

**March 8, 2019**

**VIA EMAIL AND HAND DELIVERED**

Delray Beach Community Redevelopment Agency  
Lori Hayward  
Finance and Operations Director  
20 N. Swinton Avenue  
Delray Beach, FL 33444

Re: Formal Written Protest - Request for Proposal #2018-08  
Fixed-Route Transportation Services

Dear Ms. Hayward:

This is a formal protest by First Transit, Inc. ("First Transit") of the Delray Beach Community Redevelopment Agency's ("CRA") recommendation to accept the proposal of Downtowner Holdings, LLC ("Downtowner") in the matter of CRA's Request for Proposal No. 2018-08, Fixed-Route Transportation Services (the "RFP"). Pursuant to Section 3.17 of the RFP ("Protest Procedure"), First Transit has standing to protest the award because it submitted a proposal to CRA in response to the RFP and will be aggrieved by an award to Downtowner. This protest is timely as it will be delivered on March 8, 2019, which is within five calendar days from the date the recommendation to award to Downtowner was posted. On March 7, 2019, CRA publicly posted the Agenda for its March 12, 2019 Regular Board Meeting, and such agenda included the Cover Memorandum/Staff Report which recommended acceptance of Downtowner's proposal, as well as the Selection Committee Results, which ranked Downtowner as the number one bidder and First Transit as the number two.

As set forth more fully below, Downtowner was not a responsive or responsible bidder as its proposal failed to meet the RFP requirements of environmentally friendly vehicles, and such failure most likely allowed it to submit a lower fee proposal than First Transit, whose proposal adhered to the required vehicle specifications. As a result, the recommendation to award to CRA is clearly erroneous, contrary to competition, arbitrary and capricious. First Transit therefore requests that CRA reject Downtowner's bid and award the work to First Transit, the number two ranked bidder or, in the alternative, reject the bid, investigate the irregularities, hold a hearing and reissue the RFP.

Downtowner's Proposal was not Responsive to the RFP

To be deemed responsive, a proposal must conform in all material respects to the solicitation. Sec. 7.1 of the RFP states that each proposal must "follow the requirements of this solicitation" and Section 5.6 of the RFP states the following with respect to the requirements of the vehicles to be used pursuant to the RFP:

The use of environmentally friendly vehicle is **required**, more specifically a vehicle that uses alternative fuels and produces less harmful impacts to the environment than comparable vehicles running on gasoline or diesel.

In this case, Downtowner's proposal did not meet the RFP's requirements with respect to the use of environmentally friendly vehicles, and this deviation ultimately gave Downtowner a significant pricing advantage over First Transit. Though First Transit does not currently have a copy of Downtowner's proposal, attached as Exhibit A is the RFP Scoring Sheet of Evaluator Jorge (the "Jorge Scoring Sheet"), which states the following:

"Downtowner is not offering environmentally friendly vehicles, only seating for 14"

Additionally, on his RFP Scoring Sheet attached hereto as Exhibit B, Evaluator Patrick noted the word "gasoline" in the box devoted to Downtowner. By contract, First Transit's Fee Proposal page, attached hereto as Exhibit C, specifically provided that it would provide two (2) *propane fueled* Star Craft Allstar vehicles to provide service pursuant to the RFP, and Evaluator Patrick made note of this when he wrote "Propane" in the box devoted to First Transit. First Transit estimates that Downtowner's material deviation from the required vehicle guidelines caused Downtowner's pricing to be substantially lower than First Transit's, which adversely impacted the scoring for First Transit in the price per hour criteria column.

#### Downtowner is not a Responsible Bidder

A responsible vendor pursuant to Sec. 7.2 of the RFP "is a [p]roposer which the CRA affirmatively determines (prior to the award of the contract) has the ability to, capability and skill to perform under the terms of the contract..." Sec. 9 of the RFP includes the standard agreement which CRA will enter into with Downtowner (attached hereto as Exhibit D) and incorporates into such contract the requirement to utilize environmentally friendly vehicles in Articles 2 which states:

#### ARTICLE 2 DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The contractor shall provide the goods and/or perform those services identified in the specifications accompanying CRA's Request for Proposals, which are incorporated herein by reference.

For Downtowner to have the ability to perform the contract, it would need to have environmentally friendly vehicles as required by the RFP. It appears from the Scoring Sheet, that members of the Evaluation/Selection Committee were aware that Downtowner will not be able to supply environmentally friendly vehicles as required by the RFP and the related contract and therefore the recommendation to award to Downtowner was clearly erroneous, contrary to competition, arbitrary and capricious.

In conclusion, First Transit requests that CRA reject Downtowner's bid and award the work to First Transit or, in the alternative, reject the bid, investigate these irregularities, hold a hearing and reissue the RFP.

First Transit reserves the right to supplement or amend this protest to the extent that additional information from its public records request is received after the date of this protest.

This Protest is submitted by First Transit, Inc. 600 Vine Street, Suite 1400, Cincinnati, Ohio 45202, an entity that has submitted a proposal in response to the RFP.

First Transit's contact for this protest is Kate Molinsky, Senior Attorney, FirstGroup America, Inc., 600 Vine Street, Suite 1400, Cincinnati, Ohio 45202; email: [kate.molinsky@firstgroup.com](mailto:kate.molinsky@firstgroup.com); phone: (513) 419-4077; fax: (513) 362-4537.

Thank you for your attention to this matter.

Sincerely,



Kate Molinsky  
*Senior Attorney, FirstGroup America, Inc.*

Enclosures

cc: Jeff Costello, *Executive Director*, Delray Beach Community Redevelopment Agency  
(w/enclosures)  
Dave Van Fossen, *Region Vice President*, First Transit, Inc.

EXHIBIT A



Delray Beach Community Redevelopment Agency  
 20 N. Swinton Avenue  
 Delray Beach, FL 33444

RFP 2018-08 Fixed-Route Transportation Services

	Experience	Project Organization & Technical Evaluations of Personnel	Proposed Approach & Methodology	References & Completed Similar Projects	Price per Hour	Total
<b>Company</b>	20%	25%	20%	20%	15%	100%
First Transit, Inc.	19	20	20	20	10	89
Downtown Holdings, LLC	15	18	18	17	15	83
Maruti Fleet & Management, LLC	17	22	17	18	12	86

Evaluator Comments:

First transit - Prepare buses, Good training program for customer service. 54hrs in class training. Drivecam SF64 included. Audio/Video recording. 24hrs complaint resolution. Local manager.

Maruti - Great expertise. Transportation services to Disney. Great customer service training program. Some issues with their gas vehicle. Older vehicle 3 years old. Boiler plate proposal.

Downtown is not offering environmentally friendly vehicles only seating for 14

Evaluator Signature:

*Jimmy Allen*

Date:

2/27/19

EXHIBIT B



Delray Beach Community Redevelopment Agency  
 20 N. Swinton Avenue  
 Delray Beach, FL 33444

RFP 2018-08 Fixed-Route Transportation Services

Company	Experience	Project Organization & Technical Evaluations of Personnel	Proposed Approach & Methodology	References & Completed Similar Projects	Price per Hour	Total
CURRENT PROVIDER 22 SEATS DANECOM RECORDING CDL						
PROPANE First Transit, Inc.	20%	25%	20%	20%	15%	100%
MAINT. AREA BOYDWAY 15 SEATS GP-APRUS OUTREACH TO CITY	18	23	18	18	9	86
12 SEATS 2-YEAR VEHICLE TURN OVER GASOLINE	17	24	19	18	11	89
Maruti Fleet & Management, LLC DBE FLORIDA BUSSES	16	22	18	18	13	87

PROPANE → HAD ROUGH ROLL OUT  
 WORKED THROUGH HI I!  
 CLOUD BASED REPORTING SYSTEM  
 SIX SIGMA  
 QC  
 OPENING SHOP  
 HERE IN  
 DELRAY

Evaluator Comments: Maruti proposed "trolley" vehicles, others proposed vans or shuttle buses wrapped to look like trolleys  
 Downtowner mentioned intergration with the Point to Point service

→ 2 VEHICLES (( 2 + 1 SPARE) BASED ON USED VEHICLES  
 Evaluator Signature: Patricia → WANTS TO CONVERT TO GASOLINE 3 YEARS OLD  
 Date: 3/1/2019  
 ! WINDOWS GO DOWN! 30 MILE RADIUS  
 DOES NOT YET HAVE OWN MECHANIC  
 100,000. INCLUDES APP/ANNOUNCING  
 22 SITTING / 2 STANDING LOOKING INTO POINT-TO-POINT

## EXHIBIT C

### TAB 7 - FEE PROPOSAL (FEES TO THE CRA)

No.	Item	Price
1	Estimated Monthly Fee to CRA	\$42,717
2	Total Estimated Fee for Year One (Program Implementation)	\$512,606
3	Total Estimated fee for After Year One (Recurring fees) *Year Two Pricing Only*	\$527,218
4	Hourly Rate for Vehicle Rental with Driver *Inclusive of fuel, maintenance, operations, etc.*	\$52.81

#### Pricing Assumptions

1. First Transit will provide two (2) propane fueled Star Craft Allstar vehicles wrapped in Trolley theme for the first two years of the contract.
2. First Transit will provide the current diesel spare vehicle as a backup vehicle and will only use in emergencies.
3. The pricing provided in the table above is valid for the first two (2) years of the contract. Should Delray Beach CRA wish to exercise the three (3) option years, pricing for these years will be negotiated between First Transit and Delray Beach CRA.
4. If the Delray Beach CRA requires three (3) propane vehicles to be provided, the cost of the third vehicle would be \$43,000 annually.
5. **First Transit qualifies pricing based on providing the two (2) propane vehicles for the full two (2) year period. Should Delray Beach CRA terminate the contract prior to the end of the two (2) year base period, Delray Beach CRA would be responsible for the remaining lease costs of the vehicles.**
6. First Transit must be allowed to advertise on vehicles provided to the Delray Beach Redevelopment Agency Trolley service.
7. First Transit did not assume any advertising revenue in our cost proposal.
8. First Transit will provide maximum reimbursement to the Delray Beach CRA in the amount of \$12,500 annually from advertising revenue to keep operating cost in line with budget.
9. Advertisement revenue that may be earned over and above the \$12,500 annual amount will be retained by First Transit.

#### Optional Technology Pricing

First Transit can provide technology that includes Passenger Counting, Voice Annunciation, and an Infotainment System for an additional fee. This technology costs \$71,000 in one-time capital costs and \$16,500 in annual expense.

**SECTION 9  
SAMPLE AGREEMENT FORMAT**

Below is the standard agreement format for this Request for Proposals. This is a sample agreement only and is subject to revisions. **PLEASE DO NOT COMPLETE.**

**AGREEMENT**

THIS AGREEMENT is made and entered into by and between the CRA of Delray Beach, a Florida municipal corporation ("CRA"), whose address is 20 N. Swinton Avenue, Delray Beach, Florida 33444, and \_\_\_\_\_, a corporation (hereafter referred to as "Contractor"), whose address is \_\_\_\_\_.

WHEREAS, the CRA desires to retain the services of the Contractor to provide the goods and services in accordance with the CRA's Request for Proposals No. 2018-08, and the Contractor's response thereto, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Contractor and the CRA agree as follows:

ARTICLE 1. INCORPORATION OF REQUEST FOR PROPOSALS

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the CRA's Request for Proposals No. 2018-08 and the Contractor's response thereto, including all documentation required thereunder.

ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The Contractor shall provide the goods and/or perform those services identified in the specifications accompanying the CRA's Request for Proposals, which are incorporated herein by reference.

ARTICLE 3. COMPENSATION

The CRA shall pay to the Contractor, in compliance with the Pricing Schedule attached hereto and incorporated herein, according to the terms and specifications of the referenced Invitation to Bid.

ARTICLE 4. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the following addresses:

- i. As to the CRA:
  - Delray Beach CRA
  - 20 N. Swinton Avenue
  - Delray Beach, Florida 33444
  - Attn: Executive Director
  - Email: costelloj@mydelraybeach.com