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May 28, 2020

Ms. Nancy Cibic,
Acting Team Lead/Compliance Specialist/COR
Great Lakes Region
3246 N. Heritage Ln.
Arlington Heights, IL 60004

Dear Ms. Cibic:

Enclosed please find the DBE Program document for the Memphis Shelby County Airport Authority (MSCAA). In preparing this document, we followed the draft sample plan provided to us by the FAA with modifications that are relevant to MSCAA.

We look forward to your questions, suggestions and comments about our program plan submission. Please feel free to contact me at 901-922-2556 or jclaiborne@flymemphis.com at any time.

Sincerely,


Joe Claiborne (Jun 2, 2020 15:10 CDT)

Joe Claiborne,
Senior Manager, Business Diversity Development
Memphis-Shelby County Airport Authority
901-922-2556

MEMPHIS – SHELBY COUNTY AIRPORT AUTHORITY

DBE PROGRAM

Policy Statement from President and CEO

The Memphis Shelby Count Airport Authority (MSCAA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The MSCAA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the MSCAA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the MSCAA to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Joe Claiborne, Senior. Manager of Business Diversity Development, has been designated as the DBE Liaison Officer. In that capacity, the DBELO is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MSCAA in its financial assistance agreements with the Department of Transportation.

This Policy Statement will be circulated to members of the MSCAA’s Board of Commissioners, employees of all Divisions and Departments, and the DBE and non-DBE communities that perform work on federally-funded contracts at the MSCAA’s airports. Additionally, the MSCAA will circulate this Policy Statement by, among other things, posting a copy on the MSCAA’s website (www.flymemphis.com) and distributing copies to each attendee at informational and pre-bid meetings dealing with concessions opportunities and to each entity that enters into a concessions agreement with the MSCAA.

Scott A Brockman
Scott A Brockman (Jun 2, 2020 15:52 CDT)

Scott A. Brockman, A.A.E.

06/02/2020

Date

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DBE PROGRAM

Part A. General Requirements

1. Objectives (Reference: 49 CFR Section 26.1, 26.23)

The objectives of the Memphis Shelby County Airport Authority (MSCAA) under this Disadvantaged Business Enterprise (DBE) Program are listed in the Statement of the President and CEO in this DBE Program (Program), all references are found in the 49 CFR Part 26 which can be found [here](#).

2. Definitions (Reference: 49 CFR Section 26.5)

The MSCAA will use terms in this program that have the meaning defined in Section 26.5.

3. Applicability (Reference: 49 CFR Section 26.3)

The MSCAA is a Non- Hub Primary airport and the recipient of federal funds authorized for airport development after January 1988 pursuant to Title 49 of the United States Code.

4. Non-discrimination Requirements (Reference: 49 CFR Section 26.7)

- a. The MSCAA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concessions agreement or other agreement covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.
- b. In administering this Program, the MSCAA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this Program with respect to individuals of a particular race, color, sex or national origin.

5. Record Keeping Requirements (Reference: 49 CFR Section 26.11 / 26.11(b))

- 1) Since MSCAA will receive an annual grant during the reporting period of \$250,000 or more for airport planning or development we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal once every three years on August 1 if we plan to award contracts exceeding \$250,000 in FAA funds in that Federal fiscal year.

We will report DBE participation to DOT as follows:

We will transmit to FAA annually on December 1, as required the Uniform Report of DBE Awards or Commitments and Payments, as outlined in 49 CFR Part 26, Appendix B, which can be viewed [here](#).

2) Bidders List: 26.11(c)

The MSCAA will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

We will collect this information in the following ways:

We will include a [form](#) with all solicitations requiring bidders to list the name, address, phone number and contact person for all firms who provided a bid or a quote regardless of whether these firms were ultimately selected as subcontractors or partners on a given contract. The Memphis-Shelby Airport Authority will then follow up with each firm for which we need to obtain additional required information. All of this data will be maintained in the Airport Authority's data collection and management system.

6. Federal Financial Assistance Agreement (Reference 49 CFR Section 26.13)

The MSCAA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The MSCAA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The MSCAA DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the MSCAA of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

Part B. Administration Requirements

1. DBE Program Updates (Reference 49 CFR Section 26.21)

The MSCAA will receive an annual grant for airport planning or development totaling \$250,000 during one or more years of the reporting period. We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal on August 1 as required, if we plan to award FAA funded contracts exceeding \$250,000 annually, during the reporting period.

2. Policy Statement (Reference 49 CFR Section 26.23)

The Policy Statement is elaborated on the first page of this program.

3. DBE Liaison Officer (DBELO) (Reference 49 CFR Section 26.25)

We have designated the following individual as our DBE Liaison Officer:

Joe Claiborne, Sr. Manager Business Diversity Development
2491 Winchester Rd., Suite 113,
Memphis, TN 38116,
Phone: 901-922-2556
Email: jclaiborne@flymemphis.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the MSCAA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the President & CEO concerning DBE

program matters. An organization chart displaying the DBELO's position in the organization is found [here](#).

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of four to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the Memphis-Shelby County Airport Authority's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process in Tennessee.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the Memphis-Shelby County Airport Authority's updated directory on certified DBEs and distinguishes them from ACDBEs.

The specific duties of Business Diversity Development (BDD) staff for the DBE Program are:

DBE Program Administrator(s): There are two DBE Program Administrator positions, both duties consist of: Plans, develops and administering the Disadvantaged Business Enterprise (DBE), Airport Concessions Disadvantaged Enterprise (ACDBE), the Small Business Participation Program (SBPP), and/or the in-house certification program (s) to ensure compliance with federally mandated program and related requirements in accordance with 49 C.F.R. §23.23(a) and §26.23.

DBE Compliance Coordinator: Responsible for creating and analyzing reports to reflect actual accomplishments of disadvantaged/minority/women business enterprises (D/M/WBEs); including enforcing, reviewing, analyzing program policies and monitoring adherence to the Authority's procurement process and disseminating information on available contracting opportunities for D/M/WBEs.

DBE Certification Specialist: Responsible for administrative and technical support to the Airport Authority's in-house certification program for Disadvantaged Business Enterprise (DBE), Airport Concessions Disadvantaged Business Enterprise (ACDBE) and the Small Business Participation Program (SBPP).

4. DBE Financial Institutions (Reference 49 CFR Section 26.27)

It is the policy of the MSCAA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

To date, we have identified the following such institutions:

1. Tri-State Bank
2. Tennessee Small Business Development Center (TSBDC)

5. Prompt Payment Mechanisms (Reference 49 CFR Section 26.29)

The MSCAA will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from MSCAA. The prime contractor agrees further to return retainage payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the MSCAA. This clause applies to both DBE and non-DBE subcontractors.

6. Directory (Reference 49 CFR Section 26.31)

The MSCAA uses the State of Tennessee DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The State of Tennessee revises the Directory weekly. Visit their directory [here](#).

7. Over-concentration (Reference 49 CFR Section 26.33)

The MSCAA has not identified that over-concentration exists in the types of work that DBEs perform.

8. Business Development Programs (Reference 49 CFR Section 26.35)

The MSCAA has established a business development program utilizing our relationships with;

- [The Mid-South Minority Business Council](#)
- [Tennessee Small Business Development Center](#)

Each of these organizations operate to empower small business owners, entrepreneurs, and individuals to compete in the global marketplace. Utilizing a network of certified professional business counselors located in the Memphis community. Perspective businesses are referred to either of these entities to assist and further develop their business model on an as needed basis.

9. Monitoring and Enforcement Mechanisms (Reference 49 CFR Section 26.37)

The MSCAA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Such regulation as [§26.37](#) and [§26.107](#) as provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. This mechanism will include a written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by:

MSCAA's DBE Program Administrator and Compliance Coordinator to specifically monitor the compliance of DBEs in addition to prime contractors/vendors.

Prime contractors/vendors are required to submit DBE Monthly Compliance Reports to the appropriate MSCAA Development division Director and the Business Diversity Development along with proof of DBE payment.

The DBE Program Administrator will ensure that the data detailing DBE Accomplishments by Prime contractors are properly entered into the BDD database (B2GNOW) tracking system.

The DBE Program Administrator calculates the percentage and dollar amount of DBE participation.

If it appears that DBE participation is not consistent with the goal, then the Business Diversity Development office contacts the prime to confirm the accuracy of payment data received.

If it is determined that a problem exists, then the office of Business Diversity Development in conjunction with the appropriate MSCAA Division representative works with the prime contractor/vendor in resolving the issue.

If necessary, the BDD DBE Program Administrator and the Compliance Coordinator will visit prime contractor/vendor to obtain any records necessary to confirm compliance with DBE regulations and/or policies.

4. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.
5. We annually audit a sample of certified firms to ensure compliance with eligibility requirements.
6. The MSCAA includes in all contractual agreements a right to audit, at MSCAA expense, contractor/vendor records to facilitate monitoring and ensure compliance with Part 26.

10. Small Business Participation Program (Reference 49 CFR Section 26.39)

MSCAA has established a Small Business Participation Program (SBPP) in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26.

MSCAA's SBPP is a race-neutral program designed to facilitate competition by small businesses, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors.

Businesses interested in pursuing MSCAA's SBPP verification must meet the following standards:

- Have business gross receipts below \$23.9M
- The 51% owner(s) personal net worth must be below \$1.32M without regard to race or gender of the business owner(s)
- Complete the online vendor verification application located [here](#).

All firms currently certified as DBEs by the MSCAA, Tennessee Uniformed Certification Program (TNUCP) or any DOT certifying agency is eligible to participate in the SBPP and DO NOT need to submit an additional SBPP application.

Further, MSCAA will:

- Work with internal Departments to seek opportunities for projects not greater than \$1,000,000.00, that participants of MSCAA's small businesses program can compete.
- Ensure that only those who are verified via MSCAA office of Business Diversity Development as Small Businesses are permitted to participate on MSCAA contracts.
- Assist the development of these firms to compete successfully on SBPP projects.

Part C. GOALS, GOOD FAITH EFFORTS, AND COUNTING

1. Set-asides or Quotas (Reference 49 CFR Section 26.43)

The MSCAA does not use quotas in any way in the administration of this DBE program.

2. Overall Goals (Reference 49 CFR Section 26.45)

The MSCAA will establish 3-year overall goals if we anticipate awarding FAA funded prime contracts exceeding \$250,000 annually within one or more of the reporting years within the 3-year goal period. Goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the MSCAA does not anticipate awarding more than \$250,000 in FAA funding annually during the 3-year reporting period, we will not develop an overall goal; however, the existing DBE program will remain in effect and the MSCAA will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, "base figure". The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

A description of the methodology to calculate the overall goal and the goal calculations can be found [here](#).

In accordance with Section 26.45(f) the MSCAA will submit its overall goal to DOT on August 1 as required by the goal submittal timeline. In establishing the overall goal, the MSCAA will consult with minority, women's and general contractor groups, community

organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the MSCAA efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at 2491 Winchester Rd., Suite 113, Memphis, TN 38116 for 30 days following the date of the notice, and informing the public that the MSCAA and DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority-focus media and trade publications, websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

3. Failure to meet overall goals (Reference 49 CFR Section 26.47)

If the MSCAA awards and commitments are less than the goal for that year, we will:

- (1) Analyze the reasons for difference
- (2) Establish specific steps and milestones to fully meet the goal for the new fiscal year
- (3) As an Operational Evolution Partnership (OEP) Plan or primary airport we will submit, within 90 days of the end of that fiscal year, the analysis and corrective actions developed, to the appropriate FAA DBE Team

4. Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found [here](#) on page 10.

5. Contract Goals (Reference 49 CFR Section 26.51(d-g))

The MSCAA will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

6. Good Faith Efforts Procedures (Reference 49 CFR Section 26.53)

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in [Appendix A to Part 26](#).

The DBE Liaison Officer is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

The MSCAA treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require all bidders/offeror to submit the following information at the time of bid:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 5 business days of being informed by the MSCAA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offeror should make this request in writing to the following reconsideration official: Scott Brockman, President and CEO, Memphis Shelby County Airport Authority, 2491 Winchester Road, Suite 113, Memphis, Tennessee 38116, (901) 922-8000, sbrockman@flymemphis.com. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

MSCAA will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.

- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offeror in negotiated procurements.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the MSCAA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offeror, including those who qualify as a DBE. A DBE contract goal of 23.17 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

7. Counting DBE Participation (Reference 49 CFR Section 26.55)

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

PART D – CERTIFICATION STANDARDS & PROCEDURES

1. Certification Process (Reference 49 CFR 26.73)

The MSCAA will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should go to [MEM Vendor Online Resource Center](#).

2. Unified Certification Programs (Reference 49 CFR Section 26.81)

The MSCAA is the member of a Unified Certification Program (UCP) administered by Tennessee Unified Certification Program (TNUCP). The UCP will meet all of the requirements of this section.

3. Procedures for Certification Decisions (Reference 49 CFR Section 26.83)

MSCAA has launched an online certification process via B2GNow. This process is for both new certifications (DBE/ACDBE/Interstate and SBPP) and those who are submitting their annual updates.

First, go to: [MEM Vendor Online Resource Center](#).

Find the DBE/ACDBE & SBE section in the right column. Click on the 'Apply for/Renew Certification' link. Once there, go to 'Lookup Account' and enter your EIN/tax ID number for your business. This will let us check to see if you have done business with someone who uses this system and already have a profile. It will cut down on the amount of information you need to enter later.

If you are in the system, remember the email address associated with this account. Look beneath your company's name. You will see a link with your name or someone in your office who has been listed as the point of contact or the words 'Contact Person.' Click that link and it will open a small window beneath. On the right you will see a link labeled 'Password Reminder.' It will then open another window asking if you want to reset the password. Then, ask it to send you a new password.

Once you receive the new password, go back to the 'Apply for/Renew Certification' link and click 'Login.' From there, you will choose the appropriate option. It will be either 'Create Account' for those seeking DBE certification and were not found already in the system or 'Login' for those doing their annual renewal. Follow the prompts. The system will ask for documents to be uploaded.

MSCAA will perform an on-site visit to the offices of the firm. MSCAA must interview the principal officers of the firm and review their resumes and/or work histories. MSCAA must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. We may rely upon the site visit report of any other TNUCP recipient with respect to a firm applying for certification; decisions are based on:

- If the firm is a corporation, MSCAA will analyze the ownership of stock in the firm;
- Analyze the bonding and financial capacity of the firm;
- Determine the work history of the firm, including contracts it has received and work it has completed;
- Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

- Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- We must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
- We must review all information on the form prior to making a decision about the eligibility of the firm.
- Certification will be completed within 60-90 days upon receipt of a completed application.

For firms that MSCAA have certified or reviewed and found eligible under Part 26, we will again review their eligibility every year on the anniversary of the date of the certification. These reviews will include the following components:

“No Change” Affidavits and Notices of Change (26.83(j))

MSCAA requires all DBEs owners to inform us, via the online module, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided MSCAA’s application for certification.

Section 26.85 Interstate Certification

When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A’s certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85 as outlined [here](#) in the TNUCP Interstate Certification Process guidelines.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm’s application or decertify it, it may not reapply until 12 months have passed from our action.

Section 26.87 Removal of a DBE’s Eligibility

In the event we propose to remove a DBE’s certification, we will follow procedures consistent with §26.87. We have a system for administrative appeals of certification decisions as set forth in [§26.87](#). To ensure separation of functions in a de-certification, the UCP have determined that the Tennessee State Certification Program will serve as the decision-maker in de-certification proceedings. The UCP have established an

administrative “firewall” to ensure that the Tennessee State Certification Program will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

The MSCAA has a system for administrative appeals of certification decisions as set forth in [TNUCP guidelines](#).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any provision of Federal or state law, if allowed by law we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual’s firm has applied for certification under § 26.85 of this part.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the

MSCAA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.