FOLEY

FOLEY & LARDNER LLP

ATTORNEYS AT LAW

2021 MCKINNEY AVENUE, SUITE 1600
DALLAS, TX 75201-3340
214.999.3000 TEL
214.999.4667 FAX
WWW.FOLEY.COM

June 7, 2022

VIA MAIL
The Office of Procurement Services
Attention: Douglas Shelton, Procurement
1500 Marilla St.
Room 3FN
Dallas, TX 75201
Douglas.shelton@dallascityhall.com

Re: Conduent's Protest to City of Dallas Solicitation #BG22-00018902

Dear Mr. Shelton,

This firm represents Conduent State & Local Solutions, Inc. ("Conduent") in relation to the City of Dallas's (the "City") Solicitation #BG22-00018902 for Management of Parking Meter Citation and Management (the "Solicitation"). An affidavit evidencing representation is attached hereto as **Attachment 1**. In accordance with Section 21, Protest Procedures, of the Office of Procurement Services *Exhibit A: General Terms and Conditions* dated September 3, 2020 ("General Terms and Conditions"), Conduent is submitting this formal protest letter to the Solicitation and the City's resulting intended award. While the City has *not* noticed its intended awardee, and thus the protest period has not begun, Conduent is filing this protest prematurely in an effort to preserve its ability to receive a meaningful remedy. *See General Terms and Conditions* at 3-4 (providing that a protest must be filed no "later than five (5) business days after the non-awarded party has received notice of the City's intent to award"); *see also* a copy of the City's "Notice of Intent to Award" dated May 31, 2022, attached hereto as **Exhibit A**.

Conduent is the incumbent provider of some of the services sought in the Solicitation and values its relationship with the City. Conduent believes that it has provided quality services to the City, and as such, has a unique understanding and perspective on the City's decision to combine services from different contracts into a single comprehensive contract. Conduent does not wish to be in a position of having to protest the City's Solicitation and intended award, however, the City's conduct of the procurement raises serious concerns as to whether the City's procurement and intended award were in the City's best interests and resulted in the most advantageous solution. While Conduent has not received any production in response to its FOIA requests regarding documents that are routinely maintained as part of a contract file, based on the limited information currently available to Conduent, Conduent is confident that the City's procurement and intended award are fundamentally flawed and that the City should immediately reconsider its procurement and intended award. Conduent reserves the right to supplement or amend this protest after receipt of responsive documents from the City. In addition, in light of the facts brought to the attention of the City in this Protest, the

City must stay the procurement and contracting process until this Protest is resolved to preserve a meaningful remedy for Conduent, and to protect the City from entering into a disadvantageous contract and wasting further resources in connection with this fundamentally flawed procurement.

I. Identification of the Protesting Party and Contact Information

Conduent is the incumbent provider of parking services for the City. As the incumbent contractor, Conduent is uniquely positioned to provide the most advantageous solution to the City. Conduent submitted a competitive bid in response to the Solicitation but received a "Notice of Intent to Award" dated May 31, 2022, that stated that Conduent was not the most advantageous proposal.

For the purposes of this protest, Conduent's contact information is that of undersigned counsel:

David G. Cabrales, Esq.
Foley & Lardner LLP
2021 McKinney Avenue
Suite 1600
Dallas, TX 75201
dcabrales@foley.com
(214) 999-4359
Cc: rhosay@foley.com; bjgrossman@foley.com; mneumann@foley.com

II. Identification of the Solicitation

The solicitation at issue is BG22-00018902 for Management of Parking Meter and Citation Management released on March 7, 2020.

Bids were originally due on April 8, 2022. Questions for the Solicitation were due on March 18, 2022. On April 6, 2022, *just two days* before bids were due, the City released Addendum 1 to the Solicitation that provided answers to the bidders' questions and extended the due date to April 15, 2022. The City's last-minute changes to the procurement in Addendum 1, gave bidders an extremely unreasonable and short amount of time, rendering it impossible for vendors to adjust and change their bids in accordance with the City's published answers. On April 11, 2022, less than four days before bids were due to be submitted under the extended due date, the City *again* significantly amended the Solicitation, again leaving no opportunity for bidders to adjust and republish their bids for a second time in accordance with the major changes imposed by Addendum 2. Conduent later received a "Notice of Intent to Award" dated May 31, 2022 (the "Notice"). This Notice was a letter that simply checked an option saying that Conduent was "not the most advantageous solution," but it did not identify the intended awardee nor did it provide Conduent with notice of its rights to protest the Solicitation. The Notice also provided that the City "reserve[d] the right to engage discussions with the next lowest bidder or next highest ranked proposer" and stated that the City was still in the "pre-

award phase" of the procurement. Given Conduent's competitive bid and its unique knowledge and position to provide the most advantageous solution for the City, Conduent was concerned that the City's procurement was not in the City's best interests and did not comply with the City's governing procurement law and regulations. Conduent thus requested a debrief with the City, but the request was rejected, and the City instead stated that it could not conduct the debrief until after the award was executed and approved. Unfortunately, a debrief after execution and approval of the award will be too late, as the City will have already spent unnecessary time, efforts, and resources on entering into an improper contract.

In accordance with the Notice's statement that the City was still in the "pre-award phase" and given that Conduent may still be in line for an award in accordance with the City's statement that it reserved the right to engage in discussions with other bidders, Conduent believes the protest period in Section 21 of the General Terms and Conditions has not yet begun; however, Conduent believes that it would be in the best interests of the City to reconsider its procurement and intended award now, prior to the City entering into a contract that is later found to be improper and void. As such, Conduent respectfully requests that the City stay the procurement and contracting process until this protest is resolved to ensure a meaningful remedy for both the City and Conduent, and to preserve the City's time and resources.

III. Factual & Legal Grounds for Protest

Texas courts have long recognized that:

> "Competitive bidding" require[s] due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items covered by the contract; upon the same thing. *It requires that all bidders be placed upon the same plane of equality and that they each bid upon the same terms and conditions involved in all the items and parts of the contract*, and that the proposal specify as to all bids the same, or substantially similar specifications. Its purpose is to stimulate competition, prevent favoritism and secure the best work and materials at the lowest practicable price, for the best interests and benefit of the taxpayers and property owners. *There can be no competitive bidding in a legal sense where the terms of the letting of the contract prevent or restrict competition, favor a contractor or materialman, or increase the cost of the work or of the materials or other items going into the project.*

Texas Highway Com. v. Texas Ass'n of Steel Importers, Inc., 372 S.W.2d 525, 527 (Tex. 1963) (emphasis added); *see also Tex. Logos, L.P. v. Tex. DOT*, 241 S.W.3d 105, 116 (Tex.App. – Austin

[3d Dist.] 2007) (same). Unfortunately, the City's procurement here failed to satisfy these requirements. Bidders were not provided with an opportunity to compete on equal footing with respect to well-defined requirements known in advance to the vendors, the method in which the procurement was conducted materially prevented open competition, and the City's actions opened the door to – and created the appearance of – favoritism.

As set forth below, the manner in which the City conducted the Solicitation was arbitrary, capricious, and undermined the ability of the vendors to fairly compete for the resulting contract – as well as the ability of the City to actually achieve the best value for the City and its taxpayers as a result of the Solicitation. The City's procurement process here also, regrettably, results in the appearance of favoritism and conflicts of interest. This appearance of impropriety undermines the confidence of both the vendor community and the public in the competitive bidding process, and leaving the impression that the resulting contract was not equitably or fairly competed, and was not awarded in the public interest. Finally, the manner in which the Solicitation was conducted had the unfortunate effect of undermining important City initiatives and goals in the award of public business. The cumulative effect of these numerous errors is that the City's solicitation process was fundamentally flawed such that no contract award under the Solicitation can stand, and the City must instead reject all proposals and conduct an open and fair re-procurement that is not irreparably tainted by the numerous arbitrary decisions, missteps, and conflicts of interest that have undermined the integrity of the Solicitation here.

A. The City Irrationally Made Major Changes to the Qualifications Sought Immediately Prior to the Submission Deadline, and in Doing So Prejudiced Respondents and Rendered Legitimate Competition Impossible.

As an initial matter, the City's inexplicable decision to fundamentally change critical terms of the Solicitation *on the eve of bid submission*, once vendors had already developed their solutions and lacked time to adapt to the momentous changes made by the City and its consultant, fundamentally undermined the ability of vendors to fairly compete for the resulting contract. Worse still, the City made this fundamental misstep *multiple times* in this procurement, both removing nearly all of the mandatory minimum qualification requirements related to relevant experience, and removing the Minority-owned Business Enterprise and Woman-owned Business Enterprise ("M/WBE") participation goal from this procurement.

1. <u>The Last-Minute Decision to Eliminate Nearly All Relevant Mandatory Minimum Experience Qualifications Was Arbitrary, Capricious, and Contrary to Competition.</u>

Originally, the Solicitation contained a detailed list of "minimum qualification considerations" that vendors were required to meet in order to propose on the project. These considerations were directly related to the scope of work for the project, and required vendors to demonstrate how their team had specific experience, in enumerated areas, performing the scope of services under this contract. A true and correct copy of the original minimum qualification considerations is attached hereto as **Exhibit B**.

These original "minimum qualification considerations" required vendors to, amongst other things, have five years of demonstrated experience "processing parking citations, with a total volume of more than 150,000 citations processed annually, providing management support systems, collections of delinquent citations, and coordinating activities with the Texas Department of Motor Vehicles," have at least five references from municipal agencies with at least one *in Texas within the last three years*, demonstrate experience processing virtual license plate-based permits, demonstrate call center experience, and demonstrate experience regarding mail-in or lockbox procession. *See* Exhibit B at p. 1. These minimum qualifications likewise contained specific requirements for the references, in addition to references specific to individual services, limiting when the references could be from and what types of agencies would count as satisfying the minimum required references. In short, these requirements winnowed the field of potential vendors and required vendors to *construct their teams in a manner that would provide the specific experience sought* by the City.

Notwithstanding having originally published these detailed requirements, and allowing the vendors to move forward and construct their proposal teams and proposals with an eye towards satisfying these requirements, on April 11, 2022, *less than four days* before the bid submission deadline, the City eliminated *nearly all* of these requirements.[1] At approximately 3:00 PM on April 11th, the City published to its electronic procurement page Addendum #2, which served only to provide an updated set of minimum qualifications. A true and correct copy of the changed minimum qualifications is attached hereto as **Exhibit C**. While the original minimum qualifications set forth specific experience, with specific requirements, that vendors must satisfy, the last-minute change to the minimum qualifications required ***only*** the following:

[1] As discussed further below, there does not appear to be any rational and appropriate explanation for why this change to the minimum qualifications was made at this late date. It is important to note that vendor questions had, by the time this Addendum was posted, already been addressed, and there should not have been further contact between Vendors and the City between the time Vendor questions were previously answered and when this change was made.

> 1. Each reference provided should be for a configuration similar to that requested by the City (e.g., agency size, population served and scope of services).
>
> 2. Proposer must provide a minimum of five (5) U.S. municipal references, with at least two (2) references for Systems installed within the last three (3) years, preferably in Texas.
>
> 3. Each reference must have been operational for at least one (1) year.

See Exhibit C.

This change was fundamental in nature, and constituted a sea-change in both determining what vendors were eligible to respond to the Solicitation, and dictating how responding vendors would need to structure their proposals and teams. In short, the change to the minimum qualifications took what had, previously, been a requirement that vendors demonstrate long-standing experience specifically related to their ability to perform this contract – which ensured that the City would receive proposals only from the best-qualified vendors, and instead allowed minimal, generic experience to be valued at the same level as a demonstrated track-record of performance under equivalent contracts. It likewise made a fundamental change in what experience would suffice, changing from a *requirement* that vendors have experience specific to the State of Texas to the mere suggestion that Texas-specific experience would be "preferred." The decision to make such a change, particularly at the literal last minute of the procurement, was both arbitrary and capricious, and undermined the ability of vendors to fairly compete for the contract. This change was even more egregious in that it likely impacted not only the ability of vendors to bid on the contract at all, but also the evaluation of vendors and the City's ability to distinguish between superb experience and minimal experience when evaluating proposals: by redefining the required qualifications from *specific, enumerated* experience to a general requirement that vendors simply have five references that are, in some unspecified manner, *similar*, the City equated exemplary experience with any experience whatsoever and eliminated any distinction between vendors with superb qualifications and those who may be minimally qualified. Moreover, even to the degree that a loosening of minimum qualifications could potentially increase competition, the way that the City made this change in this procurement all but assured that it would not receive any material benefit from making this change and actually *reduced* potential competition: would-be-vendors could not reasonably, with less than four days of notice, be expected to find out about this change, make the decision to bid, construct a meaningful proposal, and timely respond to the City.

In addition, the last-minute nature of this change (over a month after the Solicitation was released, and mere days before bids were due), was a fundamental and fatal flaw in the procurement

process that greatly undermined the ability of vendors to compete in a fair and open process.[2] In order to have fair competition for a government procurement, it is necessary that it be *clear* to vendors what is required in their responses – precisely because the proposal submitted by vendors is tailored to and based upon the requirements of the Solicitation itself. Vendors expend significant time and resources ensuring that they are assembling a proposed solution that best satisfies *the requirements of the bid*, and it is impossible for vendors to adequately adjust when the government decides to make fundamental changes to the procurement on the eve of bid submission. In a procurement such as this one, the effect of this type of flaw is profound: the vendors' responses and partnering strategies are driven by what the Solicitation says the City is seeking, and vendors would have dedicated significant time between the bid release date and the due date to ensure that they were assembling a team that met the City's minimum qualifications and were presenting the most competitive proposal possible. When this fundamental change in the minimum requirements was made less than 4 days before the bid submission deadline, it was impossible for vendors to change course and adjust their pricing, proposals, and response and partner strategy at that late hour to account for the City's belatedly changed requirements – placing those vendors who had invested the funds and time to actually attempt to meet the City's original requirements at a distinct competitive disadvantage. More fundamentally, this last minute change prejudiced not only the competing vendors, but also the City itself: by forcing vendors to develop proposals in light of requirements that the City then eliminated at the last minute, by moving forward under this procurement the City will be locking itself into paying a premium to receive qualifications that it later determined were not necessary. Against this backdrop, the City's arbitrary decision to eliminate these requirements mere days before bids were due is indefensible: if the City valued the experience it originally requested, it should have left the minimum qualifications unchanged; if the City was, instead, amenable to receiving proposals from less qualified teams, it should have made this change far earlier in the process or extended the bid due date to allow vendors to change course and meet the changed requirements. What the City *could not* rationally do is exactly what occurred here: make the change so late in the process that it impedes the ability of vendors to fairly compete for the contract, and entirely frustrates the opportunity for the City to actually receive the best value.

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[2] While the last-minute nature of this change, and the drastic loosening of the City's requirements, give the impression that this change may have been made to accommodate a potential vendor who may not otherwise have been capable of responding (which itself would be suggestive of favoritism and a reason to re-conduct the procurement), this flaw would be particularly egregious and suggests improper contact with or influence over the Solicitation given that the change was made *after* the responses to vendor questions, when any concerns about the minimum qualifications should have been addressed.

2. The Decision to Belatedly Eliminate the M/WBE Goal for the Procurement Was Improper, Prejudiced Respondents, and Was Not in the City's Best Interests.

Similar to the last minute decision to eliminate the specific mandatory experience requirements from the Solicitation, the City likewise made a belated and surprising decision to eliminate M/WBE goals from this Solicitation in a manner that materially and meaningfully prejudiced both vendors and the City itself.

The City of Dallas has long prided itself on encouraging the inclusion of minority and women owned businesses in the public contracting process, and has a well-established program governing the use of such businesses in the City's solicitation process. To this end, the City has adopted a "Business Inclusion and Development Policy" (the "BID Policy"), and has gone so far as to have the policy officially adopted by the City Council. *See* Resolution 20-1430, a true and correct copy of which is attached hereto as **Exhibit D**. Pursuant to the BID Policy, its provisions are applicable to "*all* contracts for the purchases of goods or services over $50,000 with special emphasis on those contracts with first tier subcontracting opportunities," and the policy takes precedence over *all* conflicting departmental plans and procedures. *See* Exhibit D at p. 2. The BID Policy is affirmative in nature, and specifically confirms that the City "*will* require bidders/proposers to document good faith efforts to meet established goals," and that "[f]ailure to adequately document a good faith effort to obtain M/WBE participation may result in" a vendor not being awarded the contract.

Against this background, parking services contracts have historically been treated as professional services contracts, and had the accompanying M/WBE participation goal. This treatment is consistent with the BID Policy, because parking services contracts provide ample opportunity for M/WBE teaming arrangements and first tier subcontracting. Indeed, Conduent's existing contract with the City has incorporated M/WBE participation goals, which Conduent has satisfied.

This procurement too, *at least initially*, appeared to treat the services at issue as being professional services, which would have required vendors to document their efforts to satisfy the 38% M/WBE participation goal applicable to such contracts. The RFCSP Specifications (a true and correct copy of which is attached hereto as **Exhibit E**), when describing the applicable Evaluation Criteria, specifically called for vendors to provide a Business Inclusion and Development Plan. This evaluation criteria *mandated* that vendors submit the Office of Business Diversity Pre-Bid/Proposal Form (OBD-FRM-623), provided that the BID Policy "establishes subcontracting goals and requirements for *all* prospective bidder/proposer," and explained that "As a prerequisite for City Council Award, the contractor *must* demonstrate and document its good faith effort to meet the established goal." *See* Exhibit E at pp. 39-40 (emphasis added). In addition, the Solicitation identified forms OBD-FRM-623 and OBD-FRM-627 as *required* forms. *Id.* at p. 41. These forms provided that, for professional service contracts, a M/WBE participation goal of 38% would apply. *See* BID-FRM-623, a true and

correct copy of which is identified as **Exhibit F**. The RFCSP document further provided, with respect to evaluation criteria: "Note: the BID will mostly always be 15 points." *See* Exhibit E at p. 39.

Inexplicably, however, ***despite the RFCSP document requiring submission*** of the M/WBE forms, explaining that contractors *must* demonstrate their efforts to meet the goals, and providing that the BID Plan would be an evaluation criteria for the Solicitation, when Addendum 1 was released on April 6th – *two days before the initial bid due date* and only nine days prior to even the extended bid due date – the requirement that vendors make a good faith effort to meet the City's well-established M/WBE goals was ***eliminated in its entirety***: in response to Question 8, the City explained that the Solicitation would be considered one for "other services" (rather than "Professional Services" as parking contracts are ordinarily treated), and no M/WBE goal would apply at all. *See* Addendum #1, a true and correct copy of which is attached hereto as **Exhibit G**.

Here too, this last-minute change materially prejudiced vendors: the City, at a minimum, created the impression through its initial bid documents that a 38% M/WBE participation goal would apply to this contract. Vendors who attempted to meet this goal *spent the intervening month* between the bid release and the release of Addendum #1 entering into teaming and subcontracting arrangements to structure their proposals in a way that would satisfy this goal. Such efforts come at a real monetary cost to vendors. When the City entirely changed course, again at the literal last-minute, and changed the M/WBE participation goal from 38% to 0%, this placed vendors who had looked to comply with the Solicitation's requirements in good faith in a bind: they could not then easily abandon the teaming partners and subcontractors who they had lined up to satisfy the goal (and any attempt to abandon M/WBE participation entirely would have been inconsistent with both the stated goals and the intent behind the City's BID Policy). Thus, these vendors were forced to either move forward with more complex, but M/WBE compliant, solutions that they had crafted – likely resulting in increased costs to the City over self-performed work, or engage in a rushed effort to reconfigure their proposals in light of the changes. This placed those vendors at a material competitive disadvantage relative to any vendors who *had not* attempted to satisfy the existing BID Policy requirements, and had a real effect on vendors: while Conduent had a solution prepared to meet the original 38% participation goal, in order to attempt to remain competitive in light of the drastic change in requirements Conduent was forced to attempt to reconfigure its team and proposal under an unreasonably short timeframe.

Perhaps more fundamentally, this change materially prejudiced the City of Dallas itself, and calls into question the City's efforts to comply with the BID Policy. The City, through the City Council, has made perfectly clear that it places a high value on diversity in public contracting, and has made laudable efforts to increase the opportunities available for M/WBE businesses to participate in the City's contracting process. Against this backdrop, the last-minute decision to deem this contract an "other services" contract exempt from the City's M/WBE participation goals – rather than a professional services contract as parking contracts are ordinarily treated – calls into serious question

the motives of the City, and its efforts to satisfy its own express public policy, with respect to this Contract. Parking services contracts have long been recognized as an industry which presents a strong opportunity for minority- and women-owned business contracting, and a robust community of M/WBE vendors who can assist on such contracts exists. Given both the ability of vendors to meaningfully engage with the M/WBE vendor community with respect to these contracts, and the City's historic practice of *actually achieving* M/WBE participation with respect to this very contract, the decision to belatedly excuse vendors (at least those who had not already formulated their teams) from making any efforts to obtain M/WBE participation is inexplicable, inexcusable, and regrettable.

B. The City Evaluated Price Proposals in an Illogical and Arbitrary Manner.

In addition to the City's last minute decision to make material and consequential changes to the Solicitation terms, other fatal flaws preventing the City from rationally and reasonably awarding the contract likewise exist which mandate the conduct of a re-procurement. By way of example, the City's evaluation of price proposals was *necessarily* arbitrary, as there is no way in which the City could have rationally awarded the 30 total points allocable to "Cost."

As originally released, the Solicitation failed to identify what the term of any resulting contract would be. While this oversight was corrected in Addendum #1, with Question #4 clarifying that the contract would have a three year base term and one optional one-year renewal, *see* Exhibit G at Question #4, this clarification would ultimately prevent the City from being able to evaluate cost in a reasonable manner. In addition to explaining that the contract would be awarded with a three year term and one option year (for a maximum contract length of four years), Addendum #1 was also accompanied by a Revised Cost Proposal form, a true and correct copy of which is attached hereto as **Exhibit H**. This revised Cost Proposal form contained a number of pieces of information that vendors were to provide, and ultimately requested that vendors provide the City with a *first year* cost, and a *five year* cost.

It is not clear how the City could have conceivably evaluated vendors' cost proposals for a contract with a three year term and one option year (thus, either a three or four year contract) when vendors provided pricing for: 1) the first year and 2) a five year term. *To be clear, under no circumstances would this Solicitation result in a five year contract, thus five year pricing is entirely useless in analyzing the costs of proposals.* Similarly, this Solicitation *cannot* result in a one year contract, thus first year pricing is, on its own, insufficient to determine the cost to the City. As a result, the revised Cost Proposal form left the City in a position where it is impossible for the City to have actually made a reasonable comparison of the cost of proposals. By definition, the City has either: 1) wholly failed to consider second, third, and potential fourth year pricing when evaluating cost

proposals; or 2) based its evaluation of costs on an entirely irrelevant pricing scenario that can *never* actually occur under the Contract.

These flaws were only exacerbated by the City's responses to vendor questions concerning the Cost Proposal. Despite numerous questions concerning the Cost Proposal, including a question specifically asking the City to clarify how total price would be evaluated, *see* Exhibit G at Question #10, the City explained only that "[c]ost accounts for up to 30 points." This response sheds no light whatsoever on how Cost Proposals would be evaluated, nor is it clear *to this day* how the City evaluated vendors' pricing. A properly evaluated Cost Proposal is fundamental and material to determining the most advantageous bidder; consequently, this procurement is fundamentally flawed even by this error standing alone.

However pricing was evaluated, it was necessarily flawed – as described in detail above. This flaw, too, prejudiced both the vendors and the City. With respect to the Vendors they were, again, prejudiced by being forced to bid in the dark – without any insight into how their pricing would be evaluated or what, exactly, they needed to do in order to receive the 30 price points. A fair and proper procurement process *cannot* simply be made up by the government as it goes: vendors compete for contracts by responding in a manner that will maximize their score, and a change in the evaluation process – or an evaluation process that is not determined until after bids are submitted – both opens the door for favoritism and mischief, and renders it impossible for vendors to fairly compete for contracts. But this flaw also deprives the City itself of the benefit of competitive procurement: the Solicitation repeatedly called for the contract to be awarded to the most advantageous proposal, but in order to determine the value offered by each proposal – and thus which proposal is most advantageous – the City necessarily has to be capable of determining the *cost* of each proposal. Indeed, Texas law expressly requires the City to consider price when awarding contracts. *See* Tex. Local Gov't Code § 252.043(h). In this respect, the pricing analysis is a material and necessary component of evaluating the proposals, and the City has unfortunately left itself wholly incapable of actually determining the proposed cost of *any* proposal. Against this backdrop, the only acceptable option is for the City to cancel the Solicitation, reject all proposals, and conduct a proper re-procurement that corrects this fundamental flaw.

C. The City's Procurement Process Was Irreparably Tainted by a Material Conflict of Interest.

Finally, and critically, it appears that the City's procurement process was undermined by a material and uncurable conflict of interest between the Consultant retained by the City to guide and assist with the Solicitation process (Dixon Resources), and one of the vendors responding to the Solicitation.

On November 24, 2021, the City posted procurement IFS TRN B2000147, seeking a Meter Operation and Parking Management Consultant. The terms of this procurement made clear that the purpose of this consultant would be to assist the City with the conduct of the RFCSP at issue in this protest, and the documents for the Consultant procurement expressly explained that the Consultant would:

> Draft the specification for parking management technology systems. Manage the city's solicitation process from start to finish. This includes:
>
> Issue the final RFP and manage the schedule, and respond to questions submitted by prospective bidders develop evaluation criteria for vendor proposal review, distribute and manage internal process with city staff review proposals and create a matrix to compare submissions and verify compliance. Support the city during the vendor selection process. Be available to review and negotiate contract agreements. The vendor will work at the city's direction to provide implementation support to address the city's evolving priorities and ongoing needs regarding the implementation of parking management technology solutions.

See IFS TRN B2000147 Bid Sheet, a true and correct copy of which is attached hereto as **Exhibit I**. Thus, the effect of the consultant contract was to, in large measure, outsource the entirety of the process for this Solicitation to the Consultant. The Consultant's central and key role in conducting this procurement is, however, extremely problematic in this instance. The Consultant selected by the City was Dixon Resources which, according to its own website, is headed by Julie Dixon as the firm's "Principal Consultant."

Upon information and belief, both Dixon Resources and Ms. Dixon individually have substantial pre-existing past and current relationships with one of the vendors bidding on the Solicitation: SP Plus. By way of example, Ms. Dixon is specifically identified – by name – as one of the "Permanent Staff" for SP Plus in connection with its ongoing contract with the Los Angeles Department of Transportation, serving as SP Plus's "LBE-WBE Consultant" for that contract. *See* LA DOT Contract, a true and correct copy of which is attached hereto as **Exhibit J**.

It constitutes a manifest conflict of interest for Ms. Dixon – or her firm – to conduct a procurement on behalf of the City, or even assist with such a procurement, in which another client of Ms. Dixon and her firm will be a respondent.[3] Ms. Dixon has a personal financial interest in ensuring

[3] Both the City and Ms. Dixon should have anticipated this conflict of interest, particularly given that SP Plus is an incumbent vendor for the City's meter management services and certainly

the success of SP Plus – which pays her in connection with other contracts – and other bidders cannot have any reasonable expectation of receiving fair and even-handed consideration and treatment under such circumstances. And, as described below, *the conflict of interest identified herein would directly violate the City's Code of Ethics*: SP Plus is the outside client of Ms. Dixon and her firm, compensates Ms. Dixon for her services, and is plainly a partner of a business entity (Dixon Resources) in which both Ms. Dixon and her staff have a financial interest.

The City's own policies acknowledge the manifest nature of this conflict of interest, and make clear that such a conflict of interest is not permissible. Indeed, the City's Ethics Code expressly prohibits City officials and employees from "tak[ing] any official action that the city official or employee knows is likely to affect particularly the economic interests of," amongst others, "the city official's or employee's outside client," "the city official's or employee's outside employer," "a business entity that the city official or employee knows is an affiliated business or partner of a business entity in which that person holds an economic interest," or "a person or business entity … with whom the city official or employee, directly or indirectly, is engaged in negotiations pertaining to a business opportunity." Sec. 12A-3(a), Dallas City Code. Section 12A-45(e), in turn, requires the Procurement Services Office to "publish on the city's website information as to how this chapter applies to consultants or contractors and to city officials and city employees who work with consultants or contractors." Procurement Services has done so, stating that: "All consultants, contractors, or persons doing business with the City are required to follow Chapter 12A of the Dallas City Code the City's Code of Ethics."

Given this egregious conflict of interest, in which the City has apparently turned the keys over to a consultant and permitted the consultant to stand in the City's shoes and conduct a procurement on the City's behalf in which one of the consultant's own business partners was a bidder, the procurement process here cannot be rectified.[4] Indeed, the other flaws with the procurement identified herein *become even more suspect* when viewed through the lens of this conflict of interest. As such, the only permissible way for the City to move forward with the award of this contract would be to cancel the

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would have been amongst the list of vendors who the City and its consultant would expect to bid on this Solicitation.

[4] In addition Conduent would note that, upon information and belief, the Consultant procurement was apparently conducted in an unusual manner. The Consultant procurement was carried out with an exceptionally short procurement timeline and, apparently, without any outreach to well-known parking consultants in the field who have previously done work for the City, have a substantial local presence in the City, and would be well-qualified to carry out the scope of work sought in the Consultant procurement.

Solicitation, reject all proposals, and conduct a new procurement that is not tainted by the numerous flaws, and the conflict of interest, described herein.

D. The City's Procurement Process is Being Carried Out in an Unnecessarily Secretive Manner, and Conduent Reserves the Right to Amend its Protest Upon Receipt of Additional Information.

In addition to the numerous fatal flaws identified above, Conduent further notes that, to date, it has not been provided with *any* additional information regarding the solicitation process, including any public records relating to the Solicitation – or even the identity of the intended awardee. Instead, the City has simply provided Conduent with a purported "Notice of Intend to Award" which merely states that the City *does not* intend to contract with Conduent, but gives no indication whatsoever regarding who the City *does* intend to negotiate with for a contract. Following receipt of this Notice, Conduent both requested that it be provided with public records relating to the Solicitation and that a debrief be conducted.

To date, the City has declined to either provide Conduent with any records or to hold the requested debrief. As such, this Protest has been prepared based upon the limited information currently available to Conduent. While Conduent understands the process by which the City must protect vendors' trade secrets, the assertion that the procurement process is both ongoing – such that Conduent cannot be provided with *any* procurement records – but also complete such that Conduent must file a Protest at this time is illogical and materially impedes Conduent from filing a fully-informed protest. Particularly given the numerous flaws noted above, it is critical that Conduent be provided with documents, including even basic procurement records, immediately. While, as set forth above, even the limited information now available to Conduent reveals numerous material and fundamental flaws in the procurement process necessitating the cancellation of this Solicitation, Conduent expects that, when it is ultimately provided access to additional critical information and records, additional fundamental flaws in the procurement process will likely be revealed. As such, Conduent expressly reserves the right to amend or supplement this Protest once it has been given the opportunity to review relevant records and information.

IV. Relief Requested

For the foregoing reasons, Conduent respectfully requests that the City:

a) Take no further action on the procurement or contracting process until this protest is resolved;
b) Award the contract to Conduent as the bidder providing the most advantageous solution to the City;
c) Or, in the alternative, reject all bids and start the procurement anew to ensure the City conducts a proper procurement process with a resulting intended award that complies with the City's governing statutes and regulations.

I appreciate your consideration of the issues raised in this protest and welcome the opportunity to discuss with you further. I would appreciate the opportunity to discuss the City's protest process with you and the next steps in resolving the critical issues raised herein, and ask that you please do not hesitate to contact me at dcabrales@foley.com or (214) 999-4359.

Sincerely,

Robert H. Hosay
Benjamin J. Grossman
Foley & Lardner LLP
106 E. College Avenue
Suite 900
Tallahassee, FL 32301
rhosay@foley.com
bjgrossman@foley.com
(850) 222-6100

David G. Cabrales
Foley & Lardner LLP
2021 McKinney Avenue
Suite 1600
Dallas, TX 75201
dcabrales@foley.com
(214) 999-4359

Enclosures