
CITY OF ALBUQUERQUE

CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: Mayor Martin Chávez

FROM: City Councillors Michael Cadigan, Trudy Jones, Debbie O'Malley
And City Council President Brad Winter

SUBJECT: Concerns Over the Mayor's Automated Enforcement Study Group
and the City's contract with Redflex, Inc.

DATE: January 16, 2008

We are writing to relay serious concerns about the above referenced report and the City's contract with Redflex, Inc. Though the report was delivered to our office yesterday afternoon, we made time to discuss it with members of staff who participated in the Study Group.

In our discussion regarding the "due process issue" we were informed that the Study Group was not allowed to fully explore certain issues surrounding the STOP program. We expect that the Council will be presented with additional information before being asked to act on the Report.

At the first organizational meeting of the Study Group a member of Council staff asked for information with respect to the fairness of the STOP program and whether individual due process rights were being protected. A request was made for all communications between the City and Redflex. It was felt that if problems had been recognized they would have been discussed with Redflex. The requested information was not produced. The explanation was that fairness and due process issues were outside the scope of the charge to the Study Group. Now that the Task Force has opined on the fairness of the STOP process it would be appropriate for these communications to be belatedly produced.

A series of problems arise out of the process used to enter into the Redflex contract. On December 2, 2005 you sent to the City Council a Recommendation of Award of a contract to Redflex. The Council received your Memorandum, which contained a brief explanation of the program, and attached thereto the RFP to which Redflex responded. Part of the RFP was a "Draft Agreement." Any party responding to the RFP was required to accept the terms of the Draft Agreement or note exceptions. The Council was not told of any exceptions when it approved the Recommendation of Award. The Council was deliberately led to believe that the Draft Agreement was the basis of what

the Council was approving. The Council was never presented with and was not asked to approve the final contract.

It is not inappropriate for the Council to approve a Recommendation of Award and not see the final contract. It is inappropriate when the final contract bears no relationship to the Recommendation of Award approved by the Council. This was not a case of the Administration working out final details of a contract after Council approval; this appears to be a case of bait and switch.

- The Study Group recommends that the program be continued until the end of 2009. The contract that was signed with Redflex does not expire until the end of 2009. This was clearly a concern of the Study Group and influenced the recommendation to continue the program until the end of the current contract. **The contract with Redflex has no provision for termination before the end of 2009. The Draft Agreement that was the basis of Council approval had a provision that the City could terminate the agreement with fifteen days notice.** That provision was removed from the final contract. When Council staff asked for communications with Redflex that would shed light on why this provision was negotiated away by the City he was told that this was outside the scope of the charge to the Study Group.
- The Report raises concerns about the lack of data that Redflex has provided to the City. **The Draft Agreement stated that Redflex would provide "such statements, records, reports, data and information, as the City may request..." That provision was excluded from the final contract.** When Council staff asked for communications with Redflex that would shed light on why this provision was negotiated away by the City he was told that this was outside the scope of the charge to the Study Group.
- The Report raises concerns over Redflex receiving a percentage of all fines. **Your Memorandum to the City Council on December 2, 2005 states in part that "Redflex will adjust its pricing on a monthly basis to ensure cost neutrality." This appeared to be a representation that Redflex would charge a fixed fee per intersection but additional charges would be adjusted so as to only cover costs. If true, this would have been exactly what the Study Group is recommending. But none of the language that your Memorandum stated would be in the contract actually appears in the final contract. Rather than the adjustable rate that the Council was promised, Redflex was given a fixed percentage of fines.** The Report states that the percentage of fines being given to Redflex creates an "unintended public impression" that Red Flex is being given an incentive to generate revenues. Given the history of the pricing issue it is arguable that the City intended to give Redflex an incentive to generate revenues and that this was not "unintended." Again, when Council staff asked for communications with Redflex that would

shed light on how this provision was negotiated he was told that this was outside the scope of the charge to the Study Group.

- **The Draft Agreement presented to Council required Redflex to not discriminate against any person on the basis of “race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap or disability” and to comply with the Americans with Disability Act. While outside the Study Group’s charge the Administration needs to produce those documents that show how these contract requirements that are part of virtually every other City contract, were negotiated out of the Redflex contract.**

The Study Group Report needs to be considered in the context of the City’s relationship to Redflex. This can only be done if all documents are released evidencing communications between Redflex and the City. One of the most important of those communications would be Redflex’s response to the City’s RFP 06-004-SV “Automated Traffic Enforcement Program”. The complete lack of any substantial relationship between the Draft Agreement that was approved by the City Council and the final contract that the Council never saw raises questions about whether Redflex was responsive to the RFP.

All of the records requested in this letter are public records. These records as well as the individuals responsible for the Redflex contract should be made available to the City Council.