

C2 A A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2024-274-DF, FOR SPEED DETECTION CAMERA SYSTEM FOR SCHOOL ZONES; AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH MODAXO TRAFFIC MANAGEMENT USA INC., AS THE TOP-RANKED PROPOSER; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH MODAXO TRAFFIC MANAGEMENT USA INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH SENSYS GATSO USA, INC., AS THE SECOND RANKED PROPOSER; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH SENSYS GATSO USA, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH JENOPTIK NORTH AMERICA, INC., AS THE THIRD RANKED PROPOSER; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AN AGREEMENT UPON CONCLUSION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION. (POLICE)
Applicable Area:



COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager

DATE: November 20, 2024

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2024-274-DF, FOR SPEED DETECTION CAMERA SYSTEM FOR SCHOOL ZONES; AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH MODAXO TRAFFIC MANAGEMENT USA INC., AS THE TOP-RANKED PROPOSER; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH MODAXO TRAFFIC MANAGEMENT USA INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH SENSYS GATSO USA, INC., AS THE SECOND RANKED PROPOSER; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH SENSYS GATSO USA, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH JENOPTIK NORTH AMERICA, INC., AS THE THIRD RANKED PROPOSER; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AN AGREEMENT UPON CONCLUSION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION. (POLICE)

RECOMMENDATION

The City Administration ("Administration") recommends that the Mayor and City Commission ("City Commission") approve the Resolution.

This solicitation is under the Cone of Silence.

BACKGROUND/HISTORY

In 2023, the State of Florida Legislature enacted Section 316.008(9), Florida Statutes, effective on July 1, 2023, pertaining to the use of speed detection systems ("SDS") to enforce speed limits in school zones.

The statute authorizes counties and municipalities to place or install, or contract with a vendor to place or install, SDS to enforce school zone speed limits for violations in excess of 10 miles per hour over the applicable speed limit and to enforce the posted speed limit at other times during the entirety of the school session.

Sec. 316.008(9), Florida Statutes, authorizes municipalities to enact an ordinance regarding the placement or installation of SDS upon determining that the location of such system(s) warrants additional enforcement action based on traffic data and/or other evidence supporting the need for SDS in such location(s). In accordance with the statute, on April 3, 2024, the City Commission enacted an ordinance governing the deployment of SDS within the City.

The purpose of the school zone SDS is to enhance the safety of school children and pedestrians by effectively enforcing speed limits in designated school zones. By employing advanced technology such as radar or cameras, the system aims to detect and deter speeding motorists,

thereby reducing the risk of accidents and promoting a safer environment for students, parents, and school staff.

Through this RFP, the City sought proposals to provide and install all equipment and monitor the SDS for violations. The equipment and monitoring will be provided at no cost to the City with revenue sharing of any collections. The Bidder must implement school zone speed detection systems in accordance with Florida State Statute 316.0776, 316.008(9)(a), and all applicable other laws, ordinances, and administrative orders.

ANALYSIS

On April 3, 2024, the Mayor and City Commission authorized the issuance of RFP 2024-274-DF for speed detection camera system for school zones. On April 5, 2024, the RFP was issued. Voluntary pre-proposal conferences were held on April 18, 2024, and April 30, 2024, to provide information to proposers submitting a response. Seven (7) addenda were issued, and 88 prospective bidders accessed the advertised solicitation. RFP responses were due and received on June 27, 2024. The City received a total of nine (9) proposals. Listed below are the firms:

- Altumint, Inc.
- American Traffic Solutions, Inc d/b/a Verra Mobility
- Blue Line Solutions LLC
- Jenoptik North America, Inc.
- Modaxo Traffic Management USA Inc.
- NovoaGlobal, Inc.
- Quipux US LLC
- RedSpeed Florida LLC
- Sensys Gatso USA, Inc

On July 3, 2024, the City Manager appointed the Evaluation Committee via LTC # 277-2024 ("The Committee"). The Committee comprised Ghassan Choueiry, Senior Transportation Engineer, Transportation & Mobility Department; Ozzie Macias, Chief Technology Officer, Information Technology Department; Alejandro Mouro, Detective, Police Department; and Kyle Teijeiro, Senior Budget Analyst, Office of Management and Budget. The Committee convened on September 19, 2024, to consider the proposals received.

The Committee was provided an overview of the project, information relative to the City's Cone of Silence Ordinance, and the Government Sunshine Law. The Committee was also provided general information on the scope of services and a copy of each proposal. The Committee was instructed to score and rank each proposal pursuant to the evaluation criteria established in the RFP. The evaluation process resulted in the ranking of proposers as indicated below and in Attachment A.

- 1st - Modaxo Traffic Management USA Inc.
- 2nd - Sensys Gatso USA, Inc.
- 3rd - Jenoptik North America, Inc.
- 4th - Altumint, Inc.
- 5th - American Traffic Solutions, Inc d/b/a Verra Mobility
- 6th - Blue Line Solutions LLC
- 7th - RedSpeed Florida LLC
- 8th - NovoaGlobal, Inc.
- 8th - Quipux US LLC

The Evaluation Committee ranked Modaxo Traffic Management USA Inc. ("Modaxo") as the top-ranked proposer. The Committee highlighted during the deliberations that the software's user interface is intuitive and its database, CiteWeb, very customizable. The Committee also

appreciated the single pole hardware proposed by Modaxo, which would help minimize construction time and alleviate current City constraints in certain areas designated for this program due to limitations in right-of-way space and ADA requirements. The Committee also commented on Modaxo's experience with camera enforcement programs and with the Florida Department of Transportation (FDOT) as the proposed system Drive Safe has received FDOT approval for structural installations for red light enforcement.

Modaxo has actively managed photo enforcement programs for over 29 years. Its speed and red light camera system experience began in 1995 with the City of Portland, OR and the City of Camrose (Alberta, Canada) and both remain its clients. It is currently contracted with the City of Fairfax, VA, Montgomery County, MD, City of Richmond, VA, Howard County, MD, and City of Providence, RI specifically for school zone photo enforcement programs. Modaxo (previously Conduent State & Local Solutions, Inc.) is currently providing the City of Miami Beach with red light violation camera enhancement system and related support services pursuant to RFP 2019-093-JC and the City has been satisfied with the services. As such, Modaxo is familiar with the requirements for speed enforcement within Florida and is well-suited to provide a quick and seamless implementation to the City. Further, all submitted references provided positive feedback.

The Evaluation Committee also deemed Sensys Gatso USA, Inc., 2nd ranked proposer, and Jenoptik North America, Inc., 3rd ranked proposer, to be well qualified and should be considered if the negotiations with Modaxo were not successful. The following are summaries of both proposers as articulated in their responses:

Sensys Gatso USA, Inc. (Sensys Gatso) was founded in 1958 as Gatso and introduced the world's first speed-measurement device in the same year. It merged with Sensys, the supplier to the Swedish transport administration in 2015. Sensys Gatso is the world's most established automated traffic safety enforcement company with over 60,000 photo enforcement installations in 60 countries and over 60 years of experience. Sensys Gatso has several contracts in the east coast including East Providence and Pawtucket, RI; Abington and Warrington Township, PA; Pelham Manor and Albany, NY; St. Mary's, GA; and Maitland, FL. All submitted references provided positive feedback.

Jenoptik North America, Inc. (Jenoptik) is a worldwide pioneer in the creation and installation of Traffic and Safety Enforcement Systems. Its product suite includes Speed, Red Light, Automated License Plate Reader, School Zone and Bus Stop Arm Enforcement, Sound detection, Vessel detection and identification, and more. Jenoptik has over 4,000 systems installed across North America and more than 30,000 systems operating globally. It is continuously expanding by improving the effectiveness of road safety strategies. All submitted references provided positive feedback.

SUPPORTING SURVEY DATA

Based on the 2022 City of Miami Beach Community Satisfaction Survey, 81% of residents are concerned with pedestrian safety when crossing the street. Further, residents show 48% satisfaction with the level of safety in local public schools. This RFP looks to directly address both points by augmenting pedestrian safety near school zones.

FISCAL IMPACT STATEMENT

The speed detection camera system for school zones program, initiated in response to new State legislation therefore presents no historical context for the City regarding the potential. As HB 657 dictates the City will retain \$60 to administer speed detection systems in school zones and other public safety initiatives and will remit \$40 to entities as follows: \$20 to the Department of Revenue for deposit into the General Revenue Fund; \$12 to the School District for school security initiatives, student transportation, or safety of student walking conditions; \$5 to the County or municipality

for the School Guard Recruitment and Retention Program; and \$3 to the Law Enforcement Criminal Justice Standards and Training Trust Fund. Modaxo Traffic Management USA Inc., in its proposal response to the RFP, proposed that it will retain 32.91% of the \$60.00. Based on this revenue-sharing structure of the RFP and on the \$100,000 estimated total annual revenue received by the school zone program, Modaxo would receive an estimated \$32,910 and the City will receive an estimated \$67,090 revenue every year. In addition, a key advantage of the City's program is that the City will not incur any installation, maintenance, calibration, administration, or regulatory compliance costs, with all financial terms remaining open for negotiation, offering flexibility as the program grows.

For comparison, Miami-Dade County's school zone camera enforcement program, piggybacking from a City of Alpharetta, GA contract, follows a tiered payment system where the vendor would be entitled to 33% for the first 100 systems installed, 32% for the 101 to 200 systems installed, 31% for the 201 to 300 installed, and 30% for 301 or more systems installed. The City's program will initially launch with just six (6) sites, allowing for expansion as needed. The percentage revenue proposed by Modaxo to the City is 0.09% higher than that of Miami-Dade County, amounting to an additional \$100 based on an estimated \$100,000 in total annual revenue.

Alternatively, the Administration has found that the City of Eustis, FL and the City of Leesburg, FL utilize fee-for-service contracts where a fee (on average \$3,500 per equipment) is paid on a monthly basis by the agency for the contracted speed detection systems. In those programs, the Administration has also found instances where the vendor or agency operates the speed detection systems. Whereas there exist different business models for the administration of a school zone speed enforcement camera program within the public sector, the City is confident in its assertion to move forward with a revenue generating contract.

Does this Ordinance require a Business Impact Estimate?
(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

FINANCIAL INFORMATION

N/A. The resulting Contract is expected to be revenue generating.

CONCLUSION

Based on the foregoing, it is recommended that the Mayor and City Commission approve the Resolution authorizing the Administration to enter into negotiations with Modaxo Traffic Management USA Inc., as the top-ranked proposer. If the Administration is not successful in negotiating an agreement with Modaxo Traffic Management USA Inc., authorizing the Administration to enter into negotiations with Sensys Gatso USA, Inc., as the second-ranked proposer. If the Administration is not successful in negotiating an agreement with Sensys Gatso USA, Inc., authorizing the Administration to enter into negotiations with Jenoptik North America, Inc. as the third-ranked proposer. Further, authorizing the City Manager and City Clerk to execute an agreement upon the conclusion of successful negotiations by the Administration.

LOBBYIST DISCLOSURE

In accordance with Resolution No. 2023-32857, adopted by the City Commission on December 13, 2023, the following information has been provided by the Administration:

1. Was the Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? **No.**

2. If so, specify name of lobbyist(s) and principal(s): **Not applicable.**

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

Yes

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

Procurement

Sponsor(s)

Commissioner Alex Fernandez

Co-sponsor(s)

Condensed Title

Accept Recomm/RFP 2024-274-DF, Speed Detection Camera System for School Zones.
(Fernandez) PD/PR

Attachment A - Scoring and Ranking - RFP 2024-274-DF

RFP 2024-274-DF Speed Detection Camera System for School Zones	Ghassan Choueiry			Ranking	Ozzie Macias			Ranking	Alejandro Mouro			Ranking	Kyle Teijeiro			Ranking	Low Aggregate Totals	Ranking
	Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal			
Modaxo Traffic Management	68	21	89	2	60	21	81	2	73	21	94	2	67	21	88	4	10	1
Sensys Gatso USA	65	25	90	1	40	25	65	8	70	25	95	1	66	25	91	1	11	2
Jenoptik Smart Mobility Solutions	63	22	85	5	60	22	82	1	69	22	91	5	69	22	91	1	12	3
Altumint	64	22	86	4	56	22	78	3	70	22	92	3	68	22	90	3	13	4
Verra Mobility	66	21	87	3	54	21	75	4	69	21	90	6	66	21	87	5	18	5
Blue Line Solutions	56	22	78	8	50	22	72	5	70	22	92	3	60	22	82	8	24	6
RedSpeed	67	12	79	7	60	12	72	5	72	12	84	9	72	12	84	7	28	7
NovoaGlobal	65	19	84	6	44	19	63	9	69	19	88	7	63	19	82	8	30	8
Quipux US	50	21	71	9	45	21	66	7	65	21	86	8	65	21	86	6	30	8

Quantitative Points					
Proposer	Revenue to the City	Maximum Points	Total Points Awarded	Veteran's Points (if applicable)	Total Quantitative (Revenue + Veteran's)
Altumint	\$ 70,000.00	25	22	N/A	22
Blue Line Solutions	\$ 71,000.00	25	22	N/A	22
Jenoptik Smart Mobility Solutions	\$ 70,000.00	25	22	N/A	22
Modaxo Traffic Management	\$ 67,090.00	25	21	N/A	21
NovoaGlobal	\$ 60,000.00	25	19	N/A	19
Quipux US	\$ 68,333.00	25	21	N/A	21
RedSpeed	\$ 39,000.00	25	12	N/A	12
Sensys Gatso USA	\$ 80,500.00	25	25	N/A	25
Verra Mobility	\$ 67,500.00	25	21	N/A	21

OMB Available Balance as of 10/22/2024:

A1. Scope of Work.

The Contractor will supply a school zone speed detection system (SDS) for up to an initial eight (8) locations identified through the city's traffic consultant with potentially additional locations determined at a later date. The Contractor shall provide and install all equipment (to the satisfaction of the City) and monitor the camera system for violations. The equipment, installation, and monitoring will be provided at no cost to the City with revenue sharing of any collections. All installation, capital, electrical, maintenance, calibration, administration, and regulatory compliance costs are the responsibility of the vendor. The Contractor is responsible for ensuring the program meets and maintains compliance with all local, state, and federal laws. In addition, the Contractor's solution must conform to Florida Department of Transportation ("FDOT") School Zone Speed Detection System Placement and Installation specifications found in Appendix E herein.

The speed detection camera system is not anticipated to have any direct costs for the City and, as such, there is no review needed at this time to determine if there is sufficient available balance to cover this item.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2024-274-DF, FOR SPEED DETECTION CAMERA SYSTEM FOR SCHOOL ZONES; AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH MODAXO TRAFFIC MANAGEMENT USA INC., AS THE TOP-RANKED PROPOSER; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH MODAXO TRAFFIC MANAGEMENT USA INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH SENSYS GATSO USA, INC., AS THE SECOND RANKED PROPOSER; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH SENSYS GATSO USA, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH JENOPTIK NORTH AMERICA, INC., AS THE THIRD RANKED PROPOSER; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AN AGREEMENT UPON CONCLUSION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION.

WHEREAS, On April 3, 2024, the Mayor and City Commission authorized the issuance of RFP 2024-274-DF for speed detection camera system for school zones; and

WHEREAS, on June 27, 2024, the City received proposals from the following nine (9) firms: Altumint, Inc.; American Traffic Solutions, Inc d/b/a Verra Mobility; Blue Line Solutions LLC; Jenoptik North America, Inc.; Modaxo Traffic Management USA Inc.; NovoaGlobal, Inc.; Quipux US LLC; RedSpeed Florida LLC; and Sensys Gatso USA, Inc; and

WHEREAS, on July 3, 2024, the City Manager appointed the Evaluation Committee, via LTC # 277-2024, comprised Ghassan Choueiry, Senior Transportation Engineer, Transportation & Mobility Department; Ozzie Macias, Chief Technology Officer, Information Technology Department; Alejandro Mouro, Detective, Police Department; and Kyle Teijeiro, Senior Budget Analyst, Office of Management and Budget; and

WHEREAS, the Committee convened on September 19, 2024, to consider the proposals received; and

WHEREAS, the Committee was provided an overview of the project, information relative to the City's Cone of Silence Ordinance, the Government Sunshine Law, and general information on the scope of services and a copy of each proposal; and

WHEREAS, the Committee was instructed to score and rank each proposal pursuant to the evaluation criteria established in the RFP; and

WHEREAS, the evaluation process resulted in the proposers being ranked by the Evaluation Committee in the following order:

- 1st - Modaxo Traffic Management USA Inc.
- 2nd - Sensys Gatso USA, Inc.
- 3rd - Jenoptik North America, Inc.
- 4th - Altumint, Inc.

5th - American Traffic Solutions, Inc d/b/a Verra Mobility
6th - Blue Line Solutions LLC
7th - RedSpeed Florida LLC
8th - NovoaGlobal, Inc.
8th - Quipux US LLC; and

WHEREAS, after reviewing all of the submissions and the Evaluation Committee process, the City Manager concurs with the results of the Evaluation Committee and finds Modaxo Traffic Management USA Inc., the top-ranked firm, to be the best qualified firm to provide the services; and

WHEREAS, Modaxo Traffic Management USA Inc. has provided satisfactory services to the City as the incumbent red light camera enforcement firm since 2019.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, hereby accept the recommendation of the City Manager, pursuant to Request for Proposals (RFP) No. 2024-274-DF, for Speed Detection Camera System for School Zones; authorize the Administration to enter into negotiations with Modaxo Traffic Management Usa Inc., as the top-ranked proposer; further, if the Administration is not successful in negotiating an agreement with Modaxo Traffic Management Usa Inc., authorize the Administration to enter into negotiations with Sensys Gatso Usa, Inc., as the second ranked proposer; further, if the Administration is not successful in negotiating an agreement with Sensys Gatso Usa, Inc., authorize the Administration to enter into negotiations with Jenoptik North America, inc., as the third ranked proposer; and further authorize the City Manager and City Clerk to execute an agreement upon conclusion of successful negotiations by the Administration.

PASSED AND ADOPTED this _____ day of _____ 2024.

ATTEST:

RAFAEL E. GRANADO, CITY CLERK

STEVEN MEINER, MAYOR

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney *DH* Date

10/22/2024

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov

Via e-Mail: mjm@Redspeed.com
November 19, 2024

Michael J. McAllister
RedSpeed Florida, LLC
6245 Clark Center Avenue, Suite 3
Sarasota, FL 34328

RE: Response to Bid Protest Relating to RFP 2024-274-DF, Speed Detection Camera System for School Zones filed by RedSpeed Florida, Inc., pursuant to Section 2-371(2) of the City of Miami Beach Code.

Dear Mr. McAllister,

The City has reviewed the bid protest filed by RedSpeed Florida, Inc. ("RedSpeed") on October 24, 2024, protesting the City Manager's award recommendation pursuant to RFP 2024-274-DF, Speed Detection Camera System for School Zones (the "RFP") and arguing that City staff misunderstood RedSpeed's Appendix B Revenue Proposal form (the "Revenue Proposal") and failed to accurately calculate RedSpeed's quantitative score, resulting in a qualitative score of 12 instead of 20. After reviewing the particulars upon which RedSpeed's protest has been submitted, the City hereby rejects RedSpeed's protest and, in support thereof, finds as follows.

Background

Pursuant to Section 316.008(5) of the Florida Statutes, a municipality assessing and collecting penalties under a speed detection system in school zones must (a) remit twenty dollars to the Department of Revenue for deposit into the General Revenue Fund, (b) retain sixty dollars to be used in accordance with Section 316.008(5), (c) remit three dollars to the Department of Revenue for deposit into the Department of Law Enforcement Criminal Justice Standards and Training Fund, (d) remit twelve dollars to the county school district in which the violation occurred and (e) retain five dollars for a school crossing guard recruitment and retention program. Thus, out of every \$100 collected, \$40 is immediately subtracted for remittance or retainage to the appropriate state or county funding pools and \$60 is retained by the City to fund the red-light camera in school zones program. The RFP required each bidder to complete a Revenue Proposal form indicating the percentage of the City revenue the bidder intended to retain. On May 29, 2024, the City issued Addendum No. 4 revising components of, and providing new attachments for, the RFP, and providing responses to questions posed by interested bidders. In response to Question No. 50 of Addendum No. 4, the City clarified that "[t]he revenue share shall be based on the allowable portion retained by the City." The allowable portion thus excludes any disbursements required by Section 316.1896 of the Florida Statutes.

RedSpeed's Revenue Proposal

While reviewing the RedSpeed Revenue Proposal, the City noted a red asterisk at the end of the Gross Annual Estimated Revenue to the City ("Estimated City Revenue"). This asterisk directed City staff to the bottom of the Revenue Proposal, which indicated that the Estimated City Revenue was \$79,000 **including disbursements to the state, schools, and local police**. The City notes that RedSpeed was the **only** bidder to condition its revenue proposal to the City as including the legally required disbursements to the State, local schools, and local police. This additional information that was not requested from bidders left the City with no choice, considering the City's response to Question No. 50 of Addendum No. 4 and Section 316.1896(5) of the Florida Statutes, but to review RedSpeed's proposal as a proposal to retain 21% of the total amount collected by the school zone cameras. With RedSpeed retaining \$21 out of every \$100 collected, and another \$40 already earmarked for distribution to certain state and local governmental bodies, the City's portion under the RedSpeed proposal would be \$39. In an August 14, 2024, email, the City informed RedSpeed contacts Robert Liberman, Luke Heyman, and Greg Parks of the City's interpretation of the RedSpeed Revenue Form. RedSpeed did not respond to the City's August 14 email until October 17, 2024, two months later, when RedSpeed disputed the City's interpretation and requested the City re-calculate RedSpeed's bid scores based on RedSpeed's new explanation of its Revenue Proposal. Both in its October 17, 2024, communication and now, RedSpeed argues that the City's interpretation of the RedSpeed Revenue Proposal was not only "clearly" erroneous, but also arbitrary and capricious. The City disagrees. The City's actions were based on the information presented by RedSpeed in RedSpeed's bid. Revising the RFP award based on contradicting information submitted by a bidder several months after the bid deadline would be squarely in conflict with the long-standing principles of public procurement. Interpreting RedSpeed's bid in a manner that contradicts the explicitly stated conditions of RedSpeed's bid would be equally in conflict.

RedSpeed further claims that the Revenue Proposal form was "confusing as to whether it was discussing \$100,000 of revenue based on the total fee per citation...or only the City's share of ticket revenue..." This claim from RedSpeed continues to disregard the City's response to Question No. 50 of Addendum No. 4, as explained above. In addition to a bidder's right to seek clarification on any aspect of a solicitation that it finds unclear, Section 2-371 of the City of Miami Beach code permits bidders to challenge the specifications, requirements, and/or terms of a solicitation as long as such challenge is made at least ten (10) business days prior to the opening of bids. Failure to timely protest bid specifications, requirements, and/or terms of the solicitation is a waiver of a bidder's right to later do so. If RedSpeed took issue with any portion of the solicitation, whether due to confusion or because of a disagreement over the formulas used in the solicitation, RedSpeed's bid protest is not the appropriate channel to do so. Notwithstanding the untimely nature of these now-raised concerns, RedSpeed proactively clarified its interpretation of the Revenue Proposal form by its use of the above-referenced red asterisk. RedSpeed's attempts to now complicate and misinterpret the Revenue Proposal form and change the intent of RedSpeed's bid as written in RedSpeed's own words are rejected.

Florida courts have repeatedly made clear that, in reviewing challenges to a public agency's procurement decisions, a "public body has wide discretion" in the bidding process and "its decision, when based on an honest exercise" of the discretion, should not be overturned "even if it may appear erroneous and even if reasonable persons may disagree." *Department of Transportation v. Groves-Watkins Constructors*, 530 So.2d 912, 913 (Fla.1988)(*quoting Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So.2d 505 (Fla.1982)) (emphasis in original). "[The] sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly." *Groves-Watkins*, 530 So.2d at 914. The City clearly acted in accordance with Florida law and the principles of

a fair and open procurement process by taking RedSpeed at its word instead creative means to interpret information contrary to its clear presentation and to the benefit of one bidder over others.

For the reasons set forth above, the City denies RedSpeed's protest. RedSpeed may appeal this decision by filing an original action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in accordance with the applicable court rules. Any action not brought in good faith shall be subject to sanctions including damages suffered by the City and attorney's fees incurred by the City in defense of such wrongful action.

Respectfully Submitted,



Eric T. Carpenter
City Manager



Ricardo J. Dopico
City Attorney

CC: Mayor Steven Meiner and Members of the City Commission
Rafael E. Granado, City Clerk
Kristy Bada, Chief Procurement Officer

VIA E-MAIL

Mr. Danny Flores
Procurement Contracting Officer
City of Miami Beach Procurement Department
1755 Meridian Avenue, 3rd floor
Miami Beach, FL 33139

**Re: RFP 2024-274-DF - Speed Detection Camera System for School Zones
Request for Scoring Correction**

Dear Mr. Flores,

My company, RedSpeed, is the undisputed leader in automated school zone enforcement solutions in the southeastern United States. The Selection Committee agreed and awarded RedSpeed the most qualitative ranking points in the City's recent RFP for a school zone safety program.¹

Unfortunately, the City staff made a ministerial error in computing RedSpeed's "quantitative" pricing under the RFP which, under the RFP terms, should have awarded RedSpeed either 20 or 21 points for price (depending on the rounding for a raw calculation of 20.19). Either way, RedSpeed would be the top-ranked proposer with the best aggregate ranking. Therefore, we respectfully request the scoring be corrected to reflect RedSpeed's price of \$21.00 per collected violation, which would rank RedSpeed first in overall points.

Facts and Basis for Request

As a starting point, the pricing sheet for the City was a bit confusing as to whether it was discussing \$100,000 of revenue based on the total fee per citation (\$100 per citation) or only the City's share of ticket revenue (\$60 per citation). **To avoid doubt, RedSpeed's proposal clearly stated that we would retain \$21.00 per paid citation, which would leave the city with \$39.00 per paid citation.** The City, in a communication to RedSpeed, indicated that it would consider this as approximately \$39,000 of revenue. However, this calculation was clearly erroneous. In the later scoring it was clarified that the \$100,000 of hypothetical revenue referred to the City's \$60 share. Working backwards, we know that means 1,666 paid citations. RedSpeed's total fee would therefore be $1,666 \times \$21.00 = \$34,986$, leaving \$65,014 for the City ($\$100,000 - \$34,986$), not \$39,000 as apparently calculated.²

RedSpeed® MIAMI BEACH

Revenue Proposal

The fee includes all costs required and associated with the School Photo Enforcement system.

Includes camera equipment, installation, maintenance, signage, violation processing services, DMV records access, first class mailing of required documents, mailbox and credit card processing services, call center, web-enabled police review portal, and automated violation clearing portal, reports, and public awareness program support.

\$21.00 per each paid violation.

The City shall reimburse the costs of Certified Mail of Notice of Violation's converted to Uniform Traffic Citations.

RedSpeed retains 5% credit card convenience fee paid by violators.

**APPENDIX B
REVENUE PROPOSAL FORM**

I affirm to submit Appendix B, Revenue Proposal Form, in its entirety by the deadline established for the proposal and that the price based on the revenue proposal form below represents the entire cost of the items in full accordance with the requirements of this RFP, inclusive of its terms, conditions, specifications and other requirements stated herein, and that no claim will be made on account of any increase in wage scales, material prices, delivery delays, taxes, insurance, cost indexes or any other unless a cost escalation provision is allowed herein and has been exercised by the City Manager in advance. The Revenue Proposal Form (Appendix B) shall be completed in its entirety. All corrections on the Revenue Proposal Form (Appendix B) shall be initialed.

Item	Estimated Annual Collection (A)	Percentage of Revenue Share Vendor to Retain (B)	Annual Estimated Revenue to the City (C) A x B = C
1	\$100,000.00	21 %	\$79,000.00

This form annual estimated costs the City shall be added to obtain Total Points in the Evaluation of Proposals.
Resolving uncertainties in the form, clauses, and cost points.

¹ This communication is sent in accordance with the Cone of Silence provision of the RFP and with copy to the City Clerk.

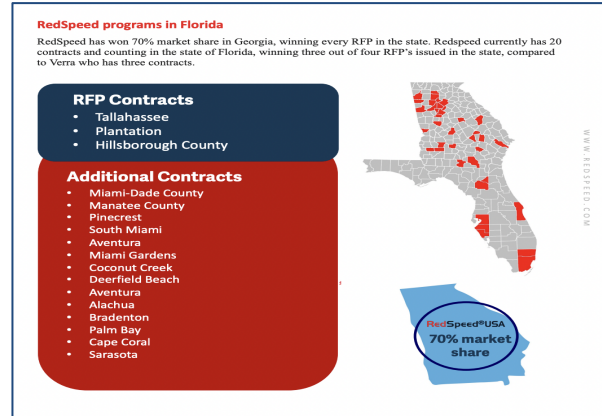
² RedSpeed's corrected revenue to the City: \$65,014, is calculated as follows: (1) The highest revenue proposal is from Sensys Gatso USA at \$80,500; (2) Using the formula: (RedSpeed's revenue / Highest revenue) x Maximum points ($\$65,014 / \$80,500 \times 25 = 20.19$ points). (3) For simplicity and avoidance of doubt, we recalculated the scoring based on 20 points (rounded-down) and note that RedSpeed is the correct top ranked proposer.

Applying the scoring formula provided in the RFP, this results in a raw score of 21.19 and should result in either 20 or 21 points for RedSpeed (depending on rounding), not the lower score currently assigned. It is a matter of fact that with this corrected score, in conjunction with RedSpeed receiving the highest qualitative score among all bidders, RedSpeed would be the top-ranked firm overall with a low aggregate score (i.e. best ranking) of 10, versus Modaxo's 11. Likewise, RedSpeed has the highest overall qualitative scoring with 271 points compared to 268 for Modaxo.

As there has not yet been a recommendation to award, this is a request for a ministerial correction and does not require a protest or other remedy. Therefore, we respectfully request:

- A review and recalculation of the points awarded to RedSpeed for the Revenue Proposal.
- A correction of the overall scoring to reflect the accurate point allocation.

RedSpeed is committed to partnering with the City of Miami Beach to create the safest possible environment for your school children while maximizing the financial benefits to the City. Our proposal offers a unique combination of proven expertise, local support, cutting-edge technology, and financial advantage that we believe is unmatched by any other bidder. RedSpeed has achieved 70% market share in Florida and Georgia because its technology is unmatched and it invests in local resources, including a fully staffed Florida office, team and technical center.



RedSpeed		Modaxo	
Florida Client	School Zones	Florida Client	School Zones
Miami-Dade County	206	None	0
South Miami	5		
Miami Gardens	15		
West Miami	2		
Pinecrest	11		
Aventura	1		
Plantation	18		
Coconut Creek	25		
Deerfield Beach	8		
Delray Beach	10		
Manatee County	50		
Tallahassee	43		
Hillsborough County	23		
Palm Bay	16		
Cape Coral	13		
Bradenton	11		
Sarasota	11		
Alachua	4		
Lawtey	1		
High Springs	1		

Miami-Dade County, Hillsborough County, Manatee County, Tallahassee, South Miami, Miami Gardens, Aventura, Pinecrest, West Miami, Sarasota and many other local governments in Florida entrust their programs to RedSpeed. We are currently installing more than 200 cameras in Florida and are the first to bring programs live in the state. We have already done the heavy work with Miami Dade Courts and permitting bodies and have the expertise, facilities and manpower needed to get your program up and running smoothly.

By comparison, **Modaxo is a risky choice** for Miami Beach because it has no Florida clients and no successful installations in Florida.

Our team stands ready to provide any additional information or clarification needed to support this review process. We appreciate your time and attention to this matter and look forward to the opportunity to further discuss how we can best serve the City of Miami Beach.

Respectfully submitted,
REDSPEED FLORIDA, LLC



Michael J. McAllister, Esq.

cc: Rafael E. Granado City Clerk, rafaelgranado@miamibeachfl.gov



Corrected Scoring

Proposer	Grassan Chouhary				Ozlie Macias				Alejandro Moura				Kyla Tejleiro				Qualitative Total Points	
	Qualitative	Quantitative	Subtotal	Ranking	Qualitative	Quantitative	Subtotal	Ranking	Qualitative	Quantitative	Subtotal	Ranking	Qualitative	Quantitative	Subtotal	Ranking		Low Aggregate Score
Alumint	64	22	86	5	56	22	78	70	92	3	48	22	90	4	256			
Blue Line Solutions	56	22	78	8	50	22	72	70	92	3	40	22	82	8	236			
Jenoptik Smart Mobility Solutions	63	22	85	6	60	22	82	69	91	6	49	22	91	2	261			
Modaco Traffic Management	68	21	89	2	60	21	81	73	94	2	67	21	88	5	268			
NovotGlobal	65	19	84	7	44	19	63	69	88	8	43	19	82	8	241			
Octotrafic US	50	21	71	9	45	21	66	65	21	86	9	45	21	86	7	225		
RedSpeed	67	20	87	3	60	20	80	72	92	3	72	20	92	1	271			
Sense Gatox USA	65	25	90	1	40	25	65	70	95	1	66	25	91	2	241			
Verra Mobility	66	21	87	3	54	21	75	69	90	7	66	21	87	6	255			

Original Scoring

Original Scoring

RFP 2024-274-DF Speed Detection Camera System for School Zones															
Proposer	Grassan Chouhary			Ozlie Macias			Alejandro Moura			Kyla Tejleiro			Low Aggregate Totals		
	Qualitative	Quantitative	Subtotal	Ranking	Qualitative	Subtotal	Ranking	Qualitative	Subtotal	Ranking	Qualitative	Subtotal	Ranking	Aggregate Totals	Ranking
Alumint	64	22	86	4	56	22	78	3	70	22	92	3	68	22	13
Blue Line Solutions	56	22	78	8	50	22	72	5	70	22	92	3	60	22	24
Jenoptik Smart Mobility Solutions	63	22	85	5	60	22	82	1	69	22	91	5	69	22	6
Modaco Traffic Management	68	21	89	2	60	21	81	2	73	21	94	2	73	21	1
NovotGlobal	65	19	84	7	44	19	63	6	68	19	88	7	63	19	10
Octotrafic US	50	21	71	9	45	21	66	7	65	21	86	8	63	21	12
RedSpeed	67	20	87	3	60	20	80	3	72	20	92	3	72	20	3
Sense Gatox USA	65	25	90	1	40	25	65	8	70	25	95	1	66	25	7
Verra Mobility	66	21	87	3	54	21	75	4	69	21	90	6	66	21	11

Quantitative Points					Total Quantitative Points (Maximum)				
Proposer	Reference to the City	Maximum Points	Total Points Awarded	Maximum Points (Reference)	Reference to the City	Maximum Points	Total Points Awarded	Maximum Points (Reference)	Total Quantitative Points (Maximum)
Alumint Solutions	\$ 70,000.00	25	22	N/A	\$ 70,000.00	25	22	N/A	22
Blue Line Solutions	\$ 70,000.00	25	22	N/A	\$ 70,000.00	25	22	N/A	22
Jenoptik Smart Mobility Solutions	\$ 70,000.00	25	22	N/A	\$ 70,000.00	25	22	N/A	22
Modaco Traffic Management	\$ 67,000.00	25	21	N/A	\$ 67,000.00	25	21	N/A	21
NovotGlobal	\$ 60,000.00	25	19	N/A	\$ 60,000.00	25	19	N/A	19
Octotrafic US	\$ 68,333.00	25	21	N/A	\$ 68,333.00	25	21	N/A	21
RedSpeed	\$ 39,000.00	25	25	N/A	\$ 39,000.00	25	25	N/A	25
Sense Gatox USA	\$ 60,500.00	25	25	N/A	\$ 60,500.00	25	25	N/A	25
Verra Mobility	\$ 67,850.00	25	21	N/A	\$ 67,850.00	25	21	N/A	21

Revenue Proposal



The fee includes all costs required and associated with the School Photo Enforcement system.

Includes camera equipment, installation, maintenance, signage, violation processing services, DMV records access, first class mailing of required documents, lockbox and credit card processing services, call center, web-enabled police review portal, web-enabled violation viewing portal, reports, and public awareness program support.

\$21.00 per each paid violation.

The City shall reimburse the costs of Certified Mail of Notice of Violation's converted to Uniform Traffic Citations.

RedSpeed retains 5% credit card convenience fee paid by violators.

APPENDIX B REVENUE PROPOSAL FORM

Failure to submit Appendix B, Revenue Proposal Form, in its entirety by the deadline established for the receipt of proposals will result in proposal being deemed non-responsive and being rejected.

Bidder affirms that the prices stated on the revenue proposal form below represent the entire cost of the items in full accordance with the requirements of this RFP, inclusive of its terms, conditions, specifications and other requirements stated herein, and that no claim will be made on account of any increase in wage scales, material prices, delivery delays, taxes, insurance, cost indexes or any other unless a cost escalation provision is allowed herein and has been exercised by the City Manager in advance. The Revenue Proposal Form (Appendix B) shall be completed in its entirety. All corrections on the Revenue Proposal Form (Appendix B) shall be initialed.

WWW.REDSPEED.COM

Item	Estimated Annual Collections ¹ (A)	Percentage of Revenue Share Vendor to Retain (B)	Gross Annual Estimated Revenue to the City ² (C) $A - (A \times B) = C$
1	\$100,000.00	21 %	\$ 79,000*

¹The estimated amounts stated herein are for calculation purposes only. Actual amounts may be greater or less than the estimated amounts.

²The total annual estimated cost to the City shall be utilized to allocate Cost Points in the Evaluation of Proposals.

*including disbursements to the state, schools, and local police.

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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov

November 19, 2024

Via e-mail: Dmendez@bilzin.com

Diana C. Mendez
Bilzin Sumberg Baena Price & Axelrod LLP c/o Sensys Gatso USA, Inc,
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131

RE: Response To Bilzin Sumberg Bid Protest dated October 24, 2024, Regarding Request for Proposals 2024-274-DF entitled "Speed Detection Camera System for School Zones" (the "RFP").

Dear Ms. Mendez,

The City is in receipt of the protest submitted by Bilzin Sumberg Baena Price & Axelrod LLP ("Bilzin Sumberg") on behalf of Sensys Gatso USA, Inc ("Sensys Gatso"), dated October 24, 2024, in response to the City Manager's recommendation to award a contract to Modaxo Traffic Management USA Inc. ("Modaxo"), the bidder deemed the top-ranked proposer to the RFP. In its protest, Sensys Gatso argues: 1) Modaxo's Revenue Proposal did not include all costs, and the revenue share Modaxo will retain is subject to increase during the option years of the contract; 2) Modaxo conditioned its proposal by marking a substantial and material portion of its proposal as Proprietary and Confidential information, requiring the City to confer with Modaxo before disclosing such information to any third party; 3) Sensys Gatso offered the highest revenue share; 4) a single committee member who ranked Sensys Gatso 8th instead of 1st "arbitrarily and capriciously" drove the final result by scoring Sensys Gatso disproportionately lower than other proposals; and 5) the City's scoring method was flawed. The City has reviewed the particulars of Sensys Gatso's bid protest and denies said protest for the reasons set forth below.

Responsiveness of Modaxo's Bid

In addition to its Revenue Cost Proposal, Modaxo included a page titled "Pricing and Assumptions" (Page 5-1, TAB 5 – Revenue Proposal of its proposal) in its bid. On this page, Modaxo offered unconditioned terms including a pass-through cost to the City for the Uniformed Traffic Citation (UTC) mailings and a request for a 3% annual cost-of-living adjustment (COLA) for the option year after the initial contract term. While it is unclear how Modaxo's proposal intends to pass through the costs of mailing, the RFP specifications clearly state that "[t]he Contractor is responsible for ensuring the program meets and maintains compliance with all local, state, and federal laws." These points, among other non-conditional terms that accompany Modaxo's proposal, are subject to negotiations as provided in Section 0100 – INSTRUCTION TO BIDDERS, sub-section 12 titled "NEGOTIATIONS" where "[i]t is also understood and acknowledged by Bidders that no property, contract or legal rights of any kind shall be created at any time until and unless an Agreement has been agreed to; approved by the City; and executed by the parties." The City disagrees that Modaxo's proposal should have been deemed non-responsive for these unconditional and supplemental assumptions. If these supplemental and non-binding terms proposed by Modaxo result in a failure of negotiations, the City will move on to negotiations with

Sensys Gatso, the second-ranked proposer.

Trade Secret Exemptions

Due to multiple bidders marking portions of their bids as "confidential" or "proprietary," the City contacted these bidders to confirm whether they sought trade secret protection as permitted under Section 119 of the Florida Statutes. Inserting the words "confidential" or "proprietary" on the cover page, header, or footer of a document does **not** entitle the document to protection under Florida law. Thus, on July 10, 2024, the City contacted bidders, including Modaxo, who marked any portion of their bids as "confidential" or "proprietary" to clarify whether they in fact sought trade secret protection. The City instructed all bidders affirming a desire for trade secret protection to complete the City's Trade Secret Affidavit and submit redacted copies of their proposal documents. Upon receipt of a completed Trade Secret Affidavit and properly redacted proposal, and as explained in the Trade Secret Affidavit, the City will only produce unredacted copies of a proposal after a court of final judgement has determined that the information contained in the proposal is not subject to trade secret protection. That same day, Modaxo retracted the "confidential" or "proprietary" markings in its bid and informed the City that it was not seeking trade secret protection for any portion of its proposal (**Exhibit A**). The issue of Modaxo marking portions of its bid as "confidential" or "proprietary" is thus moot.

Evaluation Committee Rankings and Scoring Criteria

Despite correctly identifying the Evaluation Committee's role as advisory to the City Manager, Sensys Gatso asserts that its unsuccessful bid is at least partially due to the alleged arbitrary and capricious nature of an Evaluation Committee member's "disproportionally lower" scoring of the Sensys Gatso proposal, which to the bidder's disappointment, was not substantiated by facts or merits. To rectify this situation, Sensys Gatso suggests that the City must now change the nature of evaluation committee scoring to eliminate unfavorable results. In support of its claims, Sensys Gatso notes the differences between the Evaluation Committee criteria in the City of Miami Beach and Miami Dade County. This point is moot as well. Section 36 of the terms and conditions of the RFP states that any protests to the terms of the RFP must be made at least ten (10) business days prior to the opening of bids. Failure to timely protest specifications, requirements, or terms of the solicitation results in a waiver of a bidder's right to later do so. If Sensys Gatso took issue with Section 0400, 7 (Determination of Final Ranking) and its procedural differences from those employed in nearby municipalities, a post-award bid protest is not the appropriate time or place to raise these concerns. The City cannot adhere to unwritten rules and procedures inspired by the practices implemented by other municipalities simply because it would benefit a certain proposer in a certain situation. To do so would be squarely in conflict with the long-standing principles of public procurement. Sensys Gatso's allegations amount to nothing more than an effort by a disappointed bidder to substitute its judgment for the reasonable judgment of the City Manager and the Evaluation Committee.

Sensys Gatso also correctly identified its bid as the bid with the highest revenue share for the City. However, the award under a Request for Proposals is made after considering a variety of factors including, but not limited to, revenue share, the Evaluation Committee's aggregate scores, and the technical differences of the proposals. In addition to these considerations, the City Manager's authority and discretion in recommending an award to the Mayor and City Commission are granted by Section 2-369 of the City of Miami Beach Code of Ordinances ("Code"), which is referenced in Section 0100, 11 (Determination of Award) of the RFP. Section 2-369 of the Code states that "[i]n determining the...best bidder...[the City Manager shall consider]" the following:

- (1) the ability, capacity and skill of the Bidder to perform the contract;
- (2) whether the bidder can perform the contract within the time specified, without delay or interference;

- (3) the character, integrity, reputation, judgment, experience and efficiency of the Bidder;
- (4) the quality of performance of previous contracts; and
- (5) the previous and existing compliance by the Bidder with laws and ordinances relating to the contract.

While Sensys Gatso might disagree with the City Manager's award recommendation, Florida courts have repeatedly made clear that, in reviewing challenges to a public agency's procurement decisions, a "public body has wide discretion" in the bidding process, and "its decision, when based on an honest exercise" of that discretion, should not be overturned "even if it may appear erroneous and even if reasonable persons may disagree." *Dep't of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 913 (Fla. 1988) (quoting *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505 (Fla.1982)) (emphasis in original). "[The] sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly." *Id.* It is worth noting that the agency in this regard is a singular body, regardless of the alleged thought processes of a single Evaluation Committee member.

Sensys Gatso's Supplemental Protest

The City is in receipt of Sensys Gatso's supplemental protest filed October 28, 2024, addressing concerns over RedSpeed's proposal. The City has separately addressed the merits of the RedSpeed proposal and declines to address them in this protest response as well.

Conclusion

In the case of RFP 2024-274-DF, Modaxo is the highest-ranked, responsive, and responsible bidder. Sensys Gatso has neither alleged any facts nor furnished any evidence that would support a finding of non-responsiveness by Modaxo. Further, Sensys Gatso has not set forth any facts or evidence that bring into question the evaluation committee process that resulted in the ranking of proposers pursuant to the RFP. Lastly, Sensys Gatso's challenges to the methodology of the Evaluation Committee are untimely and moot. For the reasons set forth above, the City hereby denies Sensys Gatso's protest.

Sensys Gatso may appeal this decision by filing an original action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in accordance with the applicable court rules. Any action not brought in good faith shall be subject to sanctions, including damages suffered by the City and attorney's fees incurred by the City in defense of such wrongful action.

Respectfully Submitted,



Eric T. Carpenter
City Manager



Ricardo J. Dopico
City Attorney

CC: Mayor Steven Meiner and Members of the City Commission
Rafael E. Granado, City Clerk
Kristy Bada, Chief Procurement Officer
Les Pantin, Pantin GOV

EXHIBIT A

Hooper, Daren

From: Victoria Fulton <victoria.fulton@elovate.com>
Sent: Wednesday, July 10, 2024 2:38 PM
To: Flores, Danny; Daniel Seid
Cc: Granado, Rafael
Subject: Re: RFP 2024-274-DF Speed Detection Camera System for School Zones - Trade Secret Certification

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE CAUTION WHEN REPLYING AND OPENING LINKS OR ATTACHMENTS]

Hi Danny,

I have spoken internally and in light of the details within the Trade Secret Affidavit we understand there is significant effort to withhold the propriety information due to Sunshine Law.

With this in mind, we revoke any instance or inference of trade secret, confidential or proprietary claim within our proposal.

Thanks,

Victoria Fulton »
Sr. Director, Sales
Mobile 416-318-6911
victoria.fulton@elovate.com



A Modaxo Company

From: Flores, Danny <DannyFlores@miamibeachfl.gov>
Date: Wednesday, July 10, 2024 at 7:47 PM
To: Daniel Seid <daniel.seid@elovate.com>
Cc: Granado, Rafael <RafaelGranado@miamibeachfl.gov>, Victoria Fulton <victoria.fulton@elovate.com>
Subject: RE: RFP 2024-274-DF Speed Detection Camera System for School Zones - Trade Secret Certification

EXTERNAL: Do not click links or open attachments if you do not recognize the sender.

Please advise your estimated timeframe so that we may discuss internally.

MIAMIBEACH



Danny Flores (he/him/his), CPPB, NIGP-CPP
Procurement Contracting Officer
City of Miami Beach Procurement Department
1755 Meridian Avenue, 3rd floor, Miami Beach, FL 33139
Tel: 305-673-7490 ext. 26652 | Mon-Fri. 8 am - 4:30 pm



From: Daniel Seid <daniel.seid@elovate.com>
Sent: Wednesday, July 10, 2024 1:46 PM
To: Flores, Danny <DannyFlores@miamibeachfl.gov>
Cc: Granado, Rafael <RafaelGranado@miamibeachfl.gov>; Victoria Fulton <victoria.fulton@elovate.com>
Subject: Re: RFP 2024-274-DF Speed Detection Camera System for School Zones - Trade Secret Certification

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE CAUTION WHEN REPLYING AND OPENING LINKS OR ATTACHMENTS]

Hi, we are in the process of working on this however require more time for a response. I have added my manager Victoria who can respond when ready as I will not have access to email shortly.

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Flores, Danny <DannyFlores@miamibeachfl.gov>
Sent: Wednesday, July 10, 2024 4:39:37 PM
To: Flores, Danny <DannyFlores@miamibeachfl.gov>
Cc: Granado, Rafael <RafaelGranado@miamibeachfl.gov>
Subject: RFP 2024-274-DF Speed Detection Camera System for School Zones - Trade Secret Certification

EXTERNAL: Do not click links or open attachments if you do not recognize the sender.

Good afternoon,

Your submission contains language claiming proprietary information. We request that you review and complete the attached document and provide the materials requested within.

If this is not the case, please provide in writing that you revoke any instance or inference of trade secret, confidential or proprietary claim within your firm's proposal.

Please provide by **July 10, 2024**, end of business.

Thank you,

MIAMIBeach



Danny Flores (he/him/his), CPPB, NIGP-CPP
Procurement Contracting Officer
City of Miami Beach Procurement Department
1755 Meridian Avenue, 3rd floor, Miami Beach, FL 33139
Tel: 305-673-7490 ext. 26652 | Mon-Fri. 8 am - 4:30 pm
www.miamibeachfl.gov



October 24, 2024

VIA ELECTRONIC MAIL

Mr. Eric Carpenter
City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

**Re: Protest to Recommendation to Award Request for Proposals No.
2024-274-DF Speed Detection Camera System for School Zones**

Dear Mr. Carpenter:

This firm represents Sensys Gatso USA, Inc. ("**Sensys Gatso**"), regarding Request for Proposals No. 2024-274-DF Speed Detection Camera System for School Zones ("RFP"). According to Section 2-371, Authority to Resolve Protested Bids and Proposed awards, of the Code of the City of Miami Beach, Florida ("Code"), we are submitting this Bid Protest and Supporting Documentation to the Award Notification issued by the City on October 22, 2024 ("Award Notification" or "Recommendation") (**Exhibit A**).

I. SUMMARY OF THE ARGUMENT

Sensys Gatso was one of nine proposers who responded to the RFP; was the top ranked proposer by 3 of 4 Evaluation Committee members; and was the proposer offering the highest revenues to the City. Had it not been for the City's flawed evaluation of the proposal submitted by Modaxo Management USA, Inc. ("**Modaxo**"), the City's recommended proposer, Sensys Gatso would have been the top ranked proposer by the Evaluation Committee and the recommended awardee of the RFP.

As more fully detailed below, Modaxo's proposal should have been disqualified for being non-responsive to the RFP specifications because it materially deviated from the RFP specifications. The RFP required proposers to include all costs in the Revenue Proposal Form located in Appendix B of the RFP. Instead, Modaxo's revenue proposal is subject to the City being responsible for the costs of UTC mailings as well as a 3% annual COLA for the option year periods at the end of the base contract term. In addition, Modaxo deviated from the City's requirement that the proposal be part of the public domain as defined by the State of Florida Sunshine and

Public Records Laws when it marked significant portions of its proposal proprietary and confidential.

According to Florida law, the City may not waive material deviations from the RFP specifications. A deviation is material if it affects the price of the proposal, gives the offerors an advantage or benefit not enjoyed by other offerors, or adversely impacts the interests of the agency. Because the deviations in Modaxo's proposal affect price and provide Modaxo the opportunity to have its proposal treated differently from other proposals after proposal submittal, the City cannot waive Modaxo's deviations from the RFP specifications and must disqualify its proposal as non-responsive.

Instead of disqualifying Modaxo's proposal, the City allowed the proposal to proceed to evaluations, where the final scores and ranking were driven by the arbitrary and capricious scoring of a single committee member who assigned disproportionately low scores to Sensys Gatso. While the majority of the Evaluation Committee ranked Sensys Gatso 1st place, the Evaluation Committee member with the outlier scores ranked Sensys Gatso 8th place (a lower ranking than a foreign proposer who, unlike Sensys Gato, has no experience providing services in the United States and has never obtained permitting for a project in Florida). Had it not been for the unreasonable low ranking that the Evaluation Committee member assigned to Sensys Gatso and the City's improper waiver of the deviations in Modaxo's proposal, Sensys Gatso would have been the top-ranked proposer.

II. STANDING AND TIMELINESS

As the second highest ranked proposer by the Evaluation Committee and the top ranked proposer by 3 of 4 Evaluation Committee members Sensys Gatso has standing to protest the City's Recommendation to Award the RFP to Modaxo. Sensys Gatso has a substantial interest in the outcome of the proceedings and has been injured as a result of the improper review of Modaxo's proposal. See Intercontinental Properties, Inc. v. State, Dep't of Health & Rehabilitative Servs., 606 So.2d 380, 386 (Fla. 3d DCA 1992); Overstreet Paving Co. v. State, Dept. of Transp., 608 So.2d 851, 853 (Fla. App. 2 Dist., 1992). Moreover, as required in Section 2-371 and the Award Notification, this Bid Protest and Supporting Documentation is being timely filed within two (2) days after the City issued the Award Notification on October 22, 2024.

Sensys Gatso submitted a public records request to the City on October 21, 2024. However, Sensys Gatso received the requested records less than two hours before the bid protest deadline. For that reason, Sensys Gatso reserves the right to supplement this Protest within a reasonable time after it has had time to review the records.

III. RELEVANT FACTS

A. The RFP

1. *The RFP required proposers to include all costs in the Revenue Proposal Form with the costs to remain fixed throughout the contract.*

The RFP was issued by the City on April 5, 2024, requesting proposals from qualified proposers for a school zone speed detection system (SDS) program in accordance with Section 316.008(9), Florida Statutes. See Solicitation 2024-274-DF, Speed Detection Camera System for School Zones, at 2 (Exhibit B) [hereinafter RFP].

According to the RFP, proposers were to provide and install all equipment and monitor the camera system for violations “**at no cost to the City with revenue sharing of any violations.**” RFP, Section 0100.3 (**emphasis added**). According Section 35 of the Formal Solicitations Terms and Conditions for Goods and Services incorporated by reference in Section 0200 of the RFP, the prices quoted by a proposer must remain firm and fixed during the duration of the contract. Formal Solicitations Terms and Conditions – Good and Services (Oct. 26, 2022), Section 35 (**Exhibit C**)[*hereinafter* Formal Solicitation Terms and Conditions].

Appendix A3(2) of the RFP, also indicated that prices quoted by proposers must remain firm throughout the duration of the contract, including any renewal periods. According to the RFP, the awarded contract will consist of an initial term of three (3) years, with the City having the option to extend for one (1) two-year renewal term or two (2) one-year renewal terms at the City’s sole discretion. RFP, Appendix A3 (1), Special Conditions. The RFP expressly stated that the selected contractor “maintain, **for the entirety of any renewal period, the same revenue share, terms, and conditions** included within the originally awarded contract.” RFP, Appendix A3 (2), Special Conditions (**emphasis added**).

The RFP required proposers to submit their revenue proposal under Tab 5 of the proposal using the City’s Revenue Proposal Form in Appendix B of the RFP. See RFP, Section 0300, 4 Tab 5. The materiality of the form is indicated at the top of the form cautioning proposers that failure to submit the form will result in the proposal being deemed non-responsive and being rejected. The form again indicated that the revenue proposal presented in the form must include all of the scope of the work required in the RFP and that the terms of the proposal shall remain fixed throughout contract duration:

Bidder affirms that the prices stated on the revenue proposal form below **represent the entire cost of the items in full accordance with the requirements of this RFP**, inclusive of its terms, conditions, specifications and other requirements stated herein, **and that no claim will be made on account of any increase in wage scales, material prices, delivery delays, taxes, insurance, cost indexes or any other unless a cost escalation provision is allowed herein** and has been exercised by the City Manager in advance.

RFP Appendix B (**emphasis added**).

The Revenue Proposal Form required proposers to provide the percentage of revenue share that the vendor would retain from annual collections and the annual estimated revenue to the City. See id.

Furthermore, in responding to multiple questions from proposers, the City emphasized that all costs must be included in the Revenue Proposal. Under Question 43, a proposer asked whether the integration and date provider handled consumption costs, the City unequivocally replied that “**all costs are to be absorbed by the awarded contractor.**” Addenda to RFP, Addendum 4, Q. 43(**Exhibit D**)(**emphasis added**). Then, under Question 50, a proposer asked whether the revenue share in the Revenue Proposal Form, was based on the full fine amount (\$100) or the reduced amount that goes to the City (\$60). The City replied that the revenue share is based on the portion retained by the City and, again, reminded proposers that the must include all costs in the revenue share calculation when it said:

The awarded bidder shall be responsible for any costs associated in delivering the services, in accordance with the RFP and compliance with all applicable local, county, state or deferral laws, regulations and ordinances.

Addenda to RFP, Addendum 4, Q. 50.

Finally, according to RFP Section A2, Specifications, proposers were required to provide details on how they **“will bear all costs and fees associated with litigation surrounding its system design, operations, maintenance, calibration, and violation parameters.”** RFP Appendix A(2), Minimum Requirements and Specifications.

The Revenue Proposal form was to be considered by the City as a quantitative criterion not subject to review by the Evaluation Committee. See RFP, Section 0300, 4 Tab 5 and Section 0400(6), Quantitative Criteria. Instead, the Revenue Proposal was to be reviewed by the City Manager, in preparation of his recommendation to the City Commission. The RFP allocated points to the Revenue Proposal based on a formula, which used the information supplied by the proposers in the Revenue Proposal Form. See RFP Section 0400(6), Quantitative Criteria.

2. *The RFP required proposals to be in the Public Domain and subject to disclosure under Florida Public Records law.*

The RFP also cautioned proposers that all information submitted to the City is subject to disclosure. In the Bid Submittal Questionnaire, which is a required form, proposers were asked to acknowledge that ***“all information contained [in their proposal] is part of the public domain as defined by the State of Florida Sunshine and Public Records Laws.”*** RFP at 5-6 (*emphasis added*). Moreover, in Section 14 of the Formal Solicitations Terms and Conditions, the City again notified the proposers that proposals are to be released according to Section 119.07(1), Florida Statutes, when it stated:

Bidders are hereby notified that all bids including, without limitation, any and all information and documentation submitted therewith, are exempt from public records requirements under Section 119.07(1), Florida Statutes, and s. 24(a), Art. 1 of the State Constitution under such time as the City provides notice of an intended decision or until thirty (30) days after opening of the bids, whichever is earlier.

Formal Terms and Conditions, Section 14.

Therefore, proposers were not to submit proprietary or confidential information to the City, nor attempt to obtain preferential treatment by being allowed the option to determine which portions of their proposal could be disclosed to the public.

B. Proposals Received by the City and Modaxo's Proposal

On June 28, 2024, the City received proposals from nine vendors, including the proposals submitted by Sensys Gatso and Modaxo.

1. *Modaxo's Revenue Proposal did not include all costs and the revenue share Modaxo will retain is subject to increases during the option years of the contract.*

Contrary to the RFP specifications, Modaxo included several conditions to its Revenue Proposal, which subject the City to costs in addition to the revenue share stated in Modaxo's Revenue

Proposal Form. See Modaxo, Tab 5, Revenue Proposal, at 2 (**Exhibit E**). Particularly, Modaxo states that it will be “responsible for the costs of print and mail” of the initial citation. However, it says that it will “pass-through the cost of the UTC mailings to the City.” Id. Based on the Speed Survey provided by the City, Sensys Gatso calculated that the UTC costs for just three intersections could amount to \$45,472 per month or \$1,277,744 during the 3-year term. See Sensys Gatso Analysis of Survey (**Exhibit F**). In addition, Modaxo states in its proposal that it will request a “3% annual COLA for the option year periods at the end of the base contract term.” Id. Regarding the costs of litigation involving its systems, Modaxo limited the costs to providing “an expert witness that will testify to the system design, operations, maintenance, calibration, and violation parameters.” Modaxo Proposal, at 4-24 (**Exhibit G**). The rest of the costs would depend on the claims against the parties. Id. The liability involved in providing an expert witness is significantly more limited and less expensive than the requirement in the RFP where the proposal must bear all costs and fees associated with litigation surrounding its system design, operations, maintenance, calibration, and violation parameters.

2. *Modaxo’s marked a substantial and material portion of its proposal as Proprietary and Confidential Information requiring the City to confer with Modaxo before disclosing such information to any third party.*

Disregarding the City’s requirement that its proposal be part of the public domain, Modaxo marked a substantial and material portion of its proposal as proprietary and confidential information. Modaxo included the following language as a footer, in the first page of all its Tabs:

Portions of this proposal contain proprietary information, ideas, know-how, concepts, processes, and trade secrets that are the sole property of Modaxo Traffic Management Inc. Pages containing proprietary content are designated in the footer as “Modaxo Traffic Management Inc. Confidential Information” and the specific content is identified with a light orange background, when only portions of the page are protected. If the entire page is considered Proprietary, the footer will read “This entire page contains Modaxo Traffic Management Inc. Confidential Information.” The proprietary contents of this proposal are intended solely for use in the procurement process and **may not be disclosed except to persons who are involved in the evaluation of the proposal or award of the contract.** The contents may not be duplicated, used, or disclosed in whole or in part for any purpose except the procurement process. **Release of Modaxo Traffic Management Inc. proprietary, confidential, and trade secret information would place Modaxo Traffic Management Inc. at a serious and irreparable competitive disadvantage in future procurements by providing competitors with information that Modaxo Traffic Management Inc. maintains strictly confidential and which is unavailable to any third-party** except under restrictions contained in a nondisclosure agreement or protections that cover this information under applicable law. **If a third-party makes a request for disclosure of any of the contents of this proposal, please notify Modaxo Traffic Management Inc. immediately so that Modaxo Traffic Management Inc. will have an opportunity to provide assistance in protecting the proprietary contents of this proposal from unauthorized disclosure.**

Modaxo Proposal, Tab 1, Cover Letter, Tab 2, Tab 3, and Tab 4 (**emphasis added**).

Following the provisions in its disclaimer, throughout its proposal Modaxo Marked material portions of its proposal as proprietary, trade secret, and confidential information, including the following:

- a. The name and identity of its Key Personnel. See Modaxo Proposal at 1-2, 1-3, 2-5, and 2-6.
- b. The name and identity of its authorized representative. See id. at 1-3.
- c. Project References. See id. at 2-3, 2-4, and 2-5.
- d. The Resume and Qualifications of its Key Personnel. See id. at 2-7 to 2-22.
- e. The identity and qualifications of its subcontractors. See id. at 2-23 to 2-24.
- f. Information about the manufacturer of Modaxo's DriveSafe system. See id. at 3-2.
- g. Information about the schedule for the project. See id. at 4-13.

Without such information, the City would not have been able to make an assessment of whether Madaxo is able to provide the services requested by the City.

C. Evaluation Meeting

Notwithstanding the deviations in Modaxo's proposal, the City did not disqualify Modaxo's proposal and allowed the proposal to be evaluated by the City's Evaluation Committee. The Committee met on September 19, 2024, to review, score and rank the nine proposals received by the City by the submittal deadline.

Based on the scoring sheets presented by the City during deliberations, Sensys Gatso offered the City the highest revenue share and approximately 18% more than Modaxo. See Screen Shot of Scoring taken at Evaluation Committee Meeting (Sept. 19, 2021), **Exhibit H**. Based on Sensys Gatso's quantitative as well as qualitative points, at the conclusion of the meeting, Sensys Gatso was the top ranked proposer by 3 of 4 Evaluation Committee members ("EC members"). Nevertheless, the single Committee member who did not rank Sensys Gatso 1st drove the final result by scoring Sensys Gatso disproportionately lower than other proposals, ranking Sensys Gatso 8th place (lower than a foreign proposer who, unlike Sensys Gato, has no experience providing services in the United States and has never obtained permitting for a project in Florida). The significantly low ranking skewed the results in such a way that the 1st place scores of the majority of the Evaluation Committee lost weight, placing Sensys Gatso in 2nd place under the overall results. Meanwhile, Modaxo obtained 1st place, even when not a single Evaluation Committee member ranked Modaxo 1st.

To ensure evaluations are fair and well-reasoned many jurisdictions have safeguards in place to identify and correct for outlier scores. By assigning extremely low or high scores to a proposer an EC member can skew the scoring to ensure the outcome is based on personal preference rather than the facts and merits of a proposal. For goods and services procurements, Miami-Dade County uses consensus scoring whereby if one evaluation committee member scores a proposal more than 33% above or below the average score of the other committee members, that

committee member must provide a verbal justification for their score. The outlier score and justification is provided to the Mayor who may accept or reject the score.

The City of Miami Beach, uses ordinal scoring to correct for potential outlier scores. Nevertheless, in instances where a large number of proposers is involved, the ordinal method may prove unsuccessful if the scores for a proposal by a single evaluation committee member are significantly low yielding a high ordinal number (very low ranking) for that committee member that results in the proposal receiving an overall high low aggregate score – even if all other committee members scored the same proposal with the lowest ordinal number (highest ranking). Similarly to the City, for professional services procurements (CCNA), the County uses ordinal scoring. However, the County corrects for outliers by discarding both the high and the low ordinal scores for each proposal to avoid the manipulation of the scores by a single committee member.

In this case, the City's simple ordinal scoring method failed to correct for the outlier scores because there were nine proposals. As shown in Table 1, **Exhibit I**, the total qualitative score for one EC member for Sensys Gatso was below 33% resulting in Sensys Gatso to rank eighth place for that EC member. The score resulted in Sensys Gatso's low aggregate total being higher than that of the resulting top ranked proposer even when Sensys Gatso received the lowest ordinal scores for the majority of the EC members. What is more disconcerting is that the proposer with the lowest aggregate total was not ranked first place by any committee member. See Table 1, Attachment A.

During the evaluation meeting, several Evaluation Committee members highlighted Sensys Gato's experience with school zone cameras in Florida. They were also enthusiastic about Sensys Gatso's personalized approach to service the City and its residents by committing to open a Miami Beach office. Several EC members agreed that a top priority for the City is to ensure residents have access and can reach customer service. Therefore, Sensys Gatso's commitment to opening a Miami Beach office was highly regarded by several of them. See Video of Evaluation Committee, min. 00:22:13, 00:31:29, 00:36:07 (Sept. 19, 2024)(on file with procurement officer). In addition, several Evaluation Committee members gave significant weight to Sensys Gatso's experience with school zone cameras in Florida, particularly working with FDOT. Nevertheless, contrary to the majority of the Evaluation Committee, the Evaluation Committee member assigning the disproportionately low scores to Sensys Gatso awarded Sensys Gatso's the same experience and qualifications points that he awarded to a company that does not have any experience working in the U.S. Without any justification, the Evaluation Committee member ranked that company higher than Sensys Gatso.

Ultimately, if the City had eliminated the highest and lowest ranking for each proposal to correct for the outlier score (following the ordinal method the County uses) Sensys Gatso would have been the top ranked proposer. See Table 2, **Exhibit I**.

D. Award Notification

Given that Section 0400 of the RFP provides that the Evaluation Committee only acts in an advisory capacity to the City Manager and the results of the evaluation do not constitute a Recommendation to Award, on October 7, 2024, Sensys Gatso submitted a letter to the City highlighting the outlier scores provided by one of the Evaluation Committee members. **Exhibit J**. Nevertheless, on October 22, 2024, the City issued the Notification of Award, stating that Modaxo would be recommended for negotiations and award at the October 30, 2024, Commission

meeting. This protest incorporates and supplements Sensys Gatso's October 7, 2024, letter, by highlighting responsiveness issues that require the disqualification of Modaxo's proposal.

IV. LEGAL ANALYSIS

A well-established principle of Florida procurement law is that in soliciting and accepting competitive bids, an agency has wide discretion, and its decision, if based on an honest exercise of this discretion, will not be overturned even if reasonable persons may differ with the outcome. See Department of Transportation v. Groves-Watkins Constructors, 530 So.2d 912 (Fla. 1988). However, while an agency's discretion is broad, it is not unbridled. Instead, *"the discretion vested in a public agency in respect to letting public contracts may not be exercised arbitrarily or capriciously, but that its judgments must be **bottomed upon facts reasonably tending to support a conclusion.**"* Miami-Dade County v. Church & Tower, Inc., 715 So. 2d 1084, 1089 (Fla. 3d DCA 1998) (**emphasis added**).

While a public authority has wide discretion in award of contracts for public works on competitive bids, such discretion **must be exercised based upon clearly defined criteria, and may not be exercised arbitrarily or capriciously.** City of Sweetwater v. Solo Const. Corp., 823 So.2d 798, 802 (Fla. App. 3 Dist., 2002) (**emphasis added**). In keeping with these principles, the law permits public bodies to waive minor defects in bid submissions and bidders to cure minor irregularities, but material deviations from specifications cannot be waived or altered. Emerald Corr. Mgmt. v. Bay Cnty. Bd. of Cnty. Comm'rs, 955 So. 2d 647, 653 (Fla. 1st DCA 2007). Although a bid containing a material variance is unacceptable, not every deviation from the ITB is material. ***It is only material if it affects the price of the proposal, gives the offeror an advantage or benefit not enjoyed by other offerors, or adversely impacts the interests of the agency.*** See Intercontinental Properties, Inc. v. State Dept. of Health & Rehab. Services, 606 So. 2d 380, 387 (Fla. 3d DCA 1992), Tropabest Foods, Inc. v. Department of General Services, 493 So.2d 50 (Fla. 1st DCA 1986), Robinson Electrical Co., Inc. v. Dade County, 417 So.2d 1032 (Fla. 3d DCA 1982).

A. Modexo's proposal should have been disqualified as non-responsive

1. *Modexo's additional costs to the costs provided in the revenue proposal is a material deviation from the RFP requirements.*

Modaxo submitted exceptions to its Revenue Proposal Form that allow Modaxo an unfair competitive advantage against the remaining proposers when proposers such as Sensys Gatso included all the required costs in its Revenue Proposal. Moreover, Modaxo's exceptions prevented the City from obtaining an accurate comparison of the Revenue Proposals since the revenue share that the City used to assign the quantitative points to Modaxo's proposal does not include the whole scope of services required in the RFP. Relying on Florida Procurement Law, the Miami-Dade County Attorney's office has routinely disqualified proposals with similar exceptions opining that a proposer's failure to submit the price proposal form as required in the RFP prevents the government from performing an apples-to-apples comparison of the proposals and allows the non-compliant proposer an advantage not enjoyed by others. See Responsiveness Opinions Re Request for Proposals No. ENV0000573, Exhibit K. Similarly here, the City should disqualify Modaxo's proposal for failure to include all the costs for the services required in the RFP.

Based on the above, because Modaxo's Revenue Proposal Form materially deviated from the requirements of the specification, the City must disqualify Modaxo's proposal for being non-response.

2. Modexo's assertion of proprietary and confidential protections is a material deviation from the RFP requirements.

In line with Florida's case law involving material deviations from the solicitation criteria, other administrative agencies in charge of reviewing responsiveness issues have long held that a participant in a public procurement enjoys a material competitive advantage over other participants in the procurement when the participant has an option to withdraw its proposal after the submittal deadline. See e.g., In re: Van Scott, Bagley, Cornwall & McCarthy, B-165769, 1969 WL 4532, *2 (Comp. Gen. Jan. 21, 1969) ("An allegation of error is proper for consideration only in cases where the bid is otherwise responsive to the invitation, and any other action looking to correction of such bid would serve to undermine the integrity of the bidding system despite the possibility of an immediate economic advantage which might accrue to the government."); Comptroller Gen. Ltr. to Heads of Depts., Independent Establishments, Agencies and Others Concerned, 38 Comp. Gen. 532, 536 (Comp. Gen. Feb. 5, 1959) (determining that allowing bidders to cure bid defects (e.g., failure to submit a bond) unfairly allows them "two bites at the apple" and creates processes whereby agencies must determine whether the omission was intentional or excusable causing "delay[s] award and consequently the entire production schedule" and creating opportunities for inconsistent results from similar facts).

The "two bites at the apple" rule has been specifically applied to circumstances in which bidders have marked as "confidential" the portions of their bid bearing on the "essential nature and type of services and product offered." See e.g., In the Matter of the Computer Network Corp., 55 Comp. Gen. 445, 452 (Comp. Gen. Nov. 12, 1975) ("The restriction on disclosure of information does not affect the substance of the bid per se, since the bid is the same whether the information is released. Therefore, removing the restrictive legend would not affect the substance of the bid. It would, however, afford the bidder 'two bites at the apple,' which cannot be permitted.").

In this case, the RFP did not provide any process to claim a trade secret exemption. The RFP only indicated that proposals are subject to disclosure. Therefore, by marking its proposal proprietary and confidential, Modaxo is conditioning its proposal. This allows them to withdraw their proposal if there are not the winning bidder and no one else had that advantage. Modaxo's requirement that the City confer with them as to whether the City could release the proprietary and confidential portions of its proposal allows Modaxo two bites at the apple by giving them an opportunity to determine, after proposal submittal whether it wishes to have its proposal be fully discussed at the Evaluation Committee meeting and treated similarly to other proposals. Therefore, the City must disqualify Modaxo's proposal as non-responsive, based on Modaxo's marking of a substantial and material portion of its proposal as proprietary confidential information.

B. The Evaluation of Sensys Gatso's Proposal was arbitrary and capricious

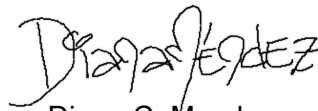
The disproportionately low scores awarded to Sensys Gatso by one committee member were arbitrary and capricious because they are not supported by the facts and merits of Sensys Gatso's proposal. The Evaluation Committee member was never requested to substantiate why its qualitative score for Sensys Gatso was below 33% of the scores he awarded to other proposers. Moreover, there is no fact or basis to support the Evaluation Committee member ranking Sensys

Gatso lower than a foreign proposer who has no experience providing services in the United States and has never obtained permitting for a project in Florida. Absent any justification for the disproportionately low scores the Evaluation Committee assigned to Sensys Gatso, it would appear that the scores were based on personal preference and not the criteria set in the Solicitation. For that reason, the City should disregard the scores of the Evaluation Committee member or eliminate the highest and lowest ranking for each proposal to correct for outlier scoring. Based on the corrected scoring, Sensys Gatso is the overall highest ranked proposer.

V. CONCLUSION AND REQUEST FOR RELIEF

Based on the above, to preserve the integrity and fairness of the City's procurement process, Sensys Gatso respectfully requests that the City rescind its recommendation to award the RFP to Modaxo and recommend awarding the RFP to Sensys Gatso, the preferred proposer by the majority of the Evaluation Committee and the top-ranked responsive and responsible proposer responding to the solicitation.

Sincerely,



Diana C. Mendez

cc: Danny Flores, Contracting Officer
Kristy Bada, Procurement Director
Rafael Granado, City Clerk
Ricardo Dopico, City Attorney
Mark Taxis, Assistant City Manager



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October 28, 2024

VIA ELECTRONIC MAIL

Mr. Eric Carpenter
City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

**Re: Supplement to Protest to Recommendation to Award Request for
Proposals No. 2024-274-DF Speed Detection Camera System for
School Zones**

Dear Mr. Carpenter:

As you know, this firm represents Sensys Gatso USA, Inc. ("**Sensys Gatso**"), regarding Request for Proposals No. 2024-274-DF Speed Detection Camera System for School Zones ("RFP"). On October 24, 2024, following Section 2-371, Authority to Resolve Protested Bids and Proposed awards, of the Code of the City of Miami Beach, Florida ("Code"), we submitted a Bid Protest and Supporting Documentation to the Award Notification issued by the City on October 22, 2024 ("Bid Protest"). In the Bid Protest, we reserved the right to supplement the protest based on our review of the public records Sensys Gatso requested on October 21, 2024. The City replied to our request less than two hours before the deadline to submit the Bid Protest. After having the opportunity to review the records we found that the third ranked proposer, RedSpeed is inappropriately requesting that the City alter RedSpeed's **Revenue Proposal Form** – and take steps on behalf of RedSpeed to correct what RedSpeed itself failed to do: comply with the RFP specifications. See RedSpeed Request for Scoring Correction (**Exhibit A**). These actions would result in impermissible favoritism to RedSpeed because they effectively give RedSpeed options on pricing not available to any other bidder.

Under Florida procurement law similar to the proposal submitted by Modaxo Management USA, Inc. ("Modaxo"), the deviations in RedSpeed's Revenue Proposal Form render its proposal non-responsive and subject to disqualification. RedSpeed's attempt to change its proposal – after proposal submittal – with respect to the conditions and reservations it expressly included in its Revenue Proposal Form, and the City's attempt to make sense of Redspeed's proposal by coming up with its own price calculations on behalf of RedSpeed, is precisely the reason why Florida law requires municipalities to disqualify proposals that materially deviate from the requirements in the

RFP with respect to pricing requirements. Price is a material term in any solicitation. The law simply does not allow for material modifications or clarifications to be made after proposal submittal. For this reason, we submit these objections to supplement Sensys Gatso's Bid Protest, as RedSpeed's arguments to the City must be rejected and its proposal must be rejected for the same reasons as Modaxo's proposal.

A basic tenet of Florida procurement law is that in letting competitive bids a public authority must act based upon clearly defined criteria, and not arbitrarily or capriciously. City of Sweetwater v. Solo Const. Corp., 823 So.2d 798, 802 (Fla. App. 3 Dist., 2002). In following this principle, the law permits public bodies to waive minor irregularities in proposal submissions, but material deviations from specifications cannot be waived or altered. Emerald Corr. Mgmt. v. Bay Cnty. Bd. of Cnty. Comm'rs, 955 So. 2d 647, 653 (Fla. 1st DCA 2007). The court in Robinson Electrical Co., Inc. v. Dade County provided the criteria to determine whether a deviation is material and cannot be waived by the public authority. 417 So.2d 1032 (Fla. 3d DCA 1982). First, the public authority must determine whether the effect of a waiver would be to deprive the public authority of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements. Id., at 1034. Second, the public authority must determine whether the deviation is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition. Id.

Deviations affecting price have been repeatedly deemed by the courts to be material. See Emerald Corr. Mgmt. v. Bay Cnty. Bd. of Cnty. Comm'rs, 955 So. 2d 647, 653 (Fla. 1st DCA 2007); Intercontinental Properties, Inc. v. State Dept. of Health & Rehab. Services, 606 So. 2d 380, 387 (Fla. 3d DCA 1992), Tropabest Foods, Inc. v. Department of General Services, 493 So.2d 50 (Fla. 1st DCA 1986), Robinson Electrical Co., Inc. v. Dade County, 417 So.2d 1032 (Fla. 3d DCA 1982).

In Emerald, the court reviewed whether a public authority may accept changes after proposal submittal to the cost proposal submitted by the awarded proposer and permit the awarded proposer to add a clause in their bid proposal forgoing the setting of a fixed cost given fluctuating construction costs. 955 So. 2d 647, 650 (Fla. 1st DCA 2007). In its analysis, the court recognized the wider discretion afforded counties and cities in exercising discretion in accepting or rejecting responses to RFPs. Id., 650–51. However, according to the court, even in an RFP setting, the decisions still must be subject to review to determine whether the governing body acted arbitrarily or capriciously. Id.

Relying on the arbitrary and capricious standard, the court in Emerald held that accepting a price proposal that was subject to inflation when the RFP required a fixed price amounted to impermissible favoritism. Id. at 653. Moreover, the court found that the public body could not allow a proposer to unilaterally amend its cost proposal after proposal submittal. See id. The court also held that a public body is not entitled to omit or alter material provisions required by the RFP because in doing so the public body fails to "inspire public confidence in the fairness of the RFP process." Id. Therefore, the public body in that case, could not allow itself discretion in the RFP to decide whether to accept or reject any portion of a proposal after proposal submittal as doing so would violate the fairness of the competitive award process. See id. at 654.

In this case, both Modaxo and RedSpeed's Revenue Proposal Forms deviate from the Revenue Proposal Form provided by the City (RFP Appendix B) – which stated that the "Bidder affirms that the prices stated on the revenue proposal form represent the entire cost of the items in full accordance with the requirements of the RFP." The Revenue forms for both parties also deviate from the specifications provided by the City in Section 35 of the Formal Solicitations Terms and Conditions for Goods and Services, Appendix A3 (2) of the RFP, Addenda to RFP, Addendum 4, Q. 43, Addenda to RFP, Addendum 4, Q. 50, and RFP Section A2 – all of which require the proposer to include all costs in its Revenue Proposal and assure the City the pricing would remain fixed throughout the term of the contract.

RedSpeed modified the Revenue Proposal Form by stating:

The fee includes all costs required and associated with the School Photo Enforcement system [...]

\$21.00 per each paid violation.

The City shall reimburse the costs of Certified Mail of Notice of Violation's converted to Uniform Traffic Citations

Then, under the Gross Annual Estimated Revenue to the City ("Estimated Revenue") in the Revenue Proposal Form, RedSpeed inputted \$79,000.00 based on a 21% Percentage of Revenue Share and modified the Revenue Proposal Form to clarify that the Estimated Revenue includes disbursements to the state, schools and local police. See Exhibit B, RedSpeed Revenue Proposal.

The fee includes all costs required and associated with the School Photo Enforcement system.

Includes camera equipment, installation, maintenance, signage, violation processing services, DMV records access, first class mailing of required documents, lockbox and credit card processing services, call center, web-enabled police review portal, web-enabled violator viewing portal, reports, and public awareness program support.

\$21.00 per each paid violation.

The City shall reimburse the costs of Certified Mail of Notice of Violation's converted to Uniform Traffic Citations.

RedSpeed retains 5% credit card convenience fee paid by violators.

APPENDIX B REVENUE PROPOSAL FORM

Failure to submit Appendix B, Revenue Proposal Form, in its entirety by the deadline established for the receipt of proposals will result in proposal being deemed non-responsive and being rejected.

Bidder affirms that the prices stated on the revenue proposal form below represent the entire cost of the items in full accordance with the requirements of this RFP, inclusive of its terms, conditions, specifications and other requirements stated herein, and that no claim will be made on account of any increase in wage scales, material prices, delivery delays, taxes, insurance, cost indexes or any other unless a cost escalation provision is allowed herein and has been exercised by the City Manager in advance. The Revenue Proposal Form (Appendix B) shall be completed in its entirety. All corrections on the Revenue Proposal Form (Appendix B) shall be initialed.

Item	Estimated Annual Collections ¹ (A)	Percentage of Revenue Share Vendor to Retain (B)	Gross Annual Estimated Revenue to the City ² (C) A - (A x B) = C
1	\$100,000.00	21 %	\$ 79,000 ³

¹The estimated amounts stated herein are for calculation purposes only. Actual amounts may be greater or less than the estimated amounts.

²The total annual estimated cost to the City shall be utilized to allocate Cost Points in the Evaluation of Proposals.

³Including disbursements to the state, schools, and local police.

The City in Addendum 4, Question 50, directed proposers to calculate the Percentage of Revenue and Estimated Revenue, based on the reduced amount that goes to the City (\$60) after deducting the fees that go to state, school, and local police and not on the on the full fine amount (\$100). Therefore, in evaluating RedSpeed Revenue Proposal form, the City could not reconcile the Percentage Revenue Share and the Estimated Revenue in the table in RedSpeed's Revenue Proposal Form with RedSpeed's statement that its fee is \$21 per each paid violation. RedSpeed

also qualified its Estimated Revenue of \$79,000.00 by including an ambiguous statement indicating that the Estimated Revenues that the City gets "includ[es] disbursements to the state, schools, and local police." Moreover, like Modaxo, RedSpeed excluded from their Revenue Proposal the costs related to the mailings involving the Uniform Traffic Citations ("UTC"), contrary to the RFP specifications. As indicated in Sensys Gatso's Bid Protest, the UTC costs for just three intersections could amount to \$45,472 per month or \$1,277,744 during the 3-year term.

Notwithstanding RedSpeed's failure to follow the RFP specifications, in its "request for scoring correction," RedSpeed asks the City to modify the formula and instructions provided to the proposers in the City's Revenue Proposal form to correct RedSpeed's Estimated Revenue. In other words, RedSpeed is requesting the City to manipulate RedSpeed's Revenue Proposal Form to bring it into compliance with the RFP specifications and instructions provided by the City.

Based on Emerald Correctional Management and Robinson Electric, however, the reservations that Modaxo and RedSpeed included in their Revenue Proposal are material deviations that the City cannot waive or modify. Neither proposal provided the City with the assurance that the awarded contract will be entered into, performed and guaranteed according to the City's specifications (in fact, the proposed terms excluded costs the RFP expressly required bidders to absorb).

Moreover, the deviations in both proposals adversely affected competitive bidding because they placed Modaxo and RedSpeed in a position of advantage over other proposers by allowing themselves the opportunity to determine, after proposal submittal, whether they were willing to include all the costs in their Estimated Revenue or exclude certain costs and fees depending on the Estimated Revenue submitted by other proposers. The deviations also prevented the City from being able to make an apples-to-apples comparison of the proposals, as the formula-based quantitative scores did not accurately reflect the Estimated Revenues that the City gets from each proposal. Furthermore, according to the court in Emerald, allowing either proposer to modify its proposal to meet the RFP requirements after proposal submittal amounts to impermissible favoritism.

For these reasons, we trust that the City will follow the requirements of the law and determine that both Modaxo and RedSpeed's proposals are non-responsive, and award the contract to Sensys Gatso, the top ranked responsive and responsible proposer.

Sincerely,



Diana C. Mendez

cc: Danny Flores, Contracting Officer
Kristy Bada, Procurement Director
Rafael Granado, City Clerk
Ricardo Dopico, City Attorney
Mark Taxis, Assistant City Manager