

REQUEST

FOR

PROPOSALS

***ELEVATOR, ESCALATOR, & MOVING WALK REPAIR &
MAINTENANCE***

RFP NUMBER 21-0011

DUE DATE:

JULY 8, 2021

TRANSMITTAL LETTER

May 28, 2021

Dear Respondent,

The Memphis-Shelby County Airport Authority (Authority) is seeking a qualified Respondent to provide services for Elevator, Escalator, & Moving Walk Repair & Maintenance for the Authority. This Request for Proposals (RFP) is under the direction of the Maintenance Department.

The Procurement Department is responsible for coordinating all communications between the Authority and Respondents. The RFP limits the manner, method, and type of communications that the Authority and Respondents may have once an RFP process is initiated to ensure that the process is fair and impartial. Please review the RFP carefully and abide by all required deadlines, dates, and terms.

All Respondents are hereby notified that all updates, addenda and additional information, if any, shall be posted to the Authority website www.flymemphis.com, and Respondents are responsible for checking the Authority website up to the time of the RFP submission deadline.

The Authority reserves the right to reject any or all responses to this RFP in whole or in part; to waive any informalities, technicalities, or omissions therein; and/or to cancel this process at any time. The Authority also reserves the right to reject any response when a parent, subsidiary, affiliate, or predecessor in interest of the Respondent has pending litigation or claims with the Authority, or if any response includes a proposed subcontractor or supplier that has pending litigation or claims with the Authority, if the Authority determines, in its sole discretion, such litigation or claims may adversely affect the ability of the parties to work efficiently and effectively under this RFP, or for any other reason as determined by the Authority. Any such responses will be returned to the Respondent. All Respondents must use forms provided by the Authority.

No Respondent may withdraw an opened Response without the Authority's consent.

The Authority shall give a preference to businesses located in or near the County of Shelby, State of Tennessee in awarding contracts and making purchases whenever the application of such a preference is reasonable in light of the valuation points/dollar-value of the proposal/bid received in relation to such valuation points/expenditures and pursuant to the terms and conditions that are outlined in the adopted policy as amended.

Should you have questions regarding this RFP, the RFP sets forth a process by which you may submit your questions and receive answers. Thank you for your participation in this process. We look forward to receiving your response.

Sincerely,

Nathan Luce, P.E.
Director of Procurement
Memphis-Shelby County Airport Authority

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1 BACKGROUND

The Authority owns and operates Memphis International Airport, Charles Baker Airport and General DeWitt Spain Airport. Memphis International Airport is located in Shelby County about 13 miles southeast of downtown Memphis. Memphis International Airport is the principal air carrier airport serving west Tennessee, north Mississippi, southeast Missouri, and east Arkansas. Memphis International Airport is also the principal hub for FedEx, which makes it the world’s second busiest cargo airport and the single largest economic engine in the Mid-South.

The Airport is primarily an origin and destination (O&D) airport. Approximately 1.7 million passengers were enplaned at the Airport in the Fiscal Year ending June 30, 2020, a decrease of approximately 24.6% compared to FY 2019. However, this decrease is attributed to the significant downturn in passenger traffic due to the COVID-19 pandemic, which had a devastating impact on the aviation industry worldwide. Traffic has gradually increased since its low point in April 2020.

The Airport is located on 4,640 acres of land in the County and includes a terminal complex of approximately one million square feet, and four other buildings containing approximately 100,000 square feet, which are used by air carriers and all-cargo carriers as transfer facilities for cargo. These buildings are adjacent to the terminal complex and are separate from FedEx facilities that contain approximately 3.5 million square feet and occupy approximately 518 acres.

2 REQUEST FOR PROPOSALS TIMELINE, COMMUNICATIONS AND PROCESS

2.1 RFP Timeline

While this timeline sets forth important dates for this Request for Proposals (RFP) process, the entire RFP should be consulted for additional information and requirements concerning these deadlines. The schedule below is subject to change without liability to the Authority.

All times listed are Memphis, Tennessee Local Time (CST).

May 27, 2021	Publication of Legal Notice
May 28, 2021	Release of RFP Documents
June 14, 2021	Mandatory Pre-Proposal Meeting 11:00 a.m.
June 18, 2021	Questions Due from Respondents by 4:30 p.m.
June 25, 2021	Questions and Answers posted on Authority website by 4:30 p.m.
July 8, 2021	Response Due to Authority by 2:00 p.m.
July 29, 2021	Oral Interviews with Selected Respondents (if required)
August 19, 2021	Anticipated Board Approval of the Award of Contract
January 1, 2022	Anticipated Contract Commencement Date

2.2 Communication with the Authority during this RFP

The Authority has designated Nathan Luce, Director of Procurement, to be responsible for coordinating communications between the Authority and Respondents. Respondents should direct all communications to Nathan Luce via email at ProcurementDirector@flymemphis.com. Respondents are further advised that any communication, either verbally or in writing, direct or indirect, subsequent to the date of issuance of the RFP by a prospective Respondent or any of its owners, officers, employees, or agents, or any individual or entity acting on its behalf, with any member of the Board of Commissioners or any officer or employee of the Authority, except as provided in this section, is **strictly prohibited** and may be cause for disqualification of the prospective Respondent. The only exception to this requirement is for communications between prospective Respondents and the Authority's in-house and outside legal counsel to further client communications on pending matters that are not related to this RFP. This restriction on communication will govern until the RFP process has been completed and a contract has been fully executed for the for these services. Please note that the Authority prefers all communication to be in writing.

2.3 Addenda

All updates, addenda and other information, if any, shall be posted to the Authority's website, www.flymemphis.com. Respondents are responsible for checking the Authority's website up to the time of the RFP submission deadline.

2.4 Mandatory Pre-Proposal Meeting

A mandatory pre-proposal meeting will be held June 14, 2021, at 11:00 a.m. via zoom conferencing.

Join Zoom Meeting

<https://zoom.us/j/99496385471?pwd=M2NycHZvREY3NmVwdjJOam5Ta2lnUT09>

Meeting ID: 994 9638 5471

Passcode: 030174

One tap mobile

+13126266799,99496385471# US (Chicago)

+16468769923,99496385471# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 646 876 9923 US (New York)

+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 994 9638 5471

Those interested bidders will log into Meeting ID#994 9638 5471 to listen to information regarding this RFP.

2.5 Questions Regarding RFP

Questions regarding this RFP must be submitted in written form via email to Nathan Luce at ProcurementDirector@flymemphis.com. Questions will be accepted until 4:30 PM, June 18, 2021. Answers will be provided by 4:30 p.m., June 25, 2021. Answers will only be posted on the website, www.flymemphis.com.

2.6 RFP and Response Submissions

A copy of this RFP will be distributed to prospective Respondents. This RFP also will be available on the Authority's website, www.flymemphis.com.

Respondents shall prepare responses in compliance with all the instructions outlined in this RFP, providing the requested information and returning the completed document to the Authority by the submission deadline.

All responses shall be sealed and clearly marked with the Respondent's name and address and the words "Elevator, Escalator, & Moving Walk Repair & Maintenance" and "RFP Number 21-0011" on the outside of the envelope or container. The Respondent shall allow sufficient time to ensure receipt of the response. It is the sole responsibility of the Respondent to have the response delivered to the Authority at the address below before the closing hour and date given in this RFP.

Respondents should note that FedEx First Overnight® and UPS Next Day Air Early AM® shipments typically arrive before normal Authority business hours of 7:00 AM – 3:30 PM Local Time. Should you choose to ship by one of these methods, and your shipment arrives before the Authority's business hours, FedEx or UPS will not deliver the package until the following day. Any response tendered for delivery to the Authority must be in the Authority's possession prior to the opening date and time. Any delivery received after the submission deadline will be accepted and returned to the Bidder unopened.

Responses must be received at the address below **before 2:00 PM Local Time on July 8, 2021:**

Procurement Department
Memphis-Shelby County Airport Authority
4150 Louis Carruthers Drive
Memphis, Tennessee 38118
Attn: Request for Proposals, Elevator, Escalator, & Moving Walk Repair & Maintenance
RFP Number 21-0011

A listing of all proposers responding to Requests for Proposals and Requests for Qualifications will be posted to the Authority's website one (1) hour after the response deadline. Responses to Requests for Proposals and Requests for Qualifications will not be publicly opened.

The Authority reserves the right to extend the opening date or time provided no RFP responses have been previously opened. Late responses will NOT be considered and will be returned to the Respondent unopened.

2.7 Rejection of Responses / Cancellation of RFP

The Authority reserves the right to reject any or all responses to this RFP, including but not limited to, any response that contains exceptions to the minimum requirements and/or specifications or fails to meet the minimum requirements and/or specifications in whole or in part. Responses containing terms and conditions other than those specified herein may be considered nonresponsive. Partial or incomplete responses may be rejected. The Authority reserves the right to reject responses or penalize Respondents who do not follow the requirements of the RFP and, likewise, to waive any informalities, technicalities, or omissions therein. Responses having any erasures or corrections shall be initialed in ink by the Respondent. Unsigned responses will be considered nonresponsive.

The Authority also reserves the right to reject any response when a parent, subsidiary, affiliate, or predecessor in interest of the Respondent has pending litigation or claims with the Authority, or if any response includes a proposed subcontractor or supplier that has pending litigation or claims with the Authority, if the Authority determines, in its sole discretion, such litigation or claims may adversely affect the ability of the parties to work efficiently and effectively under any contract resulting from this RFP, or for any other reason as determined by the Authority. The Authority further reserves the right to cancel this RFP process at any time.

2.8 RFP to Bind Respondent

The response must contain the signature of a duly authorized officer of the Respondent with the legal right to bind the Respondent. All submitted responses shall be binding for a period of one hundred twenty (120) days from the response submission deadline.

2.9 Sole Responsibility

The successful Respondent, if any, shall assume responsibility for meeting all requirements agreed to in the response to this RFP.

2.10 Sole Contact

The Authority will consider the selected Respondent to be the sole point of contact with regard to contractual matters and the payment of any and all charges resulting from Contract obligations. Upon Contract award, the selected Respondent will be directly responsible for all of its subcontractors, if any, and the selected Respondent shall designate a project manager who will serve as the point of contact for the Authority for billing, additions, deletions, or any other requests or inquiries.

2.11 Response Modification or Withdrawal

Responses may be modified or withdrawn in writing prior to the deadline for RFP submission. After the submission deadline, no modifications will be accepted, and responses may only be withdrawn with the Authority's consent.

2.12 Response Costs

All costs incurred in preparing the response to this RFP, participating in this process and negotiating with the Authority, whether or not a contract is awarded, shall be solely the

responsibility of the Respondent. All materials and documents submitted by Respondents in response to this RFP become the property of the Authority and shall not be returned to the Respondents.

2.13 Protest

Any protest must be filed in writing and received by the Authority within seven (7) calendar days of the date of the occurrence of the event that is the subject of the protest, *e.g.*, the opening of responses, the award, or a determination that a respondent is not responsible or that a response is not responsive.

Any protest must be delivered to the Authority during the business hours of 7:00 AM – 3:30 PM Local Time in order to be deemed to be received by the Authority as required under this Section. A protest must be submitted in hard copy and addressed as follows:

Memphis-Shelby County Airport Authority
Attention: Director of Procurement
4150 Louis Carruthers Drive
Memphis, Tennessee 38118

Any protest sent by telegraphic or facsimile transmission or by email or other electronic means will not meet the filing requirements set forth herein and will not be deemed to be received by the Authority.

No objections with regard to the application, meaning, or interpretation of the specifications contained herein will be considered after the opening of the subject RFP.

3 RESPONDENT ASSURANCES

By submitting the RFP response and participating in this process, the Respondent asserts that he/she has read, understands and agrees to the terms and conditions contained in this RFP document and has full authority to submit the written and verbal responses on behalf of the entity for whom they are acting and that the information submitted to the Authority in the response is true, accurate and complete to the fullest extent possible and to the best of his/her knowledge and abilities. The Respondent further certifies:

3.1 No Hidden Parties

Response is genuine and that no other person, firm, or corporation than the one herein named has any interest herein or in the Contract proposed to be taken; that it is made without any connection with any person, firm, or corporation making a response for the same work; and that it is in all respects fair as to each item proposed and to the response as a whole;

3.2 No Collusion in Any Form

Respondent has not sought by collusion or fraud to obtain any advantage over any other Respondent or over the Authority;

3.3 No Inducement to Submit False Proposals

Respondent has not directly or indirectly induced or solicited any other Respondent to submit a false or sham proposal;

3.4 No Inducement to Refrain from Response

Respondent has not induced or solicited any other person, firm, or corporation to refrain from submitting a proposal;

3.5 No Financial Interest

No Authority employee or member of the Board of Commissioners, Memphis City Council, or Shelby County Commission is directly or indirectly interested herein, or in the furnishing of the service or doing the work to which it relates; or in any portion thereof. Respondent asserts that no Authority employee or member of the Board of Commissioners, Memphis City Council, or Shelby County Commission shall receive or has received any financial benefit arising out of this RFP or its Contract, if awarded, either directly or indirectly. Further, any fees paid to any person or entity by Respondent for assistance in obtaining the Contract with the Authority must be fully disclosed to the Authority in writing.

3.6 No Contact

Respondent has not had any communications, either verbally or in writing, directly or indirectly, subsequent to the date of issuance of the RFP by any of its owners, officers, employees, or agents, or any individual or entity acting on its behalf, with any member of the Board of Commissioners or any officer or employee of the Authority. Respondent understands and agrees any communication except as provided in Section 2.2 of the RFP is strictly prohibited and may be cause for disqualification of the prospective Respondent.

3.7 Addenda

Respondent has reviewed and agrees to any and all Addenda, if applicable, posted by the Authority on its website, www.flymemphis.com, in regard to this RFP. The information contained in all Addenda that may be issued shall become a part of this RFP and, to the extent specified, shall amend and supersede the similar information in the original RFP document. All other terms, provisions, and conditions of the RFP shall remain unchanged.

4 IRAN DIVESTMENT ACT

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list [of persons engaging in investment activities in Iran] created pursuant to T.C.A. § 12-12-106.

5 BUY LOCAL INITIATIVES

The Authority shall give a preference to businesses with their principal place of business in the County of Shelby, State of Tennessee in awarding contracts and making purchases whenever the application of such a

preference is reasonable in light of the valuation points/dollar-value of the proposal/bid respectively that is received in relation to such valuation points/expenditures and pursuant to the terms and conditions that are outlined in the adopted policy as amended. If applicable, the Authority may also give a preference to businesses operating in the County of Shelby, State of Tennessee, or to businesses with their principal place of business in the Memphis, TN-MS-AR Metropolitan Statistical Area.

6 DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

6.1 Overview

The Authority operates a federal Disadvantaged Business Enterprise (DBE) Program and a non-federal Business Diversity Development Program (BDDP) to ensure full and fair opportunities in Authority contracting for businesses owned by socially and economically disadvantaged individuals. The Authority administers both programs according to the regulations that apply to the federal program, primarily 49 CFR Part 26. Because the BDDP program applies to contracts involving non-federal funds, not every aspect of 49 CFR Part 26 is relevant to the BDDP program. In most areas, 49 CFR Part 26 will guide our operation of the BDDP including, but not necessarily limited to, rules dealing with certification and counting participation. Only firms that are certified consistent with 49 CFR Part 26 and by the Authority or the Tennessee Department of Transportation Unified Certification Program, as identified below, will be considered to be certified as a Disadvantaged Business Enterprise.

This section, entitled “Disadvantaged Business Enterprise Requirements” is provided in an effort to assist Respondents. The information contained in this section is not intended to, nor does it, supplement or amend any federal regulation. All Respondents are responsible for compliance with all applicable federal and Authority rules and requirements.

It is a requirement that all Respondents providing services for the Authority take all reasonable steps to ensure that DBEs have a full and fair opportunity to compete for and perform contract work without discrimination on the basis of age, race, sex, color, national origin, creed, religion, sexual orientation or disability. In order to satisfy this requirement, Respondents will be expected to timely submit documentation as identified below and throughout the contract period if selected and cooperate with the Authority. Failure to timely submit requested documentation, cooperate with the Authority or answer inquiries truthfully will be considered a material contract breach and may result in termination.

6.2 Disadvantaged Business Enterprise (DBE) Required Forms

The following documents must be submitted with your response to this solicitation:

6.2.1 DBE Assurance Statement/Letter of Intent

The Respondent must submit an Assurance Statement for each DBE whose participation the Respondent is counting toward the goal. This may include first, second, third and so on tier subcontractors, and the Respondent and all subcontractors between the Respondent and the DBE should sign the Assurance

Statement. The Respondent must submit the form provided in Section 15.1 below on Company Letterhead.

For each Assurance Statement, the Respondent must also provide the written quote or proposal from the DBE or other communication from the DBE upon which the scope of work and dollar value contained in your Assurance Statement is based (“quote/proposal”).

For all RFP’s using federal monies, the Assurance Statement(s) must still be submitted and list the DBEs to be used and their scope of work, but no dollar amount(s) is entered. Dollar amount(s) will be submitted by the successful Respondent upon completion of the selection process.

All portions of the Assurance Statement must be completed (including the description of work, the estimated contract amount, and the estimated dollar value of DBE participation for counting and goal purposes) before the Assurance Statement is signed by either the DBE or the Respondent. If the DBE’s, and if applicable the 2nd/3rd Tier Subcontractor’s, signature(s) can be obtained on the completed Assurance Statement before the bid submission deadline, the Respondent should submit the fully completed and fully-signed Assurance Statement. If the Respondent submits an Assurance Statement that is completed except for the DBE’s, and if applicable, the 2nd/3rd Tier Subcontractor’s signature(s) and a quote/proposal from the DBE as described above, the Respondent will be given 24 hours from the bid submission deadline to submit the completed Assurance Statement signed by the DBE and, if applicable, the 2nd/3rd Tier Subcontractor. Each Assurance Statement submitted during this 24-hour window must conform to the previously submitted Assurance Statement except for DBE signature. These signed Assurance Statements must be submitted pursuant to the same location and time restrictions that applied to the solicitation response and late signed Assurance Statements will only be accepted for good cause as determined solely by the Authority.

The Authority reserves the right to ask questions of the Respondent, investigate and require additional information as it determines necessary in its sole discretion to ensure that the regulations and the Authority’s rules are followed as it relates to DBE participation.

6.2.2 Respondent DBE Goals Accomplishment Statement

The form provided in Section 15.2 must be submitted on Respondent’s company letterhead.

6.2.3 Information on All Firms Providing Responses

The form provided in Section 15.3 must be completed by respondent.

6.3 Disadvantaged Business Enterprise (DBE) Voluntary Form

We ask, but do not require, that each Respondent submit the following information with the response to this solicitation:

6.3.1 Voluntary Disclosure of Respondent Data

If submitted, the form provided in Section 15.4 must be completed by respondent.

6.4 Definition of Socially and Economically Disadvantaged

The rules that govern eligibility and certification of DBE are found generally at 49 CFR Part 26.5 and 26.61 through 26.73. These rules define a DBE as a for-profit, small business concern which is at least fifty-one percent (51%) owned and controlled by one or more socially and economically disadvantaged individuals. In the case of any publicly owned business, at least fifty-one percent (51%) of the stock must be owned by one or more socially and economically disadvantaged individuals. In addition, the personal net worth of the socially and economically disadvantaged owners of the small business concern must not exceed one million three hundred twenty thousand dollars (\$1,320,000).

As defined by 49 CFR, Part 26.5, a socially and economically disadvantaged individual is any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - a. **Black Americans** which includes persons having origins in any of the Black racial groups of Africa;
 - b. **Hispanic Americans** which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. **Native Americans** which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. **Asian-Pacific Americans** which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U. S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. **Subcontinent Asian Americans** which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f. **Women;**

- g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

6.5 DBE Liaison Officer

The DBE Liaison Officer is responsible for developing, implementing, and monitoring the DBE program on a day-to-day basis in coordination with other appropriate officials; carrying out technical assistance for a DBE; and, disseminating information on available business opportunities so that a DBE is provided an equitable opportunity to bid on Authority contracts. The DBE Liaison Officer reports directly to the President of the Authority. For questions or information related to the DBE program, contact Joe Claiborne, the Senior Manager of Business Diversity Development at (901) 922-0255.

6.6 DBE Certification

The Authority certifies all of its DBE's through internal processes. The Authority compiles a directory of firms who have met the Authority's selection criteria for eligibility as a DBE, including 49 CFR Part 26. You can review the directory of certified firms for the Authority at our website www.flymemphis.com or obtain a copy of the directory by calling the Business Diversity Department at (901) 922-0255. The Tennessee Department of Transportation Unified Certification Program (TNUCP) is a cooperative of entities which are recipients of federal funds that have developed a "one-stop shop" for certification throughout the State of Tennessee, of which the Authority is a certifying member. In order to be considered as meeting the DBE goal for this Contract, each business wishing to participate as a DBE or a joint venture DBE, must either be:

- a. **Certified by the Authority or the TNUCP** in accordance with 49 CFR Part 26, or;
- b. **Received affirmation from the Authority or the TNUCP** that their certification from another entity is consistent with and acceptable to the Authority or the TNUCP.

Persons or entities who consider themselves a DBE but who are not certified by Authority or the TNUCP as a DBE, or have not received affirmation from the Authority or the TNUCP that their certification from another entity is consistent with and acceptable to the Authority or the TNUCP will not be considered. Unless a firm meets the criteria above by the time the responses to this solicitation are due, its participation will not be considered as meeting the DBE goal in the solicitation. Each business wishing to participate as a DBE, or a joint venture DBE must be certified by the time the responses are due.

6.7 Identification of Contract Goal and Requirements

For this Contract, the DBE goal is established as 4%. In order to be responsive, a Respondent must either meet the goal or make good faith efforts to do so. Good faith efforts are defined in Appendix A to 49 CFR Part 26 and discussed in the following section.

If a Respondent's DBE Assurance Statement proposes a DBE percentage less than the established goal, the Respondent must, at the time of making the response, submit appropriate

documentation justifying its submitted DBE percentage. The Authority reserves the right to request additional documentation or information from Respondent regarding its DBE Assurance Statement and; if applicable, any good faith efforts documentation. If the Authority enters into a contract based on the Respondent's DBE Goals Accomplishment Statement and documentation, the DBE percentage accepted by the Authority will become a contractual requirement. If the Respondent's DBE Assurance Statement proposes to attain a DBE percentage higher than the established goal, the established goal will remain the contractual requirement.

Respondents shall not contract with, demand, require or coerce a DBE into any agreement or into the signing of any Assurance Statement or any other document which prohibits the DBE from providing subcontracting quotations or doing business with other Respondents. The DBE shall be free to provide their services to any number of Respondents. To ensure that all obligations under sub-contracts awarded to a DBE are met, the Authority will review the agreement between the Respondent and DBE, and Respondent's DBE involvement efforts during the performance of the Contract. The Respondent shall bring to the attention of the Authority any situation in which regularly scheduled progress payments are not made to a DBE. If, in the opinion of the Authority, the Respondent has made significant deviations from the DBE program commitments, it shall be considered a breach of contract.

6.8 Good Faith Efforts Statement and Requirements

In order to be responsive, Respondents must either meet the DBE goal or make good faith efforts to meet the goal. Respondents who do not meet the goal must establish adequate good faith efforts by submitting documentation along with the Respondent DBE Goals Accomplishment Statement. This statement should show that they took all necessary and reasonable steps to achieve the DBE goal, which could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The Respondent's DBE Goals Accomplishment Statement and supporting documents should conform to the good faith requirements outlined in Appendix A of 49 CFR Part 26.

The following is a list of types of actions that may be part of a Respondent's efforts to obtain DBE participation and may be included in the Respondent DBE Goals Accomplishment Statement and documentation. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified as a DBE who have the capability to perform the work of the Contract. The Respondent must solicit this interest within sufficient time to allow the DBE to respond to the solicitation and take appropriate steps to follow-up initial solicitations to determine interest.
- b. Selecting portions of the work to be performed by a DBE in order to increase the likelihood that the goals of the DBE will be achieved.
- c. Providing any interested DBE with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.

- d. Negotiating in good faith with any interested DBE. It is the Respondent's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation.
- e. Not rejecting any DBE as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- f. Making efforts to assist any interested DBE in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- g. Making efforts to assist any interested DBE in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of any DBE.
- i. Making efforts to identify and assist eligible firms, which are not yet certified by the Authority or the TNUCP as a DBE, to obtain certification. These types of efforts will have special weight where it appears that the relevant firms will be certified in time for the execution of the Contract.

If a Respondent has not met the DBE goal and submits Respondent DBE Goals Accomplishment Statement and documentation, the Respondent should summarize in detail all good faith efforts taken by the Respondent, including, but not limited to, the activities listed above in A through I, and supporting documentation. While the Respondent should submit documentation to support its good faith efforts at the time of the Response submission, the Authority may ask questions of Respondent or request additional documentation after review of Respondent's DBE Goals Accomplishment Statement and any documentation. In submitting the information required under this section, Respondent understands and agrees that the determination of whether Respondent has met the DBE goal or established good faith efforts to meet the goal is a judgment call that the Authority will make.

6.9 Counting DBE Participation

DBE participation shall be counted toward meeting the DBE goal as outlined in 49 CFR Part 26, especially 26.55. When the Respondent completes an Assurance Statement, the Respondent must include not only the total value of the work to be performed and/or the materials to be supplied by the DBE but also the total amount of DBE participation that should be counted toward meeting the goal. For example, if a DBE is a regular dealer or supplier of pipe but does not install the pipe, then the Respondent can generally count the dollar value spent on the pipe at 60%. This would mean that if the DBE was supplying \$100,000 of pipe then the contract amount would be \$100,000 but the total amount of DBE participation would be \$60,000 for counting and meeting the goal purposes. If you have any questions about counting, we strongly urge you to consult 49 CFR Part 26. The following may be helpful to you in counting DBE participation and in determining which sections of Part 26.55 you need to review in more detail:

- j. When a DBE participates in a contract or subcontract, the provider will count only the value of the work actually performed by the DBE toward the DBE goals. In a construction contract (and other similar contracts), this will include the work performed by the DBE's own forces and supplies purchased or equipment leased by the DBE as described below, especially (d) (but not supplies or equipment the DBE subcontractor purchases from the prime contractor or its affiliate.) The Respondent will count the entire amount of fees or commissions charged by a DBE for providing a bona fide service toward goals provided that we determine the fees to be reasonable and not excessive. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE.
- k. When a DBE performs as a participant in a joint venture, the Respondent will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- l. The Respondent will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract or subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the Respondent will evaluate industry practices, the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors. The Respondent will determine questions of commercially useful function with regard to trucking companies under 49 CFR Part 26.55 (d).
- m. The Respondent will count expenditures with the DBE for materials or supplies toward DBE goal in the manner described in 49 CFR Part 26.55 (e). Please review Part 26.55(e) carefully. It is important to note that the rule counts expenditures differently based upon whether the DBE is a manufacturer as defined by the rule (normally counted at 100% percent of the cost), a regular dealer as defined by the rule (normally counted at 60% of the cost) or neither of the two (normally counted at the entire amount of fees or commissions, or fees or transportation charges, provided they are reasonable). It is important to note that materials and supplies provided by a DBE that is not a regular dealer in those materials and supplies do not count toward meeting the goal. For example, if the DBE is a regular dealer of piping, the DBE cannot purchase office equipment and then supply that office equipment to the prime and count any portion of the cost of the office equipment toward meeting the goal. Such conduct for DBE counting purposes is prohibited by the rules and is considered to be an impermissible and illegal pass-through.
- n. If a firm is not currently certified as a DBE, in accordance with the standards of subpart D of this part, at the time of the execution of the contract, the Respondent will not count the Firm's participation toward any DBE goals, except as provided for in 49 CFR Part 26.87(i).

- o. The Respondent will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward any goals except as provided in 49 CFR Part 26.87(j).
- p. The Respondent will not count the participation of a DBE subcontractor 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.

6.10 Sanctions for Non-Compliance

In case of the Respondent's non-compliance with DBE and/or BDDP requirements as applicable, including, but not limited to, documentation, cooperation, and truthfulness, the Authority shall impose such Contract sanctions as it may determine to be appropriate. This may include but is not limited to:

- q. Withholding of payments to the Respondent under the Contract until the Respondent complies; and/or
- r. Cancellation, termination, or suspension of the Contract, in whole or in part; and/or
- s. Payment by the Respondent to the Authority of an amount equal to the difference in the DBE dollar value contracted for and the dollar value achieved in documented DBE participation or any lesser amount or penalty as deemed appropriate by the Authority, which dollar value shall be considered liquidated damages for failure to perform the requirements of the Contract and for which Respondent and all of its subcontractors agree to be bound.

6.11 Prompt Payment / Retainage

The successful Respondent agrees to pay each subcontractor under this prime contract for invoices submitted or normal progress payments for work completed satisfactorily or supplies provided satisfactorily pursuant to its contract and no later than fifteen (15) days from the receipt of each payment it receives from the Authority.

There is no retainage or other sums allowed to be withheld from progress payments or any other payments, and any exceptions to this prompt pay/retainage provision must be requested in writing by the successful Respondent and approved in writing by an Authority Vice-President or higher, prior to the delay or withholding of any payments under this provision.

The successful Respondent will include the following paragraphs in all contracts and/or agreements related to the work under the Contract with subcontractors or suppliers and will require all its subcontractors and suppliers to include the following paragraphs in any contracts and/or agreements related to the work under the Contract with any other third parties and any other lower tier subcontractors or suppliers:

"It is understood and agreed by all involved parties that payment for work completed satisfactorily or supplies provided satisfactorily will be made to the appropriate party no later than fifteen (15) days from receipt of payment for that work or those supplies.

There is no retainage or other sums allowed to be withheld from progress payments or any other payments and any exceptions to this prompt pay/retainage provision must be requested in writing to the Authority and approved in writing by an Authority Vice-President or higher prior to the delay or withholding of any payments under this provision.”

6.12 49 CFR Part 26

The Respondent shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of Authority contracts. Respondent agrees to provide all its subcontractors and suppliers and to require all its subcontractors and suppliers on this project to provide a complete copy of the **Disadvantaged Business Enterprise (DBE) Requirements** of the Contract to all those who provide supplies or work related to the Contract and to require all those providing supplies or work to be bound by these requirements as it relates to their work related to the Contract.

7 INSURANCE REQUIREMENTS

The successful Respondent shall submit evidence of required insurance on an original ACORD certificate or comparable insurance certificate form(s) acceptable to the Authority, with required endorsements attached, the earlier of fifteen (15) working days following award notification or prior to the scheduled commencement of work. Failure to submit the required document(s) may result in rescinding the award. The Contract may thereafter be awarded to the next qualified Respondent. A certificate of insurance is not required at the time of the response; however, an approved insurance certificate and amendatory endorsements are required to be on file prior to the start of the work. In addition, a copy of the policy or policies shall be provided by the successful Respondent upon request.

The insurance requirements are established in Section 18 of the Sample Contract, which is set forth in Section 16 below.

8 BOND REQUIREMENTS

8.1 Surety

Any bond provided to the Authority in connection with the response to this RFP or any resulting agreement shall be executed by the Principal and Surety, and duly issued by an insurer or corporate surety which:

- a. Is authorized to conduct insurance business and provide surety bonds in the State of Tennessee; and
- b. Is otherwise in compliance with the provisions of the Tennessee Insurance Code; and
- c. Is authorized by the United States Department of Treasury pursuant to 31 U.S.C. § 9304-9308; and
- d. Has an A- or better rating and a Financial Size Category of “Class VII” or higher according to the most current edition of Best’s Key Rating Guide; and

- e. Notwithstanding the provisions of (d) above, an insurer or corporate surety that is not rated by Best's Key Rating Guide may be accepted by the Authority following a review or investigation of the insurer's or corporate surety's financial and performance standing, including without limitation, its capital adequacy, assets, earnings, liquidity, and such other factors as the Authority may deem appropriate.

8.2 Proof of Surety

Any Proposal and/or Performance Bond submitted by Respondent must include an original or certified copy of the Power of Attorney authorizing the Attorney-in-Fact to execute the Proposal and/or Performance Bond on behalf of the Surety.

8.3 Proposal Bond

Each response must include an original **Proposal Bond** with a valid Power of Attorney, at no cost to the Authority, in the amount of **Five Thousand Dollars (\$5,000.00)**, payable to the Memphis-Shelby County Airport Authority. Failure of the successful Respondent to execute the Contract within thirty (30) days after receiving the Contract document and furnish acceptable surety bonds and proof of required insurance prior to the Contract execution shall be just cause for cancellation of the award and forfeiture of the Proposal Bond, not as a penalty, but as liquidation of damages to the Authority.

Certified or cashier's checks will **NOT** be accepted in lieu of a proposal bond.

Proposal Bonds provided to the Authority in connection with the RFP shall be duly issued by an insurer or corporate surety on a bond form provided by the Authority in Section 14.2, or on a form substantially the same as the Authority's form, and which obligates the surety for at least one hundred twenty (120) days following the date on which responses to this RFP are publicly opened; and that is authorized to conduct insurance business in the State of Tennessee.

Failure to furnish a Proposal Bond with valid Power of Attorney, as specified, will result in rejection of Proposal for non-compliance.

8.4 Performance Bond

The successful Respondent will be required to furnish a **Performance Bond** at the time of Contract execution and prior to the start date of the Contract, in an amount **equal to contract price**, to guarantee the principal's performance of the Contract. The Performance Bond shall be made payable to the Memphis-Shelby County Airport Authority and shall remain in force for the duration of the Contract.

8.5 Contractor's Responsibility

The successful Respondent is solely responsible for providing surety bonds in connection with this RFP and its resulting contract. Subcontractors are not required to provide any type of surety bond to the Authority in connection with this RFP and or its resulting contract.

9 SECURITY AND ACCESS

9.1 General Requirements

The successful Respondent shall comply with all Airport Security requirements concerning access to restricted areas of the buildings or airfield. Access to certain areas of the buildings may be restricted to off-peak working or operational hours or other reasons, and the Respondent will conduct their work accordingly. If the Authority determines that any employee(s) of the successful Respondent should not work on the Authority's property or on the Contract, the successful Respondent will immediately comply with the Authority's request to remove employee(s).

The successful Respondent and all employees performing duties under the Contract shall conform to all applicable aviation security procedures regarding the issue, wearing, replacement, and return of personal identification badges, as defined in the Airport Security Program (available through the Airport Identification Office) approved by the Transportation Security Administration (TSA) and amended from time to time.

All employees working under the Contract will be required to display on their person, at all times while on duty, an identification badge issued by the Authority. Identification badges will be worn on the outermost garment above the waist.

The successful Respondent will provide the Authority with a badge application signed by the certifying official of the successful Respondent.

Prior to the issuance of the airport identification badge, an airport badge application must be prepared and submitted to the Airport Identification Office. The application form for airport identification will be provided by the Authority and properly completed by the successful Respondent.

All employees must be able to meet the requirements of the TSA in order to receive an airport identification badge. Individuals will be issued a badge by the Airport Identification Office only after they have met all necessary security and training requirements including the appropriate certifications of the fingerprint-based background check and the Security Threat Assessment. The successful Respondent shall be responsible for the following fees:

- Initial Authority photo identification badge \$62.00 Each

Above fees are subject to increase during the Contract term.

In order to ensure control and accountability of airport identification badges, the successful Respondent will notify the Authority of the termination of any employee immediately and submit written notification of badge status of terminated employees within twenty-four (24) hours to the Security Access Supervisor, Airport Identification Office. The Airport Identification Office shall be immediately notified if the badge is not recovered for any reason. Failure to recover the identification badge and return it to the Airport Identification Office will result in a one-hundred-

dollar (\$100.00) fee assessed to the successful Respondent. The successful Respondent will also receive a Monthly Status Report and will verify accuracy of that report monthly.

ID badges reported lost or stolen must be thoroughly investigated and closely scrutinized. Replacement ID badges may be issued only upon written request from the Respondent. Such request must be on Company letterhead, stating the circumstances surrounding the loss, and be signed by an authorized Company representative on file with the Airport Identification Office. Replacement fees for lost or stolen badges will be:

- First replacement \$100.00
- Second replacement \$150.00
- Third replacement* \$200.00

*Requires approval of the Director of Operations and Public Safety

9.2 Security Checkpoint Procedures

Security Checkpoints are located throughout the MEM terminal building. These checkpoints prevent access to certain “restricted” areas. Personnel must have the proper photo identification badge, as described in Section 9 Security and Access, to access areas beyond these checkpoints.

9.3 Operations of Others

During the time that successful Respondent is performing under the Contract, other persons may be engaged in other operations on or about the work site, including facility operations, pedestrian, bus, and vehicular traffic and other contractors performing at the work site, all of which shall remain uninterrupted.

The successful Respondent shall so plan and conduct its operations to work in harmony with others engaged at the site and not to delay, endanger, or interfere with the operations of others, whether specifically mentioned above, and in the best interests of the Authority. All operations should be conducted in a manner that ensures the safety and well-being of others.

10 TERMS OF PERFORMANCE

The Authority will contract with a single Respondent to provide services under the direction of the Authority’s Maintenance Department, as outlined in the Scope of Services in this RFP.

10.1 Contract Negotiations and Contract Form

One Respondent will be selected for contract negotiations in accordance with Section 13.4. Realizing that the final basis for agreement between the successful Respondent and the Authority must be a contract, Respondents shall indicate their willingness to negotiate a Contract acceptable to both Parties. This RFP and specified portions of the successful Respondent’s response shall be incorporated into such Contract. The successful Respondent shall be required to execute a written contract with the Authority. The Authority will not execute the successful Respondent’s standard contract.

10.2 Cancellation

Should the successful Respondent fail to meet the requirements of the Contract after it is executed, the Authority may cancel the Contract at once and award the remainder of the contract term to the next qualified Respondent. If the Contract is cancelled, all materials provided to Contractor shall be returned to the Authority.

10.3 Term of Contract

The initial term of this Contract shall be for a period of one (1) year commencing on the start date of the Contract (Contract Term). The Authority, in its sole discretion, reserves the option to extend the Contract Term for four (4) additional periods of one (1) year each (Renewal Terms) by giving written notice to the Company at least ninety (90) days before the expiration of the Contract Term or any Renewal Term. At the sole option of the Authority, the Contract may be extended beyond the four (4) Renewal Terms. The Contract shall be amended to reflect any negotiated and agreed upon Compensation for any such extension of this Contract.

10.4 Convenience Termination of Contract

The Authority may, at any time upon thirty (30) days written notice to successful Respondent specifying the effective date of termination, terminate the Contract, in whole or in part, when the Authority deems it to be in the Authority's best interests.

10.5 Payment and Billing Requirements

10.5.1 Invoice Submittal

Invoices for payments related to the services rendered under the Contract shall be presented at the completion of each task as described below. Payment will be made only for correct invoices presented with a complete itemization of the services rendered. Incorrect invoices will be returned for correction, unpaid. All invoices must include the contract number and/or the purchase order number. The successful Respondent must email the invoice to the email address below:

Finance Department - acctpayable@flymemphis.com

10.5.2 Payment Terms

The Authority shall use its best efforts to pay invoices within net thirty (30) days from the receipt of a correct invoice.

10.5.3 Taxes

The Authority is exempt from Local, State, and Federal taxes. Tax certificates will be issued to the successful Respondent.

11 SCOPE OF SERVICES

The Company shall provide preventive maintenance services and repairs for all elevators, escalators, and moving sidewalks located at the Memphis International Airport and other Authority buildings. (See list of

equipment below). This service shall include all labor on site and normal preventative maintenance materials (including, but not limited to, lubes, oils, cleaning chemicals/materials, nuts/bolts, belts, rails, chains, steps, pallets, rollers, bearings, bushings, screws, electronic control boards, buttons, switches, and glass panels) necessary to perform the preventative maintenance services. Company shall provide a list for what they consider is minor equipment and a list for major equipment.

Respondent must show a minimum of ten years' experience servicing an account similar in size, scope, and frequency to the Authority's program listed herein. Dedicated maintenance personnel will be required to be on-site at the Memphis International Airport during this contract. The dedicated maintenance personnel shall have a minimum 5 years' experience and hold an elevator, escalator, moving walk journeyman's license. The Authority will require technician, technician assistant, and other badged maintenance personnel to wear their company's uniform when working on-site.

The Authority is also considering hiring a technician assistant (Assistant) under this Contract to assist the dedicated maintenance personnel. The Assistant will not be allowed to work on-site without a dedicated maintenance personnel. The Assistant shall be a local licensed apprentice. Authorization of the Assistant might not be affordable and is subject to approval within the Authority's annual operating budget.

For any repairs or replacements not incidental to the preventative maintenance services, the Company shall submit proposals for work. All repairs will require written approval from the Authority prior to work being done. Cost for parts will be at a pre-determined discount off Manufacturer's Suggested Retail Price. If approved by the Authority, a purchase order will be issued for the repair; all purchase orders issued pursuant to this contract must abide by the insurance provisions of the contract instead of the typical insurance requirements of the Authority's standard purchase order terms and conditions.

The company shall furnish labor, parts, materials, equipment, etc., necessary to service and maintain the elevator, escalator, and moving sidewalk equipment and components herein listed, using trained and experienced employees to keep the specified equipment in a proper and safe, dependable operating condition for maximum operating efficiency.

Any elevators, escalators, or moving walkways that serves the public and fails to operate shall constitute an emergency call back. These call backs are subject to immediate response by the Company at any time of day or night. Company's dedicated maintenance personnel must be on site within two (2) hours; all time associated with emergency call backs will be paid separately. As noted above, any necessary repairs not incidental to the preventative maintenance services will be reviewed and paid separately.

11.1 Current Equipment List

UNIT #	LOCATION	EQUIPMENT TYPE
1	"B" Terminal	Schindler Escalator
2	"B" Terminal	Schindler Escalator
3	"B" Terminal	Schindler Escalator
4	"B" Terminal	Schindler Escalator
5	"B" Terminal Development	Dover / Thyssen-Krupp Elevator

UNIT #	LOCATION	EQUIPMENT TYPE
6	"B" Terminal BC Baggage Level	Dover / Thyssen-Krupp Elevator
7	"B" Terminal MSCAA Management	Dover / Thyssen-Krupp Elevator
8	"C" Terminal	Schindler Escalator
9	"C" Terminal	Schindler Escalator

UNIT #	LOCATION	EQUIPMENT TYPE
10	"C" Terminal	Schindler Escalator
11	"C" Terminal	Schindler Escalator
12	"C" Terminal - Check Point	Schindler Moving Walk
14	"C" Terminal - Check Point	Morris-Wallace / Kone Elevator
15	"A" Terminal - Check Point	Morris-Wallace / Kone Elevator
16	"A" Terminal	Schindler Escalator
17	"A" Terminal	Schindler Escalator
18	"A" Terminal	Schindler Escalator
22	Gate B-17 (South East "Y")	Morris-Wallace / Kone Elevator
24	Gate B-8	Dover / Thyssen-Krupp Elevator
25	Building maintenance Freight	Morris-Wallace / Kone Elevator
26	Gate B-34 (FIS North)	Schindler Escalator
27	Gate B-34 (FIS North)	Schindler Elevator
28	Gate B-43 (FIS South)	Schindler Escalator
29	Gate B-43 (FIS South)	Schindler Elevator
34	East Connector (South East)	Westmont Moving Walk
37	East Connector (South West)	Westmont Moving Walk
43	Gate C-22	Northern / Thyssen Krupp Elevator
45	Gate B-7	Thyssen-Krupp Elevator

UNIT #	LOCATION	EQUIPMENT TYPE
46	B-Baggage (West)	Schindler Elevator
47	B Baggage (East)	Schindler Elevator
48	B Check point	Thyssen-Krupp Escalator
49	C Baggage	Schindler Elevator
50	A Baggage	Schindler Elevator
51	Pedestrian Plaza South (West unit)	Otis Moving Walk
52	Pedestrian Plaza South (East unit)	Otis Moving Walk
53	Pedestrian Plaza Center (West unit)	Otis Moving Walk
54	Pedestrian Plaza Center (East unit)	Otis Moving Walk
55	Pedestrian Plaza North (West unit)	Otis Moving Walk
56	Pedestrian Plaza North (East unit)	Otis Moving Walk
57	GTC (car #1) East	Otis Elevator
58	GTC (car #2) East Center	Otis Elevator
59	GTC (car #3) West Center	Otis Elevator
60	GTC (car # 4) West	Otis Elevator
61	GTC Car Rental (North Unit)	Otis Escalators
62	GTC Car Rental (South Unit)	Otis Escalators

11.2 Type of Maintenance

Full maintenance service will include preventative maintenance examinations, adjustments, lubrications, repairs, and replacements of parts as required and as listed hereinafter. It will also include all components and accessories not specifically mentioned or limited to the following items that are required for proper and safe operation of the above-mentioned equipment. Preventive maintenance parts (e.g., lubes, oils, chemicals, materials, nuts, bolts, etc.) will be considered incidental and will be the responsibility of the Company. All replacement parts will be acceptable, compatible, and operative components like the original installation. In addition, all equipment, components, accessories, car tops, pits and trusses will be maintained in a clean housekeeping condition.

11.3 Machine Room

Equipment machine spaces and storage areas will be maintained in a neat and orderly condition.

11.4 Communication

The Company will, for the duration of this contract, maintain the following means of communication:

Twenty-four (24) hour live answering service,

Cellular telephones operating twenty-four (24) hours per day for field employees,

Prior to each shift, the Company shall notify Airport Maintenance when Company's employees are on site or notify Airport Communications if Maintenance is unavailable.

Company shall provide Authority with access to Company's customer-facing internet portal. At a minimum, portal shall be capable of monitoring equipment, entering service tickets, reviewing prior work history, and generating reports.

11.5 Right of Inspection and Test

The Authority reserves the right to make such examination and test, anytime and as often as it deems advisable, to ascertain the requirements of this contract are being fulfilled.

11.6 Normal & Long Lead Time Parts

The Company shall maintain a job material inventory of frequently used small parts, lubricants, and miscellaneous supplies. A list of normal spare parts, including quantity and cost, must be maintained by the Company. The Company shall provide a list of commonly known long lead time components and shall maintain in Memphis the critical, long lead time components, for Escalator, Elevator, and Moving walks. Parts and Supplies Not Normally Kept is a list of inventories of parts and supplies not normally kept in inventory but are necessary to maintain the equipment.

All hand tools and supplies customarily required for service and maintenance of elevators, escalators, and moving walks shall be maintained by Company. The Company's local office shall stock and maintain an inventory of tools, and/or replacement parts, and have available on short delivery schedules in a reasonable length of time from stocking warehouses and other supply sources all compatible replacement components and parts required for the immediate repair of all elevators, escalator, and moving walk equipment under this contract. Company will allow the Authority viewing access to local supplies stored in the company's local office that are used/or will be used in conjunction with this contract to ensure compliance with inventory control requirements specified in this scope of service.

The Authority recognizes that some replacement and repair parts require long lead times. The Company shall provide with their response a list of all parts that will require long lead times. List will be reviewed with Company annually and subject to approval by the Authority. Any parts not included in this list will be assumed to be repairable or replaceable within 2 business days.

11.7 Working Hours

The Company must have a mechanic on duty at the Memphis International Airport 5 days a week from 11:00 p.m. to 7:00 a.m., Sunday night thru Thursday night. Absences and vacations must be filled by a badged maintenance personnel. Any missed shift without prior Authority approval will result in a reduction of payment.

Company shall provide a list of all holidays observed.

11.8 Preventative Maintenance Scope, Schedule, and Reporting

Company shall supply with their response to this RFP a detailed preventative scope of work and schedule for each piece of equipment to be maintained.

A monthly report of all maintenance performed will be submitted by the Company. The report format shall be separated for each unit and in a form agreed upon by the Authority and Company. Failure to maintain and provide monthly reporting will be construed as failure to perform the services required, and payment shall not be made for any period during that month. Payment that is withheld will be released upon satisfactory completion of the monthly reporting.

11.9 Check in/Check Out

The Company's service representative shall check in with the Authority's Building Maintenance Manager/ Supervisor or other designated representative on entering the premises, and receive any reports of elevator, escalator, or moving sidewalk equipment deficiencies that need correction. He/she shall also check out with the Authority's representative at completion of service visit and submit the reports as required herein.

11.10 Shutdowns of Equipment

All equipment shutdowns or out of service requirements requested by the Company shall be coordinated and approved by the Authority before any equipment shall be removed from service. Maintenance shutdowns will be allowed only between 11:00 p.m. thru 7:00 a.m.

11.11 O&M Manuals

Company must obtain operations and maintenance manuals and provide the Authority with printed and digital copies.

11.12 Penalty Deduction

Failure to report for an emergency call back within the required 2-hour timeframe will result in a non-recoverable penalty of 5% of the monthly payment for services of the dedicated maintenance personnel.

For additional repairs that are required to restore out-of-service equipment to operational status, failure to complete within an established timeframe after the Authority's issuance of a purchase order will result in a non-recoverable penalty of 20% of the monthly payment for services of the dedicated maintenance personnel. The established timeframes will correspond

to the lead times described in Section 11.6, “Normal & Long Lead Time Parts” (above), plus any additional time required for on-site work.

12 RESPONSE STRUCTURE

It is not the intent of the Authority to restrict response preparation; however, to enable the Authority to evaluate each response in a uniform manner, all Respondents shall structure their response by submitting one (1) marked as “original”, six (6) marked “copies”, and one (1) digital copy of the response each in a three-ring binder with marked reference tabs containing the data requested and the forms provided in Sections 14 and 15 below. Respondents shall also include a USB drive with a complete digital copy of their response.

Submit data as requested in the following sections:

12.1 Table of Contents

Respondent shall submit a Table of Contents outlining the response and shall include the tabs listed below.

12.2 Tab A – Company Information

Submitted under Tab A – Company Information, Respondent shall provide a brief company description, history, and financial status. In addition, Respondent must submit the requested information on the Respondent Information Form found in Section 14.1 below.

12.3 Tab B – References

12.3.1 Positive Comments

List four (4) references, with contact names and telephone numbers, for Elevator, Escalator, & Moving Walk Repair & Maintenance that are similar in size and scope of services to the Authority, who would have positive comments concerning their experience with your company. Please verify names and phone numbers of person to be contacted.

12.3.2 Negative Comments

List one (1) reference, with contact name and telephone number, for Elevator, Escalator, & Moving Walk Repair & Maintenance that is similar in size and scope of services to the Authority, who would have negative comments concerning their experience with your company. Please verify names and phone numbers of person to be contacted.

12.4 Tab C – DBE Inclusion

Discuss the ability and the intent of your firm to include DBE participation for this Contract. Respondent shall also include in this tab all required DBE documents/forms as stated in Section 6 above.

12.5 Tab D – Proposal Bond

All Respondents must include the original Proposal bond as described in Section 14.2. The selected Respondent will be required to submit at time of Contract an original Performance Bond as described in Section 8.4.

12.6 Tab E – Experience

12.6.1 Experience of the Respondent

Indicate the experience of the Respondent Company and subcontractors have in providing the requested Scope of Services.

12.6.2 Experience of the Dedicated Technician

Indicate the experience of the dedicated technician, technician assistant, and the back-up dedicated personnel.

12.6.3 Other Relevant Experience

Indicate other relevant experience that shows the qualifications of the Respondent and subcontractors for the performance of the Contract.

12.6.4 Relevant Contracts

Include a list of contracts the Respondent has held during the last five (5) years that relate to the Respondent's ability to perform the services outlined in this RFP. Examples should include the relative size and complexity of other similar work. Show contract reference numbers, contract period, current and valid names of contact persons with telephone numbers and e-mail addresses. By including this list, the Respondent grants permission to the Authority to contact this client list.

12.7 Tab F – Tab H – Pricing

Include pricing requirements for each year of the contract, based on the specifications in Section 11 of this RFP. Forms for completing pricing requirements may be found in Section 14.3. The proposal shall include the total charges to the Authority for services covered by these specifications.

12.8 Tab G– Additional Data

Submit additional data, exhibits, statements, and drawings necessary to assure the Authority has a total understanding of the Response. Include any other material which your team believes would be helpful in evaluation the quality of your firm and its overall operations. The Authority may require an interview with short-listed Respondents to obtain a better understanding of their Response. As described in Section 11 (above), the Company must include the Company holiday list, Preventative Maintenance Scope and Schedule for each piece of equipment, and the Non-Incidental Replacement and Repair Parts list with lead times.

12.9 Tab H– Contract Changes

A sample contract may be found in Section 16 of this document. Please review the sample contract as it contains the Authority's standard terms and conditions. The Authority may

negotiate additional terms with the chosen Respondent as appropriate, and these terms will be incorporated into the Contract. The Authority reserves the right to change the sample contract; however, if changes are requested to this sample contract by the Respondent, the Respondent must submit those proposed changes under Tab H - Contract Changes for review and possible approval by the Authority. If no changes are submitted, the Authority's interpretation will be the Respondent is accepting the Contract as shown in the sample contract. The successful Respondent will not be allowed to change the content of the sample contract terms which may be incorporated in the final Contract, unless those proposed changes are submitted under Tab H and approved by the Authority. **Do not return the sample contract with your response.**

12.10 Tab I – Executive Summary

Describe your team's approach to providing the services in this RFP, identifying any unique or distinctive features, or alternatives to which the Respondent wishes the evaluation committee to give particular attention.

13 AWARD

13.1 Solicitation

Responses are solicited from all companies that wish to be considered for the services outlined in this Request for Proposals document. The Authority will make its selection from the information contained in the responses to the Request for Proposals submitted by the due date. All parties are encouraged to respond in depth with statements containing specific experience and qualifications related to this RFP in the format described herein.

13.2 Evaluation Criteria

The following criteria, although not exhaustive, may be used in the evaluation. The Authority reserves the right to change or modify the criteria. The following list in alphabetical order illustrates some of the criteria that may be used in the evaluation process.

13.2.1 Demonstrated ability to perform the service

13.2.1 Experience of Respondent including any subcontractors

13.2.2 Experience of Dedicated Technician

13.2.3 Oral Presentations

13.2.1 Pricing

13.2.2 Responses of references

13.2.3 Responsiveness, organization, and clarity of the submittal

13.3 Oral Presentation

Written submittals and oral presentations, if considered necessary, will be utilized in selecting the winning Response. The Authority, in its sole discretion, may elect to select the top scoring finalists from the written submittals for an oral presentation and final determination of Contract award. Should the Authority elect to hold oral presentations, the Authority will contact the top-scoring Respondent(s) to schedule a date, time, and location.

13.4 Final Selection

Once the oral presentations have been completed, those Respondents will be ranked, and the ranking approved by the Authority's Board of Commissioners. Subsequently, the Authority staff will attempt to contract with the number-one-ranked firm. If negotiations are successful, the selected firm shall be recommended to the President for final approval. If an appropriate Contract cannot be negotiated with the first choice, negotiations shall be terminated, and the second ranked firm may be contracted. This may continue until successful negotiations have been concluded or it is determined that it is in the Authority's best interest to cease negotiations and/or issue a new RFP.

13.5 The Authority's Right to No Award or Partial Award

Award will be made to the best qualified, responsive Respondent, if awarded. The Authority reserves the right to reject all responses, reject portions of any response, or accept the response deemed most advantageous to the Authority.

13.6 Cancellation

Should the successful Respondent fail to execute or meet the requirements of the Contract after it is executed, the Authority may cancel the Contract at once and award the Contract to the next best qualified, responsive Respondent.

13.7 Anticipated Contract Date

The Authority anticipates the commencement date of the Contract to be January 1, 2022.

This space intentionally left blank.

14 REQUEST FOR PROPOSALS FORMS

14.1 Respondent Information Form (Required)

If Respondent is an INDIVIDUAL, fill out the following:

Individual's name: _____

If Respondent is a PARTNERSHIP, fill out the following:

Partner Name:

Partner Address:

_____	_____
_____	_____
_____	_____
_____	_____

If Respondent is a CORPORATION, fill out the following:

NAME OF CORPORATION PRESIDENT: _____

NAME OF CORPORATION SECRETARY: _____

All Respondents fill out the following:

NAME OF COMPANY: _____

PRINCIPAL BUSINESS ADDRESS: _____

CITY, STATE, ZIP CODE: _____

LOCAL STREET ADDRESS: _____

CITY, STATE, ZIP CODE: _____

FEDERAL TAX ID #: _____

TELEPHONE NUMBER: _____ CELL NUMBER: _____

EMAIL ADDRESS: _____

PRINTED NAME: _____

SIGNATURE OF RESPONDENT: _____

14.2 Proposal Bond

PROPOSAL BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we the undersigned,

_____ as Principal and
(Insert full legal name and address or Respondent/Offeror)

_____ as Surety,
(Insert full name and address or legal title of Surety)

Licensed under the laws of the State of Tennessee to act on surety bonds for principals, are hereby held and firmly bound unto

Memphis-Shelby County Airport Authority
2491 Winchester Road, Suite 113
Memphis, Tennessee 38116-3856

in the sum of \$5,000.00, for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a proposal to Memphis-Shelby County Airport Authority for Elevator, Escalator, & Moving Walk Repair & Maintenance, Proposal Number 21-0011, and more fully described in said Request for Proposals and made a part hereof and incorporated herein by reference; and

WHEREAS, it is one of the conditions of the Request for Proposals that this Bond be executed prior to the award of the Contract;

NOW, THEREFORE, if the Proposal shall be accepted and the Principal shall enter into a Contract in accordance with the terms of such Proposal, and furnish such bonds and proof of insurance as required in the Proposal or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the performance thereof and in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bond, then this obligation shall be void, otherwise the same shall remain in full force and effect. The Principal or the Surety shall not be liable for any amount in excess of the sum stated in this Bond, and the obligation shall be in no way impaired or affected by any extension of time within which the Proposal may be accepted; and said Surety does hereby waive notice of any such extension.

Signed and sealed this _____ day of _____, 20_____.

PRINCIPAL

SURETY

Respondents Name

_____(Surety)

By: _____
Signature of Principal

By: _____
Signature of Attorney-in-Fact

Printed Name

Printed Name

14.3 Pricing Schedule (Required)

Description	Year 1	Year 2	Year 3	Year 4	Year 5
Dedicated, full-time, on-site technician (see note 1 below)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Assistant (see note 2 below)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Additional work cost for additional services (ST) (see note 3 below)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Additional work cost for additional services (OT) (see note 3 below)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Discount for non-incidentals parts (see note 4 below)	_____ %	_____ %	_____ %	_____ %	_____ %

Notes

1. Response should be for annual cost including all incidental preventative maintenance costs.
2. Response should be for hourly rate for the Assistant either full-time or as needed. As described in Section 11, this service might not be approved by Authority.
3. Response should be for hourly rates for straight time and overtime for a single technician for all non-incidentals work, including repairs.
4. Response should be percentage discount off MSRP for all parts needed for repair work.

By signing the RFP response and participating in this process, the Respondent asserts that he/she has read, understands and agrees to the terms and conditions contained in this RFP document and has full authority to submit the written and verbal responses on behalf of the entity for whom they are acting and that the information submitted to the Authority in the response is true, accurate and complete to the fullest extent possible and to the best of his/her knowledge and abilities.

Company Name: _____ Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ Fax: _____ Email: _____

Signature: _____ Title: _____

15 DBE FORMS

15.1 DBE Assurance Statement/Letter of Intent (Required)

Submit on Company Letterhead for each DBE Subcontractor

DBE ASSURANCE STATEMENT/LETTER OF INTENT		
RESPONDENT:		
Name of Firm: _____		
Address: _____		
City: _____	State: _____	Zip: _____
Telephone: _____		
DBE:		
Name of Firm: _____		
Address: _____		
City: _____	State: _____	Zip: _____
Description of work to be performed by DBE: _____ _____ _____		
The Respondent is committed to utilizing the above-named DBE towards obtaining the DBE goal of _____% of the negotiated contract price for the work described above.		
AFFIRMATION		
The above-named DBE affirms that it will perform the portion of the contract for the estimated dollar value as stated above.		
By: _____		
Signature of DBE and Title	Date	Name
By: _____		
Signature of 2 nd /3 rd Tier Subcontractor and Title	Date	Name
If the Respondent does not receive award of the prime contract, any and all representations in this letter of Intent and Affirmation shall be null and void.		
By: _____		
Signature of Respondent and Title	Date	Name

15.4 Voluntary Disclosure of Respondent Data (Voluntary)

Do **not** submit this form on company letterhead

<u>VOLUNTARY DISCLOSURE OF RESPONDENT DATA</u>		
For Title VI Compliance, the Authority asks for <u>voluntary disclosure</u> of the following information:		
Gender:	Male	_____
	Female	_____
Race:	Caucasian	_____
	Black American	_____
	Hispanic American	_____
	Native American	_____
	Subcontinent Asian American	_____
	Asian-Pacific American	_____
	Other (please specify)	_____

16 SAMPLE CONTRACT

CONTRACT # 21-0011

FOR

ELEVATOR, ESCALATOR, & MOVING WALKWAYS

BY AND BETWEEN

THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY

AND

SUCCESSFUL RESPONDENT

THIS CONTRACT made and entered into this [day] day of [month], [year], (the “Contract” or “Agreement”), by and between [VENDOR NAME] (“Company” or “Contractor”) and **Memphis-Shelby County Airport Authority**, a body politic and corporate organized and existing under and by virtue of the laws of the State of Tennessee, (“Authority” or “Sponsor” or “Owner”). The Authority and the Company may be referred to herein individually as a “Party” and collectively as the “Parties”.

WITNESSETH THAT:

For and in consideration of the mutual promises, covenants, and stipulations of each Party to the other, the Company agrees to provide the Authority with services on the terms and conditions set forth herein as follows:

1 PERFORMANCE

Company shall provide Elevator, Escalator, & Moving Walkways maintenance services to the Authority in accordance with the Scope of Services (“Scope of Services”), which is attached hereto as Exhibit A and incorporated herein by reference. The Authority and the Company agree that from time to time it may be necessary to add to, delete from, or amend the Scope of Services in order to better meet the needs of the Authority, as determined by the Authority in its sole discretion. In such event, the Parties shall in writing, amend this Contract if the Parties reach an agreement on modifications of the Scope of Services and Compensation, which is defined in the “Compensation” section below.

2 COMPENSATION

For satisfactory performance, the Authority agrees to pay the Company in accordance with the Schedule of Compensation (“Compensation”) which is attached hereto as Exhibit B and incorporated herein by reference. The Authority agrees to remit payment to Company within thirty (30) days of receipt of a properly submitted and approved invoice with a complete itemization of the charges, including any and all supporting documentation. However, if Company has an outstanding debt with the Authority for any fees or expenses

related to this Contract, and the debt is over thirty (30) days past due, the Authority reserves the right to deduct the amount owed from the Company's submitted invoice.

3 TERM AND RENEWAL

The initial term of this Contract shall be for a period of one (1) year commencing on the start date of the Contract (Contract Term). The Authority, in its sole discretion, reserves the option to extend the Contract Term for four (4) additional periods of one (1) year each (Renewal Terms) by giving written notice to the Company at least ninety (90) days before the expiration of the Contract Term or any Renewal Term. At the sole option of the Authority, the Contract may be extended beyond the four (4) Renewal Terms. The Contract shall be amended to reflect any negotiated and agreed upon Compensation for any such extension of this Contract.

Any violation or breach of the terms of this Contract on the part of the Company or their subcontractors may result in the termination of this Contract or such other action that may be necessary to enforce the rights of the Parties to this Contract. The duties and obligations imposed by the Contract Documents, as defined in the "Contract Documents" section below, and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

4 TERMINATION OF CONTRACT

The Authority may, at any time upon thirty (30) days written notice, terminate this Contract in whole or in part at any time, either for the Authority's convenience or because of failure by Company to fulfill the Contract obligations. Upon receipt of such notice, services shall be discontinued on the effective date of termination (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Contract, whether completed or in progress, delivered to the Authority.

If the Authority terminates this Contract, the Authority shall be liable under the payment provisions of this Contract only for payment for services rendered and expenses incurred before the effective date of termination.

Company may terminate this Contract upon thirty (30) days written notice to Authority if Authority is in material breach of this Contract and fails to cure the breach before the end of the thirty (30) day notice period.

If, after notice of termination for failure to fulfill contract obligations, it is determined that the Company had not so failed, the termination shall be deemed to have been affected for the convenience of the Authority.

The rights and remedies of the Authority provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

5 UPON TERMINATION

If this Contract is terminated prior to Company's completion of the services to be performed hereunder, then all finished or unfinished documents or other materials prepared or obtained by Company pursuant to this Contract shall become the Authority's property to the extent allowable by law and accounting standards. If this Contract is terminated prior to Company's completion of the services to be performed hereunder,

Company shall return to Authority any sums paid in advance by Authority for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the Contract. Company shall prepare an accounting of the services performed and money spent by Company up to the effective date of termination and shall return to Authority any remaining sums within thirty (30) days of such date.

6 DEFAULTS AND REMEDIES

6.1 DEFAULTS

Company shall be in default of this Contract upon the occurrence of any of the following events:

- a. If Company fails to comply with any of the provisions required of Company under this Contract, and such failure continues for a period of twenty-four (24) hours after written notice thereof is given to Company by the Authority; or
- b. If, by operation of law or otherwise, the right, title, or interest of Company in this Contract is transferred to, passes to, or devolves upon any other person, firm, or corporation without prior written consent of the Authority; or
- c. Upon the levy of any attachment or execution of any process of a court of competent jurisdiction which does or will interfere with Company's performance under this Contract, and which attachment, execution, or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days; or
- d. Upon the suspension, revocation, or termination of any power, license, permit, or authority that has the effect of preventing Company from performing under this Contract.

6.2 REMEDIES

Upon the occurrence of any one or more of the events as set forth above, or upon any other default or breach of this Contract by Company, the Authority may, at the Authority's sole option, exercise concurrently or successively, any one or more of the following rights and remedies without waiving such default or breach:

- a. Interplead funds to a court or pay any sum required to be paid by Company to parties other than the Authority, and which Company has incurred in connection with this Contract and failed to pay. Any amount so paid in good faith by the Authority, together with interest thereon at the maximum rate provided by law from the date of such payment, and all expenses connected therewith shall be repaid by Company to the Authority on demand; or
- b. Enjoin any breach or threatened breach by Company of any covenants, sections, terms, provisions, or conditions hereof; or
- c. Bring suit for the performance of any covenant devolving upon Company for performance or damage thereof, all without terminating this Contract; or

- d. Terminate this Contract upon ten (10) days written notice to Company, specifying date of termination and upon payment of all fees and expenses incurred prior to termination.

7 RIGHTS AND REMEDIES CUMULATIVE AND NOT EXCLUSIVE

All rights and remedies granted to Authority herein and any other rights and remedies which Authority may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that Authority may have exercised any remedy without terminating this Contract shall not impair Authority's rights thereafter to terminate or to exercise any other remedy herein granted or to which Authority may be otherwise entitled.

8 RECOVERY OF FEES AND EXPENSES

In the event of any claim or other matter in question between the Authority and Company arising out of, or relating to, this Contract or the breach thereof and in addition to any other remedies or recoveries provided herein, the Company shall be liable for and shall promptly reimburse the Authority for any cost or expense incurred by the Authority, including fees and expenses of its attorneys, consultants, and experts, as a result of (i) Company's failure to perform in accordance with the terms of this Contract; (ii) breach of the warranties and guaranties set forth in this Contract; or (iii) any successful action taken by the Authority to enforce the terms of this Contract.

9 WAIVER

Waiver by the Authority of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant, or condition. No term, covenant, or condition of this Contract can be waived except by written consent of Authority, and forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of same to be performed by Company to which the same may apply and, until complete performance by Company of the term, covenant, or condition, Authority shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

10 FORCE MAJEURE

Neither Party shall be liable for any failure or delay in performance under this Contract (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused (i) by causes beyond that Party's reasonable control and (ii) occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or Party to substantially meet its performance obligations under this Contract, provided that, as a condition to the claim of non-liability, the Party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused; however, such delays shall not be grounds for an adjustment in Compensation.

11 ASSIGNMENT

The Company shall not assign the Contract or any part hereof or any monies due or to become due hereunder without the prior written approval of the Authority.

12 SUCCESSORS AND ASSIGNS

The Authority and the Company each binds itself and its partners, successors, executors, administrators and assigns, to the other Party of this Contract and to the partners, successors, executors, administrators, and assigns of such other Party with respect to all covenants, terms, provisions, and conditions of this Contract. Neither the Authority nor the Company shall assign, sublet, or transfer its interest in this Contract without the prior written consent of the other; provided, however, that claims for money due, or to become due the Company from the Authority under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of such assignment or transfer shall be furnished promptly in writing to the Authority. Except as provided for above, if Company should subcontract, assign, or transfer any part of Company's interests or obligations under this Contract without the prior written approval of Authority, it shall constitute a material breach of this Contract.

13 INDEPENDENT COMPANY

Company is an independent contractor with respect to all services performed under this Contract. Company accepts full and exclusive liability for the payment of any and all premiums, contributions, or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by Company on work performed under the terms of this Contract. Company shall defend, indemnify, save, and hold harmless the Authority from any claims or liability for such contributions, benefits or taxes. Nothing contained in this Contract, nor any act of the Authority or Company, shall be deemed or construed to create any third-party beneficiary or principal and agent association or relationship with the Authority. The Company is not the Authority's agent, and the Company has no authority, express, apparent or otherwise, to take any action or execute any documents on behalf of the Authority.

14 NO FINANCIAL INTEREST

Company understands and agrees that no Authority employee or member of the Board of Commissioners of the Authority, Memphis City Council, or Shelby County Board of Commissioners shall receive any financial benefit arising out of this Contract, either directly or indirectly. Further, any fees paid to any person or entity by the Company for assistance in obtaining this Contract with the Authority have been fully disclosed to the Authority in Company's Response, as defined in the "Incorporation of Company's Response" section below and supplemented in writing as necessary throughout this process.

15 INDEMNIFICATION

- a. Company shall defend, indemnify, and hold harmless the Authority and its commissioners, officers, agents and employees, from and against all claims, damages, demands, liability, losses, acts of God, costs, fines, and expenses of any nature whatsoever, including reasonable attorneys' fees, arising out of or resulting from any negligent acts or omissions in connection with Company's performance of this Contract, to the extent caused in whole or in part by Company or its employees, officers, agents, or subcontractors, or caused by others for whom Company is liable except to the extent of intentional misconduct of the Authority. The indemnity set forth in this section shall survive the expiration or earlier termination of this Contract.

- b. When the Company is obligated to provide the Authority a defense hereunder, it shall do so with qualified counsel that is selected by the Company and approved by the Authority. Such approval shall not be unreasonably withheld. In light of the Authority and the Company's continuing relationship, however, the potential for conflicts of interests exists if the same counsel represents both the Authority and the Company when the Company accepts the Authority's tender of defense under the indemnity provision of this Agreement. Therefore, the Authority retains the right to select its own counsel from a list of qualified attorneys provided by the Company or the Company's insurer. The selected counsel's fees and expenses shall be paid for by the Company or its insurer, and the counsel shall be different from that selected by the Company to represent it in the same matter.

16 LAWS, PERMITS AND LICENSES

Company shall abide by and observe all laws, ordinances, and regulations relating to the work to be done pursuant to this Contract. Company shall secure all permits and pay all license fees required by law before beginning the services.

17 DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

17.1 OVERVIEW

The Authority operates a federal Disadvantaged Business Enterprise (DBE) Program and a non-federal Business Diversity Development Program (BDDP) to ensure full and fair opportunities in Authority contracting for businesses owned by socially and economically disadvantaged individuals. Only firms that are certified consistent with 49 CFR Part 26 and by the Authority or the Tennessee Department of Transportation Unified Certification Program will be considered to be certified as a Disadvantaged Business Enterprise. The information contained in this section is not intended to, nor does it, supplement or amend any federal regulation. Company is responsible for compliance with all applicable federal and Authority rules and requirements.

17.2 IDENTIFICATION OF CONTRACT GOAL AND REQUIREMENTS

For this Contract, the DBE goal is established as 4%. The DBE goal shall apply to Change Orders.

17.3 ASSURANCE REQUIRED BY 49 CFR 26.13

The Contractor, and any 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 Department of Transportation-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; and/or
- (3) Disqualifying the contractor from future bidding as non-responsible.

17.4 PROMPT PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contractor receives from the Authority. The prime contractor agrees further to return retainage payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Authority. This clause applies to both DBE and non-DBE subcontractors. There is no retainage or other sums allowed to be withheld from progress payments or any other payments and any exceptions to this prompt pay/retainage provision must be requested in writing by the successful Respondent and approved in writing by an Authority Vice-President or higher prior to the delay or withholding of any payments under this provision.

17.5 UTILIZATION OF DBE SUBCONTRACTOR

The Company listed specific DBEs who will perform the work and/or supply the materials related to the Scope of Services. The Company shall utilize those specific DBEs until such time as the Company obtains the written consent of the Authority to terminate a DBE subcontractor in accordance with the provisions of 49 CFR 26.53(f). If the Company fails to obtain the Authority's consent, the Company will not be entitled to any payment for work or material, unless performed or supplied by a listed DBE.

18 INSURANCE REQUIREMENTS

See Exhibit C for Insurance Requirements.

19 DAMAGE TO AUTHORITY PROPERTY

Company agrees to promptly notify Authority of any damage caused to Airport property arising from Company's activities at the Airport. Company also agrees to comply with any request made by the Authority for reimbursement of costs associated with any damage to Airport property arising from the use of the Airport by Company or any of Company's representatives, managers, employees, agents, contractors, subcontractors, licensees or invitees or from the conduct of same. This provision shall survive the termination of this Contract.

20 AUDIT

The Authority shall have the right to audit this Contract along with any and all books, documents, and records relating thereto, as deemed necessary by the Authority, in its sole discretion. The books, documents, and records of Company in connection with this Contract shall be made available to the Authority in the Authority's offices or other locations in Memphis, Tennessee, acceptable to the Authority, within ten (10) days after a written request is made. The Authority may audit the Company's records at any time within three (3) years of each year ended June 30. The provisions of this section shall survive the expiration or earlier termination of the Contract by a period of no less than three (3) years.

21 GOVERNING LAW

This Contract shall be interpreted, construed and performance shall be governed by and in accordance with the laws of the State of Tennessee. Authority and Company irrevocably agree that should any litigation arise out of this Contract, it shall be brought in the state or federal courts in Shelby County, Tennessee.

22 SURVIVAL OF OBLIGATIONS

All obligations of the Parties that either expressly or by their nature survive the expiration or termination of this Contract shall continue in full force and effect subsequent to, and regardless of, this Contract's expiration or termination and until they are fully satisfied or by their nature expire.

23 INCORPORATION OF AUTHORITY'S REQUEST FOR PROPOSALS

The Authority's Request for Proposal, 21-0011, shall be incorporated in its entirety herein by reference. Accordingly, the Company shall be obligated to meet all requirements including, but not limited to, DBE requirements and Performance Bonds as described in the Request for Proposals; provided, however, that where an express provision of this Contract conflicts with any provision of the Request for Proposals, this Contract shall control.

24 INCORPORATION OF COMPANY'S RESPONSE

Company's timely response to the Authority's Request for Proposals ("Company's Response") shall be incorporated in its entirety herein by reference. Company and Authority acknowledge that Company's Response was a valuable consideration in the award of this Contract to the Company and is an authoritative reference for understanding the intention of the Parties to this Contract. Accordingly, Company shall be obligated to meet all specifications described in Company's Response; provided, however, that any conflict between an express provision of this Contract and any provision of Company's Response shall be resolved in the following order: (1) the provisions of this Contract, (2) Scope of Services, and (3) Schedule of Compensation.

25 UNCONDITIONAL OBLIGATION TO PROCEED

Notwithstanding anything herein to the contrary, when the Authority has requested work for which time is of the essence, the Company will proceed with the work even if it has a dispute with the Authority concerning the amount to be paid.

26 CONTRACT DOCUMENTS

The documents which comprise the entire Contract between the Authority and the Company ("Contract Documents") consist of the following:

- a. This Contract
- b. Exhibit A – Scope of Services
- c. Exhibit B – Schedule of Compensation
- d. Exhibit C – Insurance Requirements
- e. Exhibit D – Required contract provisions for Airport Improvement Program and for Obligated Sponsors

- f. Exhibit E – State Required Contract Provisions
- g. Exhibit F – Company’s DBE Accomplishment Statement and Assurance Statement(s)

27 SEVERABILITY

In the event any provisions of this Contract shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either Party of any provision, term, condition or covenant shall not be construed by the other Party as a waiver of a subsequent breach of the same by the other Party.

28 BONDS

The Company is required to furnish a Performance Bond and a Labor and Material Payment Bond at the time of Contract execution and prior to the start date of the Contract, in an amount equal to contract price, to guarantee the Company’s performance of the Contract. The bonds shall be made payable to the Memphis-Shelby County Airport Authority and shall remain in force for the duration of the Contract.

The bonds submitted by Company must include an original or certified copy of the Power of Attorney authorizing the Attorney-in-Fact to execute the bonds on behalf of the Surety. The bonds provided to the Authority in connection with this Contract shall be executed by the Company and Surety, and duly issued by an insurer or corporate surety which:

- a. Is authorized to conduct insurance business and provide surety bonds in the State of Tennessee; and
- b. Is otherwise in compliance with the provisions of the Tennessee Insurance Code; and
- c. Is authorized by the United States Department of Treasury pursuant to 31 U.S.C. § 9304-9308; and
- d. Has an A- or better rating and a Financial Size Category of “Class VII” or higher according to the most current edition of Best’s Key Rating Guide; and
- e. Notwithstanding the provisions of (d) above, an insurer or corporate surety that is not rated by Best’s Key Rating Guide may be accepted by the Authority following a review or investigation of the insurer's or corporate surety's financial and performance standing, including without limitation, its capital adequacy, assets, earnings, liquidity, and such other factors as the Authority may deem appropriate.

29 GENERAL WARRANTY AND CORRECTION OF WORK

The Company warrants to the Authority that all materials and equipment furnished in performance of the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective.

The Company shall promptly correct all defective Work whether observed before or after the substantial completion date and whether or not fabricated, installed or completed. The Company shall bear all costs of correcting defective Work.

If, within one (1) year after the substantial completion date, any of the Work is found to be defective, the Company shall correct it promptly after receipt of a written notice from the Authority to do so.

by the Parties. If any provision or term of this Contract shall be determined to be illegal, invalid or unenforceable, the remainder shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

32 EXECUTION OF CONTRACT

The parties hereby agree and express their intent to execute this Contract electronically if Authority has a designated information processing system. The parties also hereby agree that this Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

The remainder of this page left blank intentionally.

IN WITNESS WHEREOF, the signatures of the respective Parties by their duly authorized officers on the date first above written.

MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY

[VENDOR NAME]

By: _____

By: _____

Title: President and CEO

Title: _____

Approved as to Content:

By: _____

Title: Vice President of Operations

Reviewed and Approved:

By: _____

Title: Director of Maintenance

Approved as to Form and Legality

By: _____

Title: General Counsel

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

SCHEDULE OF COMPENSATION

EXHIBIT C
INSURANCE REQUIREMENTS

Prior to commencing work, the Company and its Subcontractor, if any (hereinafter collectively called Company) shall procure and continuously maintain, at its sole cost and expense, with insurers' financially acceptable and lawfully authorized to do business in Tennessee and any other states where work or operations are performed on behalf of the Authority, the insurance coverage required herein. The minimum limits for the insurance coverage required herein are listed below unless higher limits are required by law.

C.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

All General Liability policies of insurance with respect to work to be performed under the Contract and submitted by the Company, whether it be separate policies or on a combined form, must be written on an occurrence basis. Acceptance by Authority of insurance submitted by the Company does not relieve or decrease in any manner the liability of the Company for performance of the work required under the Contract, nor alter Company's indemnification obligations under the Contract. The Company shall increase such minimum limits upon written request from the Authority. The Company is responsible for any losses, claims, and costs of any kind which the Company's insurance does not cover.

C.1.1 COMMERCIAL GENERAL LIABILITY

Company's insurance coverage shall be on an occurrence coverage form, with coverage at least as broad as that provided under the current edition of the *Insurance Services Office Commercial General Liability Policy, CG 00 01 @*, and shall provide coverage for bodily injury, property damage, personal injury, advertising injury, premises and operations, products and completed operations. There shall be no limitations or exclusions beyond those contained in CG 00 01 04 13 which apply to property damage, products and completed operations, or contractual liability.

Company shall maintain Commercial General Liability with limits not less than:

\$1,000,000 bodily injury and property damage per occurrence
\$1,000,000 personal and advertising injury per occurrence
\$2,000,000 products and completed operations aggregate
\$2,000,000 general aggregate

The general aggregate limit shall apply separately to this project/location, and Company shall provide a copy of such endorsement to the Authority.

C.1.2 AUTOMOBILE LIABILITY

Company shall maintain coverage for liability with respect to the use or operation of any auto, including those owned, hired or otherwise operated or used by or on behalf of the Company. The coverage shall be at least as broad as the current edition of the *Insurance Services Office Business Automobile Policy, CA 00 01 @* and include Symbol 1 'any auto'. The coverage will be endorsed to include Garage

Keepers Liability on a primary basis using the current edition of the *Insurance Services Office Garage Keepers Coverage endorsement CA 99 37*. If Company's scope of services includes the transportation of hazardous materials to or from Airport premises, as determined by the Authority, company shall also include pollution coverage by procuring and continuously maintaining current editions of standard endorsements *MCS-90* and *CA 99 48*, or their equivalents.

\$1,000,000 combined single limit each accident
\$1,000,000 Garage Keepers Liability
\$5,000,000 if hazardous materials are to be transported

If Company's scope of services is mandated by State and/or Federal DOT regulations, Company will be in compliance with all applicable mandates at all times.

C.1.3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

Company shall maintain Workers' Compensation coverage in accordance with the statutory requirements and regulations of the State of Tennessee, and shall voluntarily provide workers' compensation coverage for proprietors, partners or others not statutorily required to maintain workers compensation insurance. Coverage shall endorse the Authority as an Alternate Employer and provide a copy of such endorsement to the Authority.

Company shall maintain Employer's Liability insurance of not less than:

\$1,000,000 for bodily injury by accident
\$1,000,000 for bodily injury by disease
\$1,000,000 policy aggregate

C.1.4 UMBRELLA LIABILITY

Company shall maintain umbrella liability coverage on an occurrence coverage form, with coverage following form to the coverages provided by the current editions of the *Insurance Services Office Commercial General Liability Policy, CG 00 01 @*, the *Insurance Services Office Business Automobile Policy, CA 00 01* and *Insurance Service Office Workers' Compensation and Employers Liability Policy WC 00 00* in accordance with the statutory regulations of the State of Tennessee with coverage not less than

\$5,000,000 per occurrence
\$5,000,000 annual aggregate

C.2 DEDUCTIBLES, SELF-INSURED RETENTIONS OR SELF-INSURED PROGRAMS

Any deductibles, self-insured retentions or self-insured programs must be declared to and approved in advance by the Authority and shall be fully disclosed and identified within the Certificate of Insurance. At the option of the Authority, Company shall reduce the deductible or self-insured retention to a maximum of \$10,000 or eliminate such deductibles or self-insured retentions applicable to claims involving the Authority, its officials and employees, or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention amount.

The self-insured retention or deductible amount on the policy shall not reduce the amount of collectible limits of liability. Any policy of insurance that either specifies self-insurance or a self-insured retention or that is maintained by Company shall contain a provision to the effect that the insolvency or bankruptcy of the insured shall not relieve the insurance company of any obligation under the policy.

C.3 OTHER INSURANCE PROVISIONS

The required insurance shall contain the following additional provisions:

C.3.1 ADDITIONAL INSURED

The Memphis-Shelby County Airport Authority, including the Authority's commissioners, officers, employees and agents, shall each be included as additional insured on Company's Commercial General Liability, Pollution Liability, Auto Liability, and Umbrella Liability policies with respect to claims or liabilities arising from, or connected with Company's work or operations. The additional insured endorsements shall be at least as broad as the current edition of the Insurance Services Offices forms *CG 20 10@* and *CG 20 37@*.

C.3.2 PRIMARY COVERAGE

Company's required insurance coverage, including umbrella liability, shall be primary insurance, and any insurance or self-insurance maintained by the Authority shall be in excess of and non-contributory with Company's insurance.

C.3.3 SEVERABILITY OF INTEREST

Except with respect to the limits of insurance, Company's required insurance shall apply separately to each insured or additional insured.

C.3.4 WAIVER OF SUBROGATION

To the fullest extent permitted by law, Company agrees to waive all rights of subrogation against the Authority, including the Authority's commissioners, officers, employees and agents and shall cause each of its contractors and subcontractors to waive their rights of subrogation against the Authority, including the Authority's commissioners, officers, employees and agents for all costs or expenses, losses, damages, claims, suits or demands, howsoever caused:

- a. To real or personal property, including but not limited to vehicles, equipment, and tools owned, leased or used by the Company or the Company's employees, agents or subcontractors; and
- b. To the extent such loss, damage, claims, suits or demands are covered, or would have been covered, by the required or any other insurance, except professional liability to which this requirement does not apply, maintained by the Company.

This waiver shall apply to all first party property, equipment, vehicle and workers compensation claims, unless prohibited under applicable state statutes, and all third-party liability claims. This waiver shall also apply to all deductibles, retentions or self-insured layers applicable to the required or any other insurance, except professional liability to which this requirement does not apply, maintained by the Company. If necessary, the Company agrees to secure endorsements to the required insurance policies to permit waivers of subrogation in favor of the Authority as required hereunder. The Company further agrees to hold harmless and indemnify the Authority for any loss or expense incurred as a result of the Company's failure to obtain such waivers of subrogation from the Company's insurers.

C.3.5 NOTICE OF CANCELLATION

Should the Company cancel, fail to renew or make changes to any insurance policy required herein, and/or receive advance written notice from the insurer prior to the cancellation, termination, revocation of or any adverse material change to any insurance coverage required hereunder, the Company shall immediately notify the Authority in writing of same. If any of the insurance is cancelled, the Company shall cease operations until such insurance can be provided.

C.3.6 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers authorized to do business in the State of Tennessee having an A- or better rating and a Financial Size Category of "Class VII" or higher according to the most current edition of Best's Key Rating Guide.

C.3.7 VERIFICATION OF COVERAGE

The Company shall furnish the Authority with a certificate of insurance evidencing the required coverage prior to the commencement of work or operations. The Company agrees to submit an insurance certificate(s) such that the Authority has a certificate evidencing current required coverage at all times. The certificates are to be signed by a person authorized by the insurer(s) to bind coverage on Company's behalf. **Copies of endorsements providing coverage for additional insureds, primary, non-contributory coverage, permitting waiver of subrogation, and earlier notice of cancellation shall also be provided to the Authority.** Renewal certificates shall also be provided to the Authority prior to the expiration of the required insurance policies.

If required by the Authority's legal counsel, the Company agrees to provide true and certified copies of the required insurance policies within fifteen (15) days of receipt of written request from the Authority. In the event renewal policies have not been issued by insurer(s), the Company agrees to provide complete copies of insurance binders issued to evidence coverage required by this Contract until such time as the actual policies are received from insurer(s).

Failure of the Authority to request such certificates or other evidence of Company's compliance with insurance requirements, or failure of the Authority to identify deficiencies from evidence that is provided, shall in no way limit or relieve Company of its obligations to maintain such insurance.

C.3.8 SUBCONTRACTORS

The Company shall require their contractors and subcontractors to maintain same insurance coverage and minimum limits as is herein required of the Company, as well as provide proof of subcontractors' insurance coverage to the Authority.

C.3.9 LEASED EMPLOYEES

Use of leased employees by Company is expressly prohibited without the Authority's prior written permission. If permitted by the Authority, Company shall:

- a. Provide the Authority with a complete copy of agreement with employee leasing company;
- b. Require leasing company to provide workers' compensation and employers liability insurance with limits in amounts not less than required of Company;
- c. Require leasing company to provide standard Alternate Employer Endorsement WC 00 03 naming the Authority as alternate employer on leasing company's workers' compensation and employers liability policy;
- d. Require leasing company to provide standard Alternate Employer Endorsement WC 00 03 naming the Authority as alternate employer on leasing company's workers' compensation and employers liability policy;
- e. Provide the Authority with a copy of leasing company's certificate of insurance, with endorsements, evidencing the required coverage

C.3.10 NO REPRESENTATION OF COVERAGE ADEQUACY

In specifying minimum Company insurance requirements, the Authority does not represent that such insurance is adequate to protect Company for loss, damage or liability arising from its work. Company agrees that it is Company's responsibility to identify its own risks and protect itself accordingly and understands that the Authority accepts no liability for any such uninsured risks howsoever arising.

The insurance requirements set forth in minimum amounts shall not be construed to relieve Company for liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as is available to it under any other

provision of the Contract. Any acceptance of certificates of insurance by the Authority shall in no way limit or relieve Company of its duties and responsibilities under the Contract, including the duty to indemnify and hold harmless the Authority.

EXHIBIT D
REQUIRED CONTRACT PROVISIONS FOR AIRPORT IMPROVEMENT
PROGRAM AND FOR OBLIGATED SPONSORS

Federal Laws and regulations require that recipients of federal assistance include contract provisions in certain contracts without modification. The provisions in this section apply to this Agreement. The Company shall incorporate the applicable provisions, as indicated in this section, in all of the subcontracts that it enters into for work to be performed related to this Agreement.

Certain provisions must be included in all sponsor contracts, regardless of *whether or not* the contracts are federally funded. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances.

1 GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and sub tier contractors from the bid solicitation period through the completion of the Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

2 TITLE VI COMPLIANCE WITH NON-DISCRIMINATION REQUIREMENTS

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. COMPLIANCE WITH REGULATIONS

The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.

2. NON-DISCRIMINATION

The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT

In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the Contractor's obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. INFORMATION AND REPORTS

The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. SANCTIONS FOR NONCOMPLIANCE

In the event of a Contractor's noncompliance with the Non-discrimination provisions of this Contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the Contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a Contract, in whole or in part.

6. INCORPORATION OF PROVISIONS

The Contractor will include the provisions of paragraphs 2.1 through 2.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

3 TITLE VI LIST OF PERTINENT NON-DISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (2) 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- (3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (4) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- (5) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- (6) Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (7) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- (9) The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with

disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- (11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- (12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

4 FEDERAL FAIR LABOR STANDARDS ACT

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

5 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

EXHIBIT E
COMPANY'S DBE ACCOMPLISHMENT STATEMENT AND ASSURANCE STATEMENT(S)