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***Hand-Delivery and***

***Email: [gmarcos@fortlauderdale.gov](mailto:gmarcos@fortlauderdale.gov)***

Glenn Marcos, CPPO, CPPB, FCPM, FCPA  
Chief Procurement Officer/Assistant Finance Dir.  
City of Fort Lauderdale  
101 NE 3rd Ave Suite 1650  
Fort Lauderdale, FL 33301

***Re: RFP No. 332 - Automated School Zone Speed Detection Camera System ("RFP")  
Response to Blue Line Solutions, LLC's Formal Bid Protest***

Dear Mr. Marcos:

The undersigned law firm represents RedSpeed Florida LLC ("RedSpeed") regarding the above-referenced RFP. RedSpeed supports your denial of Blue Line Solutions, LLC's ("Blue Line") formal bid protest of the RFP dated January 21, 2025 ("Protest"). The City of Fort Lauderdale selected RedSpeed as the intended awardee for its important "School Zone Speed Detection Camera System" services following a sound procurement process. Blue Line filed its Protest in a desperate attempt to steer the award of this contract, even though it could not comply with the City's deadline to submit information.

Please include this letter as a part of any City Commission agenda item related to the Blue Line bid protest.

As you described in your January 30, 2024 rejection letter, Blue Line's Protest arguments strain credulity:

- First, it claims the required SOC Report was not due by November 6, 2024, or before the November 13, 2024 Evaluation Committee meeting concerning this RFP. Blue Line's failure to timely submit an SOC Report unquestionably renders it both non-responsive and non-responsible. This, after the City amended the RFP and gave Blue Line a 60-day extension following the proposal submittal deadline to provide the report.
- Second, Blue Line's claim regarding the measurement of calendar days versus business days for the report's submission seeks to deliberately mislead the City by cherry-picking a few references to the RFP which are not dispositive of the issue, while ignoring other key RFP Sections which directly undermine Blue Line's flawed logic.

- Third, emails from City staff requesting Blue Line submit its SOC Report after the Evaluation Committee meeting cannot modify the express written terms of the RFP's specifications, which in this case include the specific SOC submittal deadline in Addendum No. 3.
- The RFP's terms clearly make the timely submission of the SOC2 Report a material issue that cannot be waived, not a minor irregularity.

**Blue Line's material omission of the SOC 2 Report should have precluded it from being ranked in the first place.** Ultimately, however, the City made the necessary and legally sound determination rejecting Blue Line's proposal and recommending this award to RedSpeed. Therefore, the City must deny Blue Line's Protest.

## I. ARGUMENT

### A. **Blue Line's Failure to Timely Submit its SOC Report Renders It Non-Responsive and Non-Responsible**

The primary issue is the untimely submission of Blue Line's SOC2 Report. That omission should have precluded any ranking of Blue Line by the Evaluation Committee. Originally, the RFP required proposers to submit SOC Reports by the proposal submission deadline on August 30, 2024. Addendum 3 modified that requirement, but put into place a clear and definite report submission framework. The plain language of Section 2.45 of the RFP, as modified by Addendum No. 3 issued on August 30, 2024, required proposers to provide the purchasing department with a current SOC2, Type 1 Report, or SOC 3 report, within sixty (60) days after the proposal due date. **That established the due date as November 5, 2024.** Addendum No. 3 states:

**"Negotiations will occur with the highest ranked, responsive, and responsible firm contingent upon receipt of** ~~The Contractor should provide a current SSAE, SOC 2, Type I report with their proposal to be provided within 60 days after proposal due date. Awarded Contractor will be required to provide an SSAE 18, SOC 2, Type II report annually during the term of his contract. If the Contractor cannot provide the SSAE 18, SOC2, Type I report at the required time of proposal submittal, a current SOC 3 report will be accepted."~~

Thus, the highest-ranked, responsive and responsible firm could only be a proposer which timely submitted its SOC2, Type 1 Report or SOC3 Report. There were no exceptions to the City's deadline, and the failure to meet that deadline would be a material deviation from the RFP's specifications. There is no language in Section 2.45, as amended, that permits the City to accept a late-submitted SOC2 Report or SOC3 Report. This is clear because Section 2.45 identifies the sixty (60) day post-proposal due date as the deadline. Importantly, the Addendum specifically removed language from the original Section 2.45 that said proposers "should" provide reports. Originally, it was a permissive standard, but Addendum No. 3 made clear that timely of submission of the SOC2 Report was mandatory. Negotiations were "**contingent**" on the timely receipt of the reports, which underscores the mandatory nature of that deadline. If a proposer did not submit the



SOC Reports by the deadline, it could not be responsive or responsible, and negotiations could not commence with it.

Section 2-173 of the City's Administrative Code defines a responsive vendor as, "A firm who has submitted a bid, offer, quote, or response **which conforms in all material respects to the competitive solicitation document and all of its requirements.**" (Emphasis added). Section 2.15 of the RFP fortifies the City Code's definition by adding, "In order to be considered responsive to the solicitation, the firm's proposal shall fully conform in all material respects to the solicitation and all its requirements, **including all form and substance.**" (Emphasis added). Blue Line's proposal does not conform in all material respects to the RFP due to its failure to timely submit its SOC Reports. That is a material term of the RFP because the report was required to be submitted by November 5, 2024, and before the Evaluation Committee met. Blue Line's SOC report was submitted after the November 13<sup>th</sup> Evaluation Committee meeting. Therefore, Blue Line's proposal was non-responsive.

Section 2-173 of the City's Administrative Code defines a **responsible vendor** as, "A firm who is fully capable of meeting all requirements of the solicitation and subsequent contract. The respondent must possess the full capability, **including financial and technical,** ability, business judgment, **experience, qualifications,** facilities, equipment, integrity, **capability,** and reliability, in all respects to perform fully the contract requirements and assure good faith performance as determined by the city." (Emphasis added). Section 2.16 of the RFP expands that definition. "In order to be considered as a responsible firm, firm shall be fully capable to meet all of the requirements of the solicitation and subsequent contract, **must possess the full capability, including financial and technical,** to perform as contractually required, and must be able to fully document the ability to provide good faith performance." (Emphasis added).

As pointed out by the City when it rejected Blue Line's original protest in August, "given the critical nature of the services being procured and the sensitive data involved, the City cannot deviate from the established SOC 2 requirement." Blue Line did not submit its SOC 2 or SOC 3 reports by the November 5, 2024 deadline, or even before the Evaluation Committee meeting on November 13<sup>th</sup>. Therefore, the reports could not be considered part of its proposal. Blue Line at a minimum failed to demonstrate it was fully capable of meeting all the RFP requirements, or that it had the ability to do so. By failing to submit the reports, Blue Line cannot demonstrate it can fully perform the contract requirements at issue and assure good faith performance. Therefore, Blue Line's proposal had to be deemed non-responsible. **That Blue Line was non-responsive and non-responsible should have precluded any evaluation of Blue Line by the Evaluation Committee.**

## **B. The Extended SOC Report Deadline was Measured in Calendar Days**

Blue Line falsely claimed the sixty-day submission deadline of the SOC Reports was measured in business days, not calendar days. To support its misguided theory, it cites to Sections 2.19.2, 2.20.2, and 4.2 of the RFP, where calendar days are specifically identified as the measurement of time to complete the task at issue in those Sections. The Protest also references three additional sections of the RFP where the measurement of days is not specified.

This was an attempt at misdirection. What Blue Line fails to mention is that when the City measures time in business or “working days” in the RFP, it specifies it. Section 3.09 of the RFP’s General Conditions specifically identifies “working days” as the method of time calculation for the submission of samples or inspection of products. Similarly, Section 4.01 of the General Conditions, also specifies “working days” for the furnishing of a performance bond after notification of award. Those are the only two references in the RFP to working days, and they are clearly identified. There are no references to business days. Thus, where the City seeks to measure time in working or business days, it specifically states so.

In both Section 3.09 and 4.01, however, there are also 30-day deadlines for the return of samples, and for the renewal of the performance bond, respectively. Both of these 30-day deadlines are measured in calendar days, yet they are not specified in the RFP as calendar days. When the City measures a deadline in calendar days, it does not always specifically state so.

This is further evidenced in additional sections of the RFP itself (beyond the RFP’s incorporated general conditions) which also **do not** specify how the tasks at issue are measured, but which also are clearly are measured in calendar days. For example, see:

- Section 2.7 (payment to be made within 45 days after receipt of an invoice, in accordance with the Florida Local Government Prompt Payment Act (“Act”). The Act measures those days in calendar day. *See*, Section 218.74(2), Fla. Stat. Any deadlines in the Local Prompt Pay Act measured in business days are specifically stated as such);
- Section 2.12.3 (City reserving the right to cancel the contract by giving the Successful Proposer 30-days-notice);
- 2.35 (City required performance extensions up to 270 days beyond the expiration date of the existing contract)
- 2.37 (providing for a contractor test period between 30 to 90 days); and
- 3.2(V) (installation of equipment to commence within 14 days from permit issuance, and which equipment must be functional within 30 days).

In addition, the City’s Administrative Code (“Code”) uses calendar days as the common measurement unless otherwise identified. Section 1.2 of the Code pertains to computation of time. It states:

In computing any period of time prescribed or allowed by the Ordinance, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.



In sum, when business or working days are used in computing the number of days, or if weekend days and holidays are part of or excluded that computation, they are specifically referenced by the City. In this case, there is no indication that the City intended to use anything but calendar days in Section 2.45 of the RFP. Therefore, the 60-day deadline for the SOC Reports was to be measured in calendar days, making the deadline November 6, 2024, and Blue Line failed to meet it.

### **C. The Evaluation Committee Meeting Date Confirms the City’s Intent to Measure the 60-day Period in Calendar Days**

The RFP’s Amended Section 2.45 set a 60-calendar-day deadline for a reason. The November 5, 2024 deadline ensured proposers would submit their SOC Reports **before** the Evaluation Committee meeting on November 13, 2024. By establishing this timeframe, the City could adequately determine if a proposer’s SOC Report was acceptable, and thus include that information in the responsiveness/responsibility evaluation.

Although Blue Line now claims it submitted its SOC2 Report on November 13, 2024, even if that is true it is undisputed that Blue Line did not yet have the SOC2 Report at the Evaluation Committee meeting. That issue was specifically discussed at that meeting. Therefore, Blue Line could not be deemed responsive nor responsible, then or now.

### **D. The City’s Staff’s Email Does Not Change the RFP’s Requirements**

Blue Line’s Protest includes an email from City staff stating the SOC Report was due by November 15, 2024. The staff, however, had no authority to change the express requirements of the RFP. That could only be done through an addendum to the RFP. The attempt to establish a November 15<sup>th</sup> deadline was illusory. If the City were to accept Blue Line’s argument in this regard, a request that Blue Line submit its SOC2 Report after the Evaluation Committee meeting cannot modify the express terms of the RFP’s specifications, which in this case include the SOC submittal deadline requirement in Addendum No. 3.

### **E. Failure to Meet the SOC Report Submission Deadline Is Not a Minor Irregularity**

Blue Line’s attempt to characterize its untimely submission of the SOC2 Report as a minor irregularity must be rejected. The RFP language in Addendum No. 3 makes clear the City’s receipt of the SOC2 Reports was critical, and a material issue. The use of the words “contingent” and “required” reflect this. Blue Line’s reliance on the case *Robinson Electrical Co., Inc. v. Dade County*, 417 So. 2d 1032 (Fla. 3d DCA 1032) highlights this contradiction. In that case, the Court identified a non-waivable irregularity as one which would deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements. Here, the City clearly required proposers to have submitted the SOC2 Report before the Evaluation Committee meeting. Further, failing to provide the report would give Blue Line an unfair competitive advantage over other proposers because of the time and effort associated with obtaining such reports. The SOC2 Report is not a mere procedural issue that can be waived, rather the failure to submit same is a material deviation from the RFP’s specifications.

## II. Conclusion

It is wholly improper for an agency to fail to follow the terms of its evaluation process, and doing so is arbitrary and capricious. State Dep't of Lottery v. Gtech Corp., 816 So. 2d 648, 652-53 (Fla. 1st DCA 2001). The object of competitive procurement is:

“to close all avenues to favoritism and fraud in its various forms;... and to afford an equal advantage to all desiring to do business with the county, by affording an opportunity for an exact comparison of bids'....

From the above quote, it is apparent that the entire scheme of bidding on public projects is **to ensure the sanctity of the competitive atmosphere** prior to and after the actual letting of the contract.” (Emphasis added).

Harry Pepper & Associates, Inc. v. City of Cape Coral, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1190; *quoting, in part, Wester v. Belote*, 138 So. 721, 723-23 (Fla. 1931)). Moreover, the irregularities in applying the evaluation criteria cannot provide one proposer with an unfair competitive advantage, and cannot be deemed minor technicalities. See Robinson Electrical Co., Inc. v. Dade County, 417 So.2d 1032 (Fla. 3rd DCA 1032).

Blue Line’s failure to timely submit its SOC Reports renders it non-responsive and/or non-responsible. The reports were a material requirement to the RFP, and failure to submit a report is not a minor irregularity that can be waived. Blue Line’s proposal should not have even been ranked. Since negotiations of this award could only be had with, “the highest-ranked, responsive, and responsible firm contingent upon receipt of” either of the SOC Reports, Blue Line took itself out of the running by failing to timely submit its report. The City must not ignore the RFP’s requirements, as doing so would be arbitrary and capricious and violative of the City’s RFP specifications, its Code, and Florida Procurement Standards. For those reasons, the City was correct in denying Blue Line’s.

RedSpeed looks forward to working with the City on this important project, and stands ready to get to work.

Very truly yours,



Mark J. Stempler  
For the Firm

MJS2/ms

cc: Susan Grant, Acting City Manager, Via Hand-Delivery & Email  
D'Wayne M. Spence, Interim City Attorney, Via Hand-Delivery & Email  
Ellyn Bogdanoff, Shareholder  
RedSpeed Florida LLC