this Protest within 10 business days of the date of the Notice of Intent.

<sup>1</sup> The County's Request for Proposal ("RFP") #8041 is attached at Exhibit A; The Notice of Intent is attached at Exhibit B; ATS' Response to RFP #8041 is attached at Exhibit C; and, other documentary factual evidence in support of this Protest is attached at Exhibits D - I.



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On October 1, 2013, ATS responded to RFP #8041. (Exh. C). There is no dispute that ATS' bid was responsive to all of the requirements set forth in RFP #8041. ATS submitted a full and complete bid that was scored as follows in comparison to Redflex Traffic System's ("Redflex") bid:

Proposer	Qualifications and References Score (20 points)	System Capabilities Score (25 points)	Customer Service/Support Score (20 points)	Pricing Score (25 points)	Risk Score (10 points)	TOTAL Score (100 points)
Redflex	18.60	16.88	12.50	25.00	10.00	82.98
ATS	19.40	18.44	12.50	18.83	10.00	79.17
Xerox	17.94	15.94	14.50	15.69	10.00	74.06
Gatso	14.13	16.25	8.50	9.55	10.00	58.44

### III. Protest Legal Basis and Grounds for Review

This Protest establishes that ATS' bid should have been deemed the lowest cost, responsive and responsible bid, as well as the best value and highest rated bidder, yet it was not selected for the contract award.

Section 71-J(3) of the Sacramento County Charter provides that the Board of Supervisors may contract for the provision of County services so long as the contract for services is awarded through a "publicized, competitive bidding process." County Purchasing Code Section 2.56.240 provides that "awards shall be determined by and be based upon the best proposal, which in the discretion of the purchasing agent is the proposal which most adequately meets the needs of the County, officer, department, or using agency at the lowest price." Subsection (a) goes on to provide that:

In determining the best proposal, *in addition to price*, the purchasing agent may consider the quality, availability and functional or other suitability of the personal property, or contractual services to the particular use intended. The purchasing agent may also consider other factors, including, but not limited to, the following: the ability, capacity and skill of the bidder to perform the contract or provide the service required; whether the bidder can perform the contract or provide the service promptly, or



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within the time specified, without delay or interference; **the character, integrity, reputation, judgment, experience** and efficiency of the bidder; the quality of performance of previous contracts or services; **the previous and existing compliance by the bidder with laws and ordinances relating to the contract or service**; the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; the ability of the bidder to provide future maintenance and service for the use of the subject of the contract; the number and scope of conditions attached to the bid.

(Emphasis added).<sup>2</sup>

Pursuant to the County's rules, an unsuccessful bidder may submit a protest if it believes that:

1. The rating factors and/or evaluation criteria put them at an unjust disadvantage;
- ...
3. Bidder provided the overall best value response, and that Purchasing erred in not recommending them for award of the contract or purchase order; or
4. Purchasing failed to follow written policy and/or procedures. (See <http://www.dgs.saccounty.net/capsd/Pages/Goods-and-Services-Protest-Procedures.aspx> (link to the County's bid procedures).)

In the Proposal, the County must have informed prospective bidders of the true bid selection criteria, including the purported advantage of bidding some specific service that evidently drove the decision to award, or the value in bidding services affecting a lower contract price (despite

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<sup>2</sup> Here, the objective Bid Scoring shows that in the areas "in addition to price," ATS' bid was superior to that of Redflex in all areas of qualifications, systems capabilities and comparable references concerning prior performance. The embolden criteria are those areas where the publically available information (that should have been disclosed by Redflex in its bid) establishes that, contrary to the scoring results, Redflex is **not** other bidders' equal.



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the language in County Purchasing Code Section 2.56.240 (a)). (*Schram Construction, Inc. v. Regents of the University of California* (2010) 187 Cal. App. 4th 1040, 1056-1061.) In addition to these specific requirements, the County is under an obligation to award the contract to a "responsible bidder." (*See City of Inglewood-Los Angeles Civic Center Auth. v. Superior Court* (1972) 7 Cal.3d 861, 866-867; *see also* Exh. A at p. 3.)

Consistent with the County's Bidder Protest Procedures, ATS protests the proposed award on the grounds that: (a) the rating factors and evaluation criteria put ATS at an unjust disadvantage in the bid review process, (b) ATS provided the overall best value response and that the County erred in not recommending ATS for the award of the contract, and (c) the County failed to follow written policy and procedures where it proposes to award the contract to Redflex, despite Redflex apparently having failed a material requirement of RFP #8041 (Appendix F), and where the County failed to account for the risks inherent in Redflex's public admission of collusion (Appendix K) in previous public bidding on projects for similar services. That history should have caused Redflex to be deemed a "non-responsible bidder," unqualified for the same services Redflex bid in response to RFP #8041. Although the emphasis in the Proposal suggested an overall "best value" approach to bid evaluation would be employed, the Scoring Results show that the lowest price drive the award.

Being that ATS, in objective comparison to Redflex, met or exceeded every material category of review including Qualifications and System Capabilities but lost the award based on the County's scoring of the least material component of the review (Price), ATS was clearly negatively affected by the non-apparent weight of the price or other factors in the County's evaluation process and bias in favor of Redflex in the evaluation process.

#### IV. Summary of Evidence and Arguments in Protest

ATS is a responsible bidder that was completely responsive to RFP #8041. Notably, it defeated or met Redflex's bid on all categories evaluated, save *only* for that category which, according to RFP #801, was less important to the Basis for the Award -- Price. (Exh. A at p. 13 (stating that the proposal award **will be determined** by factors other than price alone) (emphasis added)).

Importantly, RFP #8041 provided that pricing proposals would be evaluated based on proposed pricing for enforcement services at existing *and additional* red light enforcement intersections. Evidently, the County evaluated pricing only for existing (not additional) intersections, which is inconsistent with RFP #8041's bid evaluation process *and* instills bias and disadvantage in the procurement process because Redflex, as the incumbent, would invariably enjoy the lowest cost.



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But the County also failed to disqualify Redflex, or otherwise consider in the Risk Assessment evaluation process, for publically available adverse information concerning Redflex's admission that it colluded in a public bidding process relating to the very types of services requested in the RFP. Aside from this information likely disqualifying Redflex from the procurement process as a non-responsible bidder, the information certainly requires a less than perfect score in assessing the risk to the County in deciding to use Redflex as its contractor.

#### IV. Evidence and Argument in Support of Protest Grounds

##### a. Statement of Facts

ATS is the largest provider of road safety cameras in North America. (Exh. C at p. 1.) Since its inception in 1992, ATS has focused on and delivered road safety camera programs and violation/citation processing across the country. (*Id.*) Currently, ATS has 16 facilities located across the United States, more than 740 full-time employees, and more than 3,200 installed camera systems. (*Id.*)

On August 30, 2013, the County released RFP #8041. It sought proposals for the supply, implementation and continuing maintenance of the hardware, software, and support services needed for an automated red light enforcement system. (*See* Exh. A at p. 3.) According to RFP #8041, responsive proposals would be evaluated based on their cumulative scores from the following Evaluation Criteria:

- Company Qualifications and References
- System Capabilities
- Customer Service and Support
- Pricing Proposal and
- Risk Assessment Response. (*See* Exh. A at p. 14.)

On October 1, 2013, ATS submitted its response to RFP #8041. (*See* Exh. C.) On November 7, 2013, the County issued its Notice of Intent which is the subject of this protest. (*See* Exh. B.) The Notice of Intent provides that the County received proposals from ATS; Gatso, USA;



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Redflex; and Xerox State & Local Solutions. As noted above, the respective parties received the following total scores:

Proposer	Qualifications and References Score (20 points)	System Capabilities Score (25 points)	Customer Service/Support Score (20 points)	Pricing Score (25 points)	Risk Score (10 points)	TOTAL Score (100 points)
Redflex	18.60	16.88	12.50	25.00	10.00	82.98
ATS	19.40	18.44	12.50	18.83	10.00	79.17
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Gatso	14.13	16.25	8.50	9.55	10.00	58.44

Based on these scores, the Notice of Intent provided that the County intended to award the contract to Redflex, which is the current provider of the County's automated red-light enforcement system. ATS respectfully submits that this award is improper as set forth below.

**b. Argument**

**i. The County Erred in Not Awarding the Contract to ATS, Which Provided a Responsive and the Best Value Bid to the County for Red Light Photo Enforcement Systems**

The County considered five evaluation criteria in scoring responses to RFP #8041: (1) qualifications and references; (2) system capabilities; (3) customer service/support; (4) pricing; and (5) risk. The Notice of Intent demonstrates the County's recognition that ATS provides superior qualifications/references and system capabilities than Redflex. Redflex, received only a higher score than ATS in the area of pricing and an equivalent score to ATS in the area of risk. Objective data is available, however, demonstrating that the County should reconsider the scoring of those criteria.

**1. Pricing**

In the area of "Pricing," Redflex received a score of 25.00 while ATS received a score of 18.83. ATS understands that, due to Redflex's status as the County's current red-light photo enforcement vendor, ATS is at somewhat of a disadvantage in this area. That score, however,



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appears to have been miscalculated. Instead of analyzing price based on an assessment of both the 26 current intersections and 14 anticipated expansion intersections, the County appears to have analyzed price based on the current intersections alone. But the RFP refers to a total of 40 intersections in several places including the following:

- Page 3 under Site Survey: *The successful vendor will work with the County to determine an initial list of forty candidate intersections, including but not limited to the County and City's current twenty-six operational sites.*
- Page 4 under the Scope of Work: *Assistance with intersection selection, including establishment of baseline counts of red light violations at any additional intersections selected beyond the existing twenty-six approaches.*
- APPENDIX I PRICING: *Monthly price for each additional intersection, per approach.*

Despite this recognition that there are a total of 40 intersections to be addressed by the winning bidder, the pricing score reflects that the County only analyzed price based on the 26 current intersections. With this apparent error in analysis and final calculation in scoring, ATS came in second to Redflex by 6.17 points. If the County had considered all 40 intersections, and holding all other factors of the analysis equal, ATS calculates that its score would have risen from 18.83 to at least 21.20. (See Exh. D (Pricing Charts Comparing 26 Intersections versus 40 Intersections).) This adjustment, when combined with the reduction in Redflex's "risk" score as described below, would have clearly put ATS ahead on total points. Regardless, at a minimum, the adjustment in the "price" score should be justification for a "Finalist Interview," as indicated in RFP #8041. (Exh. A at p. 11.)

## 2. Risk

In the area of "Risk" all four bidders received perfect scores of 10.0. Redflex's risk score, however, is improperly inflated given the existence of confirmed and admitted ethical violations by Redflex.

As confirmed by multiple corporate releases, in October/November 2012, the Chicago Board of Ethics, in conjunction with the City Corporation Counsel, began an investigation into certain



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payments made by Redflex employees to employees for the City of Chicago.<sup>3</sup> (*See* Exhs. E (Redflex's October 17, 2012, Release to Australian Securities Exchange); F (Redflex's March 4, 2013, Release to Australian Securities Exchange).) This investigation was initiated due to whistleblower allegations of improper activity in connection with the red-light camera contract between Redflex and the City. (*See* Exh. F at p. 1.) Specifically, the allegations claimed that Redflex's employees had made certain illegal payments to City officials. (*See id.*)

These allegations concerning improper activity had come to Redflex's attention in an August 2010 letter from a whistleblower. (*See id.*) With the assistance of an outside law firm, Redflex conducted its own internal investigation of the allegations and found them to be without merit, except for a single instance in which a Redflex employee paid for a hotel room for the City's Program Manager. (*See id.*) Redflex did not inform the City of Chicago's Board of Ethics about these allegations or Redflex's findings. (*See id.*)

Based on the City's investigation, Redflex authorized another independent internal investigation with the assistance of Sidley Austin, LLP. (*See id.*) While ATS believes the City's formal investigation remains pending (see footnote 5, below), Redflex's internal investigation concluded that the whistleblower's allegations had merit. (*See id.*) Specifically, the investigation found that (1) payment arrangements between the City Program Manager, a Redflex consultant based in Chicago, and Redflex would likely be considered as bribery by the authorities, (2) Redflex provided vacation-related expenses and other items of value to the City Program Manager in violation of the City of Chicago's Governmental Ethics Ordinance, (3) Redflex's 2010 internal investigation was clearly inadequate, (4) 2012 disclosures to the Chicago Board of Ethics and local newspapers by certain persons involved with the 2010 investigation were improper, and (5) certain Redflex officials violated company policies and code of conduct. (*See id.* at pp. 2-3; *see also* Exh. I at p. 10.)

To the extent the aforementioned facts do not disqualify Redflex from the proposal process as set forth below, they should have substantially reduced its "Risk" score. The "Risk Assessment Questionnaire" attached to RFP #8041 makes clear that the term "risk" encompasses ethical

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<sup>3</sup> In conjunction with this investigation, the Department of Procurement Services of the City of Chicago deemed Redflex a **nonresponsible bidder** for the purposes of an Automated Speed Enforcement Program tender process in which Redflex had been participating. (*See* Exh. I at pp. 74-75.) As a result, the City of Chicago rejected Redflex's proposal in relation to that tender. In addition, the City notified Redflex that it was in breach of its currently in-force contracts for red-light enforcement.





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and/or public relations issues as well as financial status<sup>4</sup>. (See Exh. A at Appendix K (items 20-27).) Indeed, item number 27 requests that potential bidders confirm whether or not their firm, or any of its owners/officers/partners, has ever been convicted of a crime of fraud, theft, or any other act of dishonesty. While ATS is in no way attempting to smear or otherwise harm Redflex's reputation, the aforementioned facts objectively demonstrate that Redflex should not have received the same "Risk" score as ATS, who has never been the subject of bribery allegations, much less released multiple statements confirming the truth of such allegations.

**ii. The County Failed To Follow Written Policy and/or Procedures**

Appendix K to RFP #8041 is the Non-Collusion Affidavit. This document requires bidders to declare numerous facts relating to their proposals and firms. In particular, paragraph number five provides as follows:

My firm, its affiliates, subsidiaries, officer, directors and employees are not currently under investigation by any governmental agency and have not in the last five years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

The Affidavit goes on to provide that the representations contained therein are "material and important," "that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the County of Sacramento," and that "any violation of this certification shall render bidder's response invalid" and subject to immediate disqualification.

ATS believes that at the time of Redflex's submission, the investigation by the City of Chicago was still ongoing.<sup>5</sup> Consequently, either Redflex failed to sign the Affidavit (which is prohibited

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<sup>4</sup> To the extent the "risk" score does take into consideration financial status and stability, Redflex's prior improper conduct has negatively affected its financial stability. (See Exhs. G (Redflex's April 11, 2013, Release to Australian Securities Exchange) and H (Redflex's February 11, 2013, Release to Australian Securities Exchange).)

<sup>5</sup> The veracity of Redflex's certification to Appendix K is called into question by a review of Redflex's recent public filings and media reports concerning corruption charges in Chicago and other investigations. The reporting shows that the investigations Redflex says it believes will result in a finding of bribery against it have not been concluded in Redflex's favor. Despite a search, ATS has not identified any

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as it was a "required appendix" per page 12 of RFP #8041) or may have improperly signed the Affidavit.<sup>6</sup> Assuming this to be the case, its proposal should have been subject to immediate disqualification pursuant to the County's established rules and procedures and the contract should have been awarded to ATS.

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statement or report that pending investigations have been concluded. Thus, whether or not the well-publicized City of Chicago public corruption investigation has been resolved, that does not address other more recently reported federal investigations of corruption allegations ("Redflex Consultant Also Has Ties to Controversy in Louisiana," Chicago Tribune, October 22, 2012) and Illinois ("Probe Deepens as U.S. Attorney Subpoenas Ex-City Official," Chicago Tribune, March 15, 2013). (See Exhs. I at pp. 22-23, 68-70.) Indeed, reporting is that federal authorities had "launched" a bribery probe involving Redflex in March 2013 - a "first indication that the US Attorneys' Office has 'opened' a case since the [Chicago] Tribune raised questions in October about the city's contract with Redflex . . ." (Exh. I at p. 22.)

<sup>6</sup> On November 20, 2013, ATS submitted a Public Records Act Request to the County requesting a copy of Redflex's bid. A response has yet to be provided.



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#### V. Conclusion

The award to Redflex was improper. Based on the above, Redflex's proposal should have been disqualified or, alternatively, its total score should have been substantially reduced. Either way, Redflex should not have received the award. Were the Pricing and Risk criteria to be reevaluated and re-scored in accordance with the factors addressed here, ATS anticipates that the County would award the bid to ATS based on its ability to meet and exceed the County's needs at a fair value.

Very truly yours,

  
Bryan L. Hawkins

BLH:mrd  
cc: TBD

Enclosures