



Legislation Text

File #: 20-0476, Version: 2

MOTION TO APPROVE THE AGREEMENT WITH REAXIUM, INC., PURSUANT TO THE AWARD OF RFP # ED-18-02 "CHARTER SCHOOL BUS AND STUDENT TRACKER".

PROCUREMENT PROCESS TAKEN:

- Chapter 35 of the City's Code of Ordinances is titled "PROCUREMENT PROCEDURES, PUBLIC FUNDS."

- Section 35.15 defines a Request for Proposals as "A written solicitation for competitive sealed proposals with the title, date and hour of the public opening designated. A request for proposals shall include, but is not limited to, general information, functional or general specifications, a statement of work, proposal instruction and evaluation criteria. All requests for proposals shall state the relative importance of price and any other evaluation criteria. The city may engage in competitive negotiations with responsible proposers determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offer."

- 35.18(A) states, "A purchase of or contracts for commodities or services that is estimated by the Chief Procurement Officer to cost more than \$25,000 shall be based on sealed competitive solicitations as determined by the Chief Procurement Officer, except as specifically provided herein."

- Section 35.19(A) states, "All sealed competitive solicitations as defined in §35.18 shall be presented to the City Commission for their consideration prior to advertisement."

- Section 35.21(A)(1) states, "An initial purchase of, or contract for, commodities or services, in excess of \$25,000, shall require the approval of the City Commission, regardless of whether the competitive bidding or competitive proposal procedures were followed."

SUMMARY EXPLANATION AND BACKGROUND:

1. On February 6, 2019, the City Commission authorized the advertisement of RFP # ED-18-02 "Charter School Bus and Student Tracker", which was advertised on February 12, 2019.

2. The purpose of this solicitation was to find a qualified firm to offer the Charter Schools a transportation and student rider management system with routing and tracking software, with the potential option of generating revenue.

3. On August 7, 2019, the City Commission approved the findings and recommendation of the evaluation committee to award RFP # ED-18-02 "Charter School Bus and Student Tracker" to Reaxium, Inc., and to direct the City Manager to negotiate a contract for services.
4. Administration has negotiated an agreement with Reaxium, Inc., which is attached to this agenda. The agreement is for an initial three (3) year period commencing on the date of execution. The agreement may be renewed for two (2) additional three (3) year terms upon mutual consent. The agreement will be at zero cost to the City for services, and also includes a revenue sharing component. Once Reaxium has achieved the Minimum Market Share, as described in the agreement, the City Shall receive 10% of the Reaxium Mobile Application subscription gross revenue. The City's share of Reaxium Mobile Application subscription gross revenue shall increase by 1% annually thereafter.
5. Reaxium, Inc. will generate revenue by charging a monthly subscription to the Charter School parents who choose to have access to the Reaxium application. The application will allow parents to track their children, and will be able to confirm once their child has boarded the school bus, track the bus as it travels to school, and confirm once the child has arrived at school. They will also be able to track their child on their school bus in the afternoon when they are on their way home.
6. On June 17, 2020, this item was deferred by the City Commission, requesting that City Administration work with the vendor to amend the "Reaxium Mobile App. Subscription Agreement".
7. The following changes have been made to the agreement:
 - The following language was added to Section 2.1 Payment Through Third Parties: In addition, use of the App may necessitate usage of services from third parties not related to Us, including, without limitation, our Payment Gateway partner ("Payment Gateway Partner"), Stripe (whose terms are located at <https://stripe.com/legal> - please note that We may from time to time change our Payment Gateway Partner at Our discretion). You agree that the terms of use for Stripe (or our Payment Gateway Partner from time to time) including such terms as amended from time to time in the Payment Gateway Partner's sole discretion, are incorporated into this Agreement, and you will be subject to any terms applicable to such third party services ("Third Party Terms").
 - The following struck-thru language was removed from Section 2.3 Unable-to-be-processed payments: Your agreement with your credit issuer governs use of your credit card ~~and the Stripe user agreement governs your use of the Stripe service.~~
 - The following struck-thru language was removed from Section 3.2 Privacy and Your Account: ~~Your information may be stored and processed in the United States or any other country where ReaXium has facilities, and by using the App, you consent to the transfer of information outside of your country.~~
 - The following struck-thru language was removed from Section 7 Intellectual Property Rights: As between you and us, Subscriber Data is confidential and yours; however, you give us as ~~worldwide~~ license to host, copy, transmit and display your data as is necessary for the normal operation of our App, in connection with the inter-operation of our App with other third-party Apps with which we integrate, and as otherwise noted in this Agreement.
 - The following struck-thru language was removed from and bolded language was added to Section 11.1 Third Party Payment Services: From time to time, we ~~may~~ **will** use a third party not affiliated with

us to process payments for the subscription to access the App, **such as “Stripe”** (a Third Party Processor). ~~You agree that this Third Party Processor is solely responsible for controlling, handling, processing, or fulfilling purchases processed through its systems.~~ When using such Third Party Processor you may be subject to additional terms of use/service and privacy policy(ies) of the Third Party Processor.

- The following struck-thru language was removed from and bolded language was added to Section 13 General: For all litigation which may be brought, subject to the requirements for arbitration hereunder, with respect to any controversy or claim, arising out of or relating to this Agreement or any relationship between us, the sole jurisdiction and venue for such litigation will be an appropriate federal or state court located in the ~~County~~ **Counties** of Palm Beach **or Broward** in the State of Florida.

- The following struck-thru language was removed from and bolded language was added to Section 13.1 Changes to Subscriber Agreement: You acknowledge and agree that you shall be responsible for reviewing this Agreement from time to time for changes, and that changes to this Agreement shall be effective ~~when posted~~ **thirty days after posting**.

8. Concerns were brought up by the City Commission regarding whether Reaxium would be able to sell any of the information collected. Section 7. Intellectual Property Rights, of the Mobile App Subscription Agreement, states that "Data that you upload or post to the App, if applicable, ("Subscriber Data") is treated as strictly confidential, and we won't use it or disclose it to anyone, except as set forth in this Agreement. We can assure you that access to Subscriber Data is not only treated as confidential with respect to third parties but also highly restricted within our own organization. We only access and use Subscriber Data to: (a) address technical problems or handle support issues, and then only in a highly confidential manner; or (b) as we believe may be required to permit the normal operation of the App and comply with applicable law. Subscriber Data doesn't include data relating to the use or operation of our App, such as anonymous usage-related data and technical-related data that we collect in connection with the use of the App ("Usage Data"). As is common with most software-as-a-service providers, we reserve the right to collect, monitor, aggregate and use Usage Data in any way. Usage Data improves the functionality and performance of our App, provides us with real, actionable data on user preferences and behaviors, determines performance benchmarks, and aids us in developing helpful content for schools, families, and the entire ReaXium community. As between you and us, Subscriber Data is confidential and yours; however, you give us as license to host, copy, transmit and display your data as is necessary for the normal operation of our App, in connection with the inter-operation of our App with other third-party Apps with which we integrate, and as otherwise noted in this Agreement. We claim no ownership rights whatsoever (by express or implied lien, operation of law, or otherwise) in any Subscriber Data that you upload to our App; provided, however, access and availability to the Subscriber Data is subject to the terms and conditions contained in this Agreement."

9. Concerns were also brought up by the City Commission regarding the use of biometric identifiers. The Agreement between the City and Reaxium, Inc. and the Mobile App Subscription Agreement do not include language allowing for the use of biometric identifiers.

10. City Administration together with the City Attorney's Office has also created a Mobile Application Acknowledgement and Consent Form, which would authorize the City Charter Schools to release records associated with the student to Reaxium. These records may include, but are limited to:

student name, address, bus route, grade level, and the school ridership information. The records may be used to develop and manage transportation and student rider management system software that will allow the Charter Schools to effectively and efficiently collect student ridership data associated with bus transportation services.

11. Request City Commission to approve the agreement with Reaxium, Inc., pursuant to the award of RFP # ED-18-02 "Charter School Bus and Student Tracker".

FINANCIAL IMPACT DETAIL:

- a) **Initial Cost:** None.
- b) **Amount budgeted for this item in Account No:** Not Applicable.
- c) **Source of funding for difference, if not fully budgeted:** Not Applicable.
- d) **5 year projection of the operational cost of the project:** Not Applicable.
- e) **Detail of additional staff requirements:** Not Applicable.