

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO.:

DIV.: “ ”

SEC.:

**AIRPORT TAXICAB DRIVERS, L.L.C., WASEF KUDSY,
DIUMAFATE NICOLAS, BLANCA N. MOYA, IGNATIUS B. ATSINA,
THERESA BRAGGS, ELK’S CABS CO., INC, ROLLINS CAB SERVICE, INC.,
WHITE FLEET CAB OPERATOR’S ASSOCIATION, INC.,
M. COLEMAN ENTERPRISES LTD., INC., ALLIANCE CAB SERVICE,
PATIO CAB SERVICE OF NEW ORLEANS, INC., AND UNITED CABS, INC.**

VERSUS

**NEW ORLEANS AVIATION BOARD AND
DULLES AIRPORT TAXI, INC.**

FILED: _____

DEPUTY CLERK

**PETITION FOR DAMAGES, INJUNCTIVE RELIEF AND
DECLARATORY JUDGMENT**

NOW INTO COURT, through undersigned counsel, comes **AIRPORT TAXICAB DRIVERS, L.L.C.**, (hereinafter “**ATD**”); **WASEF KUDSY, DIUMAFATE NICOLAS, BLANCA N. MOYA, IGNATIUS B. ATSINA, THERESA BRAGGS, ELK’S CABS CO., INC., ROLLINS CAB SERVICE, INC., WHITE FLEET CAB OPERATOR’S ASSOCIATION, INC., M. COLEMAN ENTERPRISES LTD., INC., ALLIANCE CAB SERVICE, PATIO CAB SERVICE OF NEW ORLEANS, INC., AND UNITED CABS, INC.**, (collectively “**Plaintiffs**”), who respectfully represent:

I.

Plaintiff herein, are as follows:

- A. AIRPORT TAXICAB DRIVERS, L.L.C.**, is a Louisiana Limited Liability Company, whose membership includes owners and operators of the taxicabs in the metropolitan New Orleans area. Each and every member of the **AIRPORT TAXICAB DRIVERS, L.L.C.** is duly authorized and permitted to provide taxicab service at Louis Armstrong New Orleans International Airport (“**LANOIA**”). **AIRPORT TAXICAB DRIVERS, L.L.C.**, is a small business owner, who derives a substantial portion of its business income from providing taxicab services to passengers at the **LANOIA**.
- B.** Plaintiff herein, **WASEF KUDSY**, is a person of the full age of majority, residing and domiciled in the Parish of Jefferson, State of Louisiana; at all times material herein **WASEF KUDSY** was the owner and/or operator of a taxicab bearing Certificate of Public Necessity and Convenience (“**CPNC**”) number 503 issued by the City of New Orleans. **WASEF KUDSY** is a small business owner, who derives a substantial portion of his business income from providing taxicab services to passengers at the **LANOIA**.

- C. Plaintiff herein, **DIUMAFATE NICOLAS** is a person of the full age of majority, residing and domiciled in the Parish of Orleans, State of Louisiana; at all times material herein **DIUMAFATE NICOLAS** was the owner and/or operator of a taxicab bearing CPNC number 963 issued by the City of New Orleans. **DIUMAFATE NICOLAS** is a small business owner, who derives a substantial portion of his business income from providing taxicab services to passengers at the LANOIA.
- D. Plaintiff herein, **BLANCA N. MOYA** is a person of the full age of majority, residing and domiciled in the Parish of Jefferson, State of Louisiana; at all times material herein **BLANCA N. MOYA** was the owner and/or operator of a taxicab bearing CPNC number K287 issued by the City of Kenner. **BLANCA N. MOYA** is a small business owner, who derives a substantial portion of his business income from providing taxicab services to passengers at the LANOIA.
- E. Plaintiff herein, **IGNATIUS B. ATSINA** is a person of the full age of majority, residing and domiciled in the Parish of St. Charles, State of Louisiana; at all times material herein **IGNATIUS B. ATSINA** was the owner and/or operator of a taxicab bearing CPNC number SC73 issued by the Parish of St. Charles. **IGNATIUS B. ATSINA** is a small business owner, who derives a substantial portion of his business income from providing taxicab services to passengers at the LANOIA.
- F. Plaintiff herein, **THERESA BRAGGS** is a person of the full age of majority, residing and domiciled in the Parish of Jefferson, State of Louisiana; at all times material herein **THERESA BRAGGS** was the owner and/or operator of a taxicab bearing CPNC number JPI161 issued by the Parish of Jefferson. **THERESA BRAGGS** is a small business owner, who derives a substantial portion of her business income from providing taxicab services to passengers at the LANOIA.
- G. Plaintiff herein, **ELK'S CABS CO., INC.** is a Louisiana Corporation engaged in the operation of a commercial taxicab fleet doing business in the metropolitan New Orleans area, including providing taxicab services to LANOIA.
- H. Plaintiff herein, **ROLLINS CAB SERVICE, INC** is a Louisiana Corporation engaged in the operation of a commercial taxicab fleet doing business in the metropolitan New Orleans area, including providing taxicab services to LANOIA.
- I. Plaintiff herein, **WHITE FLEET CAB OPERATOR'S ASSOCIATION INC.** is a Louisiana Corporation engaged in the operation of a commercial taxicab fleet doing business in the metropolitan New Orleans area, including providing taxicab services to LANOIA.
- J. Plaintiff herein, **M. COLEMAN ENTERPRISES LTD., INC.** is a Louisiana Corporation engaged in the operation of a commercial taxicab fleet doing business in the metropolitan New Orleans area, including providing taxicab services to LANOIA.
- K. Plaintiff herein, **ALLIANCE CAB SERVICE,** is a Louisiana Corporation engaged in the operation of a commercial taxicab fleet doing business in the metropolitan New Orleans area, including providing taxicab services to LANOIA.
- L. Plaintiff herein, **PATIO CAB SERVICE OF NEW ORLEANS, INC.,** is a Louisiana Corporation engaged in the operation of a commercial taxicab fleet doing business in the metropolitan New Orleans area, including providing taxicab services to LANOIA.
- M. Plaintiff herein, **UNITED CABS, INC.** is a Louisiana Corporation engaged in the operation of a commercial taxicab fleet doing business in the metropolitan New Orleans area, including providing services to LANOIA.

II.

Defendant herein, **NEW ORLEANS AVIATION BOARD (“NOAB”)** is a municipal agency charged by law with the responsibility of operating and managing LANOIA.

III.

Defendant herein, **DULLES AIRPORT TAXI INC. (“DULLES”)** is a Virginia Corporation whose principal place of business is in Church Falls, Virginia.

IV.

Since 2005, the NOAB has issued a series of Request for Proposals (RFPs) for On-Demand Taxicab Service at LANOIA.

V.

On or about October 16, 2008, the NOAB issued its most recent Request for Proposal (RFP) for On-Demand Taxicab Service at LANOIA. The purported purpose of this RFP was to:

- A. Improve customer service;
- B. Maintain a safe operating environment for travelers, as well as the taxicab operator;
- C. Enhance the image of taxicab operations at the Airport;
- D. Improve operational efficiency and the ability to manage vehicle demand during special events and non-peak periods;
- E. Improve driver opportunities to make a livable wage;
- F. Ensure that all current taxicab operators at LANOIA receive priority consideration for inclusion in the new service, including attempting to maintain the current representation of drivers from each jurisdiction in the region;
- G. Provide a fleet of vehicles meeting minimum size and other standards;
- H. Inspect vehicles;
- I. Renovate and improve existing facilities (including operations building and driver break room);
- J. Maintain facilities, staging area and passengers pick up sites;
- K. Conduct required and appropriate drug tests and criminal background checks for drivers;
- L. Develop and implement technologically advanced GPS, fee payment, computer and other system;
- M. Develop and enforce safety standards; and
- N. Develop and enforce training standards.

VI.

There was no requirement under the terms and conditions of the RFP for On-Demand Taxicab Service that the successful proposer own or maintain any CPNCs issued by any of the municipalities which currently service LANOIA. Hence, the winning proposer has been essentially excluded from the requirement that its fleet of taxicabs each have a validly issued CPNC as is now required by both NOAB and the City of New Orleans. Specifically, the New Orleans City code Sec. 162-602 maintains that no taxicab shall be operated on the streets in the city unless the owner of such vehicle has first applied for and received a CPNC. Additionally, the rules and regulations of NOAB at Sec. 12.02(A)(3) maintain:

- A. Every Person desiring to operate a taxicab from the Airport shall first obtain an Airport Taxi Use Permit issued by the Aviation Board. Said Airport Taxi Use Permit will be issued upon full compliance with the following conditions:

* * * *

3. A copy of a CPNC from a municipality within the State of Louisiana.

VII.

The current fair market value for CPNCs issued by the City of New Orleans, which have historically been bought and sold with the City's knowledge and approval ranges from thirty five thousand (\$35,000.00) dollars to fifty thousand (\$50,000.00) dollars depending on market conditions. The granting of the On-Demand Taxicab Service contract specifically devalues current CPNCs issued by the City of New Orleans as the lost opportunity to service LANOIA renders the CPNC nearly worthless.

VIII.

The terms and conditions of the aforementioned RFP contains the following prohibition:

neither the successful Proposer, nor any person holding a management position with the successful Proposer, nor any person who owns a direct or indirect ownership interest in the successful Proposer, may own, operate or manage an existing taxicab operation in or hold a Certificate of Public Necessity and convenience (CPNC) or its equivalent issued by any jurisdiction which issues CPNCs or their equivalents that are utilized by taxi drivers currently serving LANOIA, within two years prior to or at the time of submission of the subject response to this RFP or at the time of the subject Proposer's selection pursuant to this RFP or during the term of the Concession Agreement or at any other time prior to the expiration of term of the Concession Agreement.

IX.

The terms and conditions of the aforementioned RFP further maintains that the

successful Proposer will be required to provide proof of automobile liability insurance on all cabs at all times. Furthermore, the minimal limits of automobile liability insurance per cab shall be \$50,000 per occurrence. Additionally, the successful Proposer shall be required to provide proof of worker's compensation insurance with a waiver of subrogation in favor of LANOIA. Finally, the successful Proposer shall procure general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate and name LANOIA as an additional insured on the policy.

X.

The terms and conditions of the aforementioned RFP further maintains that the successful Proposer will be responsible for providing a *fleet of taxicabs*, including full size four door sedans and full size sport utility vehicles, which it owns or leases and that said vehicles must be no more than five (5) model years old at all time during the term of the On-Demand Taxicab Service contract agreement with 20% of its original fleet being new vehicles with less than 500 odometer miles. Vehicles that exceed this standard shall be replaced immediately. No replacement vehicle shall have more than 15,000 odometer miles. All vehicles shall meet all operational and vehicle standards set forth herein.

XI.

In an attempt to avoid compliance with the State Public Bid Law, applicable to the contract through Section 6-308 of the Home Rule Charter of the City of New Orleans ("City Charter"), the NOAB erroneously labeled the contract as one for "professional services."

XII.

Having improperly characterized the contract as a professional services contract, the NOAB adopted a procedure inconsistent with Section 6-308 of the City Charter, which incorporates by reference the State Public Bid Law.

XIII.

In response to this RFP, the NOAB received bids from three companies, Dulles Airport Taxi, Inc. ("Dulles"), Veolia Transportation ("Veolia"), and Tectrans, Inc. ("Tectrans").

XIV.

After an initial review of the three bids by an outside consulting firm, on January 14, 2009, each bid was discussed at an unannounced, closed-door meeting of the Technical

Committee of the NOAB – the occurrence of which violated the Louisiana Open Public Meetings Law, found at La. R.S. 42:4.1, et seq.

XV.

At this unlawful meeting, the Technical Committee found that each of the three bids submitted failed to comply with all of the mandatory requirements of the RFP.

XVI.

The Technical Committee, and later the NOAB, waived certain non-conformities in the proposals submitted by Dulles and Veolia, but refused to waive the alleged non-conformities in Tectran’s bid, finding it non-responsive and refusing to consider and grade the substance of Tectran’s proposal.

XVII.

Ultimately, the NOAB awarded the contract to Dulles, partnered with L&R Security, the current manager/and or operator of taxicab services at the airport.

XVIII.

The City Charter requires that the NOAB should have complied with the requirements of the Louisiana Public Bid Law, La. R.S. 38:2211, *et seq.*, when it awarded the contract for the On Demand Taxicab Services at the Airport. After characterizing this contract as a contract for professional services, the NOAB adopted a contract award procedure inconsistent with State Public Bid Law. Pursuant to said procedure, the NOAB waived certain requirements in the RFP for On-Demand Taxicab Service at the LANOIA, causing it to unlawfully change the RFP requirements “post-proposal” in violation of State Public Bid Law, including but not limited to La. R. S. 38:2212(a)(1)(B). This violation caused the NOAB’s subsequent award of the contract for On-Demand Taxicab Service at the Airport to be null, void, and without legal effect.

XIX.

All of the meetings of the NOAB and its committees and boards, including the Technical Committee, are subject to the requirements of the Open Meetings Law. On January 14, 2008, the Technical Committee of the NOAB met to discuss the responsiveness of the three proposals submitted in response to the RFP for the On-Demand Taxicab Service at LANOIA. Upon information and belief, the NOAB failed to comply with La. R.S. 42:7 by failing to provide written notice of this meeting and failing to open it to the public.

XX.

Plaintiffs believe that the award to Dulles violates the specific terms of the RFP in the following non-exclusive list of particulars:

- A. Dulles was not a qualified and responsible bidder;
- B. The proposal of Dulles exceeded the specified page limitations set forth in the RFP;
- C. Dulles failed to meet the required Disadvantage Business Enterprise (DBE) ownership/participation goals;
- D. Dulles failed to meet the insurance requirements as set forth in the RFP; and
- E. Any and all other deficiencies that will be discovered and proven at the trial of this matter.

XXI.

Plaintiffs further maintains that the award to Dulles violated the Constitution and laws of the State of Louisiana as well as the Constitution and laws of the United States of America in the following non-exclusive list of particulars:

- A. The request for proposal and the resulting grant of the On-Demand Taxicab Service contract constitutes an illegal monopoly of trade or commerce in violation of La. R. S. 51:123;
- B. The request for proposal and the resulting grant of the On-Demand Taxicab Service contract constitutes an unfair trade practice and an illegal restraint of trade or commerce in violation of La. R. S. 51:122;
- C. The request for proposal and the resulting grant of the On-Demand Taxicab Service contract is arbitrary and capricious and imposes undue financial burden upon plaintiffs and adversely impacts the ability of plaintiffs to earn a living in their chosen vocations and occupations;
- D. The request for proposal and the resulting grant of the On-Demand Taxicab Service contract violates the due process and equal protection laws of the State of Louisiana and the United States of America in that plaintiffs were specifically prohibited from the opportunity to bid on the current On-Demand Taxicab Service contract; and
- E. The request for proposal and the resulting grant of the On-Demand Taxicab Service contract specifically devalues the current fair market value of CPNCs owned by plaintiffs and constitutes an unfair and unjust governmental taking without adequate compensation.

XXII.

Plaintiffs maintain that the awarding of the On-Demand Taxicab Service contract will grant defendant Dulles the exclusive right to provide for the pickup of airport passengers at the LANOIA. Therefore, if plaintiffs wish to continue to pursue their livelihood and work as taxicab drivers, owners and operators at LANOIA, they will be forced to work as employees and/or

independent contractors of Dulles, if hired or allowed. This forced relationship places an unlawful and unfair restraint on plaintiffs' ability to earn a fair living and also violates plaintiffs' equal protection and due process rights under the Constitution, the laws of the United States of America and the laws of the State of Louisiana. Further, the awarding of the On-Demand Taxicab Service contract will greatly reduce the value of plaintiffs' certificates of public necessity and convenience constituting an unfair and unjust governmental taking without adequate compensation.

WHEREFORE, Plaintiffs, AIRPORT TAXICAB DRIVERS, L.L.C., WASEF KUDSY, DIUMAFATE NICOLAS, BLANCA N. MOYA, IGNATIUS B. ATSINA, THERESA BRAGGS, ELK'S CABS CO., INC, ROLLINS CAB SERVICE, INC., WHITE FLEET CAB OPERATOR'S ASSOCIATION, INC., M. COLEMAN ENTERPRISES LTD., INC. ALLIANCE CAB SERVICE, PATIO CAB SERVICE OF NEW ORLEANS, INC., AND UNITED CABS, INC. pray that judgment be granted in their favor and against the NEW ORLEANS AVIATION BOARD and DULLES AIRPORT TAXI, INC.:

- A. That a preliminary injunction, and permanent injunction be issued herein prohibiting the NOAB and their officers, agents, servants, and assigns from executing, negotiating, or performing a contract for On-Demand Taxicab Service at LANOIA with Dulles;
- B. That this Court order, adjudge, and decree that the request for proposal and granting of the On-Demand Taxicab Service contract constitutes an unfair trade practice, an illegal monopoly, and violates the due process, equal protection, and unjust takings clauses in the constitutions and laws of the State of Louisiana and the United States of America;
- C. That this Court order, adjudge, and decree that the NOAB is required to pay Plaintiffs reasonable attorney fees and costs associated with bringing this suit to protect their rights under the Constitution and laws of that State of Louisiana and the United States of America;
- D. That this Court order, adjudge and decree that the NOAB is and at all times was required by the New Orleans Charter to comply with the Louisiana Public Bid Law when it attempted to award the contract for On-Demand Taxicab Service at LANOIA;
- E. That this Court order, adjudge, and decree that the contract for On-Demand Taxicab Service at LANOIA is not considered a "professional services" contract;
- F. That this Court order, adjudge, and decree that the NOAB violated the New Orleans Charter and the Public Bid Law by waiving requirements of the RFP, including but not limited to the page limitation, the DBE ownership goal and the mandatory insurance requirements, among other deficiencies that will be discovered and proven at a trial of this matter;
- G. That this Court order, adjudge, and decree that these violations of the public bid law caused the award of the contract to Dulles to be null, void, and without legal

effect;

- H. That this Court order, adjudge, and decree that the NOAB is required to pay Plaintiffs' reasonable attorney fees and costs associated with bringing this suit to enforce the Public Bid Law pursuant to La. R.S. 38:2220.4;
- I. That this Court order, adjudge, and decree that the meetings of the NOAB's boards and committees were subject to the requirements of the Louisiana Open Meetings Laws;
- J. That this Court order, adjudge, and decree that the NOAB violated the Louisiana open Meetings Law by not announcing the meetings of its Technical Committee which evaluated and graded the proposals for On-Demand Taxicab Service;
- K. That this Court order, adjudge, and decree that the NOAB is required to pay Plaintiffs' reasonable attorney fees and costs associated with bringing this suit to enforce the Louisiana Open Meetings law pursuant to La. R.S. 42:11; and
- L. That this Court award any and all other relief that is just and proper under the circumstances, including but not limited to attorney's fees, expenses, and all other associated relief.

Respectfully submitted,

SPEARS & SPEARS

BY: _____

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1631 Elysian Fields Ave
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Telephone: (504) 593-9500

BERNARD, CASSISA, ELLIOTT & DAVIS
A Professional Law Corporation

BY: _____

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PLEASE SERVE:
NEW ORLEANS AVIATION BOARD
Through Chairman of Board
Mr. Daniel Packer, Jr.
900 AIRLINE DRIVE
KENNER, LA 70062

DULLES AIRPORT TAXI, INC.
Through Registered Agent
C T CORPORATION SYSTEM
5615 CORPORATE BLVD.
STE. 400B
BATON ROUGE, LA 70808

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

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VERSUS

NEW ORLEANS AVIATION BOARD AND
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FILED: _____

DEPUTY CLERK

RULE TO SHOW CAUSE

Defendants are ordered to show cause on _____ the ____ day of
_____, 2009 at _____ o'clock __.M., why plaintiffs' Preliminary Injunction
should not be GRANTED.

New Orleans, La, this _____ day of _____, 2008.

JUDGE

Please Serve

NEW ORLEANS AVIATION BOARD
Through Chairman of Board
Mr. Daniel Packer, Jr.
900 AIRLINE DRIVE
KENNER, LA 70062

DULLES AIRPORT TAXI, INC.
Through Registered Agent
C T CORPORATION SYSTEM
5615 CORPORATE BLVD.
STE. 400B
BATON ROUGE, LA 70808