

REQUEST

FOR

QUALIFICATIONS

DBE CONSULTING SERVICES

RFQ NUMBER 22-0003

DUE DATE:

OCTOBER 19, 2021

TRANSMITTAL LETTER

September 14, 2021

Dear Respondent,

The Memphis-Shelby County Airport Authority (Authority) is seeking a qualified Respondent to provide DBE Consulting Services for the Authority. This Request for Qualifications (RFQ) is under the direction of the Business Diversity Department (BDD).

The Procurement Department is responsible for coordinating all communications between the Authority and Respondents. The RFQ limits the manner, method, and type of communications that the Authority and Respondents may have once an RFQ process is initiated to ensure that the process is fair and impartial. Please review the RFQ 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 RFQ submission deadline.

The Authority reserves the right to reject any or all responses to this RFQ 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 RFQ, 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 RFQ, the RFQ 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 QUALIFICATIONS TIMELINE, COMMUNICATIONS AND PROCESS

2.1 RFQ Timeline

While this timeline sets forth important dates for this Request for Qualifications (RFQ) process, the entire RFQ 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).

September 14, 2021	Publication of Legal Notice
September 14, 2021	Release of RFQ Documents
September 29, 2021	Pre-Proposal Meeting 1:00 p.m.
October 5, 2021	Questions Due from Respondents by 4:30 p.m.
October 11, 2021	Questions and Answers posted on Authority website by 4:30 p.m.
October 19, 2021	Response Due to Authority by 2:00 p.m.
October 28, 2021	Oral Interviews with Selected Respondents
November 18, 2021	Anticipated Board Approval of the Award of Contract
January 1, 2022	Anticipated Contract Commencement Date

2.2 Communication with the Authority during this RFQ

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 the Procurement Department via email at Bids@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 RFQ 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 RFQ. This restriction on communication will govern until the RFQ process has been completed and a contract has been fully executed 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 RFQ submission deadline.

2.4 Pre-Proposal Conference

A pre-proposal conference will be held September 29, 2021, at 1:00 p.m. via zoom meeting.

Join Zoom Meeting

<https://us06web.zoom.us/j/83742086873?pwd=cHk2UWZXMjlnR244TzIUeW1RRXhLQT09>

Meeting ID: 837 4208 6873

Passcode: 410437

One tap mobile

+13126266799,83742086873# US (Chicago)

+16468769923,83742086873# 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)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

Meeting ID: 837 4208 6873

Find your local number: <https://us06web.zoom.us/j/kezo4kNhHi>

2.5 Questions Regarding RFQ

Questions regarding this RFQ must be submitted in written form via email to Nathan Luce at Bids@flymemphis.com. Questions will be accepted until 4:30 PM, October 5, 2021. Answers will be provided by 4:30 p.m., October 11, 2021. Answers will only be posted on the website, www.flymemphis.com.

2.6 RFQ and Response Submissions

A copy of this RFQ will be distributed to prospective Respondents. This RFQ 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 RFQ, 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 "DBE Consulting Services" and "RFQ Number 22-0003" 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 RFQ.

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 October 19, 2021:**

Procurement Department
Memphis-Shelby County Airport Authority
4150 Louis Carruthers Drive
Memphis, Tennessee 38118
Attn: Request for Qualifications, DBE Consulting Services,
RFQ Number 22-0003

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 RFQ 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 RFQ

The Authority reserves the right to reject any or all responses to this RFQ, 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 RFQ 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 RFQ, or for any other reason as determined by the Authority. The Authority further reserves the right to cancel this RFQ process at any time.

2.8 RFQ 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 RFQ.

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 RFQ 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 RFQ, 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 RFQ 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 RFQ.

3 RESPONDENT ASSURANCES

By submitting the RFQ 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 RFQ 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 RFQ 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 RFQ 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 RFQ 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 RFQ. The information contained in all Addenda that may be issued shall become a part of this RFQ and, to the extent specified, shall amend and supersede the similar information in the original RFQ document. All other terms, provisions, and conditions of the RFQ 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

This RFQ involves a process in which the Respondent will be selected without regard to price, and price will be negotiated after that selection. For that reason, each response must be accompanied by a contractually binding Assurance Statement that the Respondent will meet the DBE participation goal or make good faith efforts to do so. The Respondent must list on the Assurance Statement each DBE whose

participation the Respondent is counting toward the DBE goal, whether the DBE is a first, second, third or other tier subcontractor. The form provided in Section 14.1 of this RFQ is the Assurance Statement that must be submitted on Respondent's company letterhead with the response.

Before the Contract is executed by the Parties, the selected Respondent must submit a second statement for each DBE whose participation the Respondent is counting toward the DBE goal, which must be signed by each DBE. For each such statement, the selected Respondent must provide the written quote, proposal or other communication from the DBE upon which the scope of work and dollar value are based. The signed statements must be delivered to the same location that applies to the original solicitation response at a time to be determined by the Authority after the price is negotiated.

The Authority reserves the right to ask questions of the Respondent and to require additional information at any time and as it determines necessary, in its sole discretion, to ensure that all applicable federal regulations and Authority rules, regulations, and policies are followed as it relates to DBE participation.

6.2.2 Respondent DBE Goals Accomplishment Statement

The form provided in Section 14.2 must be submitted on Respondent's company letterhead.

6.2.3 Information on All Firms Providing Responses

The form provided in Section 14.3 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 14.4 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 include persons having origins in any of the Black racial groups of Africa;
 - b. **Hispanic Americans** which include 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 include 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 include 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 DBEs 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 35%. 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:

- a. 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.
- b. 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.
- c. 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).

- d. 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.
- e. 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).
- f. 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).
- g. 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:

- a. Withholding of payments to the Respondent under the Contract until the Respondent complies; and/or
- b. Cancellation, termination, or suspension of the Contract, in whole or in part; and/or
- c. 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 15 below.

8 SECURITY AND ACCESS

8.1 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' 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 on a monthly basis.

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

8.2 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 8 Security and Access, in order to access areas beyond these checkpoints.

8.3 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 or not 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.

9 TERMS OF PERFORMANCE

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

9.1 Contract Negotiations and Contract Form

One Respondent will be selected for contract negotiations in accordance with Section 12.4. 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 RFQ 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.

9.2 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.

9.3 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 two (2) 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 three (3) Renewal Terms. The Contract shall be amended to reflect any negotiated and agreed upon Compensation for any such extension of this Contract.

9.4 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.

9.5 Payment and Billing Requirements

9.5.1 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 - acctpactable@flymemphis.com

9.5.2 Payment Terms

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

9.5.3 Taxes

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

10 SCOPE OF SERVICES

The successful Respondent shall perform all work in a timely manner and shall be responsible for ensuring coordination of its work and the work of its subcontractors, if any. The Scope of Services includes, but is not limited to, the following:

- Oversee and perform the completion of the ACDBE/DBE/Car Rental Overall Goals, Methodology, Accomplishments and Short Fall Analysis Reports for the Authority as required and meet the specified deadlines of the reporting structure according to the following schedule:

Report	Due Date	Comments
DBE Accomplishment Report	December 1	Due Annually
ACDBE/Car Rental Accomplishment Report	March 1	Due Annually
DBE Overall Goal & Methodology Report	August 1	Due Triennially
ACDBE/Car Rental Overall Goal & Methodology	August 1	Due Triennially

- Responsible for the utilization of all FAA Reporting forms and formats as required for submittal of goals and accomplishments;
- Assist with the maintenance of the ACDBE/DBE/Car Rental/SBPP and Title VI programs;
- Provide technical knowledge and expertise relating to all federal programs and guidelines utilized by the Business Diversity Department;
- Act as a liaison for the Authority when dealing with compliance issues involving the FAA and other governmental entities;
- Offer guidance, assistance, and direction with regard to the Disparity Study Process and its completion;
- Provide training for Staff, Board, etc. as it relates to new and impending changes in legislation or federal regulations;
- Assist Authority with future contracting including, but not limited to, concessions agreements, leases, and joint venture opportunities within the ACDBE/DBE Programs;
- Assist Staff and provide suggestions with DBE language in legal notices, public notices, bid documents, etc. as needed;
- Oversee stakeholders' meetings when necessary;
- Provide assistance as it relates to the Unified Certification Program;
- Provide any recommendations regarding modifications or corrections necessary for the Authority to become compliant with Federal DBE/ACDBE certification regulations;
- Conduct reviews of DBE and ACDBE certification files of previously certified firms as follows:
 - As a part of this process, the Respondent may be required to review individual files of certified DBE firms (a list of which will be provided by the Authority to Respondent), the purpose of which will be to determine if the firm is/was properly certified in accordance with 49 CFR 26 Subpart D. The information to be reviewed will include the following:
 - All certification application forms and related supporting documents, as applicable;
 - Financial documentation submitted;

- All onsite-review documentation and verifications;
- Certification-recommendation decision documents, including approval correspondence or denial letters, appeals, etc.; and
- Initially assigned NAICS codes for proper assignment.

After completion of the review, Respondent will prepare a report to assess the appropriate application of the regulations and related processes for the certification decisions, including a recommendation whether each firm is properly certified as a DBE and a recommendation on what NAICS codes should be assigned to each file/firm reviewed; and

- Other DBE consulting services as assigned.

11 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” and six (6) marked “copies” of the response each in a three-ring binder with marked reference tabs containing the data requested and the forms provided in Sections 13 and 14 below. Respondents shall also include a USB drive with a complete digital copy of their response. **Submit data as requested in the following sections:**

11.1 Table of Contents

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

11.2 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 13.1 below.

11.3 Tab B – References

11.3.1 Positive Comments

List four (4) references, with contact names and telephone numbers, for DBE Consulting Services similar in size, scope of services, and complexity of the Memphis International Airport, who would have positive comments concerning their experience with your company. Please verify names and phone numbers of person to be contacted.

11.3.2 Negative Comments

List one (1) reference, with contact name and telephone number, for DBE Consulting Services similar in size, scope of services, and complexity of the Memphis International Airport, who would have negative comments concerning their experience with your company. Please verify names and phone numbers of person to be contacted.

11.4 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.

11.5 Tab D – Experience

Respondent must demonstrate experience performing the Services as described in Section 10, Scope of Services. Proposal must include professional reference contact information for at least three (3) airports of similar size and scope for whom the Respondent has provided these Services within the past three (3) years.

11.6 Tab E– Contract Changes

A sample contract for this solicitation may be found on our website. 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 F - 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 F and approved by the Authority. **Do not return the sample contract with your response.**

11.7 Tab F – Executive Summary

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

12 AWARD

12.1 Solicitation

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

12.2 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.

12.2.1 Demonstrated ability to perform the service

12.2.2 Experience with similar size and type of facility and complexity of Memphis International Airport

12.2.3 Oral Presentations

12.2.4 Quality of work plan.

12.2.5 Responses of references

12.2.6 Responsiveness, organization, and clarity of the submittal

12.2.7 Strength of Quality Assurance and Contract Monitoring Program

12.3 Oral Presentation

The Authority will select the top scoring finalists from the written submittals for an oral presentation.

12.4 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 RFQ.

12.5 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.

12.6 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.

12.7 Anticipated Contract Date

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

13 REQUEST FOR QUALIFICATIONS FORMS

13.1 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: _____

13.2 Scope of Services Experience

Service	Years' Experience Respondent	Years' Experience Subcontractor(s) (If applicable)
Oversee and perform the completion of the ACDBE/DBE/Car Rental Overall Goals, Methodology, Accomplishments and Short Fall Analysis Reports		
Responsible for the utilization of all FAA Reporting forms and formats as required for submittal of goals and accomplishments		
Assist with the maintenance of the ACDBE/DBE/Car Rental/SBPP and Title VI programs		
Provide technical knowledge and expertise relating to all federal programs and guidelines utilized by the Business Diversity Department		
Act as a liaison for the Authority when dealing with compliance issues involving the FAA and other governmental entities		
Offer guidance, assistance and direction with regard to the Disparity Study Process and its completion		
Provide training for Staff, Board, etc. as it relates to new and impending changes in legislation or federal regulations		
Assist Authority with future contracting including, but not limited to, concessions agreements, leases, and joint venture opportunities within the ACDBE/DBE Programs		
Assist Staff and provide suggestions with DBE language in legal notices, public notices, bid documents, etc. as needed		
Oversee stakeholders' meetings when necessary		
Provide assistance as it relates to the Unified Certification		
Provide any recommendations regarding modifications or corrections necessary for the Authority to become compliant with Federal DBE/ACDBE certification regulations		
Conduct reviews of DBE and ACDBE certification files of previously certified firms		

14 DBE FORMS

14.1 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

14.2 Respondent DBE Goals Accomplishment Statement (Required)

Submit on Company Letterhead

RESPONDENT DBE GOALS ACCOMPLISHMENT STATEMENT

The undersigned Respondent has satisfied the requirements of the bid/proposal specification in the following manner (please complete the appropriate spaces):

- The Respondent is committed to a minimum of ____% DBE utilization on this contract.
- The Respondent is unable to meet the DBE goal of ____% but is committed to a minimum of ____%

DBE utilization on this contract and submits the attached narrative and documentation demonstrating good faith efforts consistent with Appendix A of 49 CFR 26. **The Respondent should attach as many pages as necessary to provide a full and complete narrative and supporting documentation of good faith efforts made. This narrative must be written on company letterhead and signed.**

Please provide an explanation for the percentage quoted above:

Provide an explanation of the DBE's participation and how this has been determined to meet the specific goal requirements of this solicitation in whole or part.

If DBE and company will enter into a Joint Venture, please describe the terms of the relationship and attach a copy of the contract between the parties.

It is the present intent of the Respondent to utilize the specific DBE firms identified in this proposal in the execution of this contract. If for any reason, one or more of the DBE identified here are unable or unwilling to participate, the Respondent will make good faith efforts to replace the DBE with a similar DBE. The Authority DBE Good Faith Procedures are provided in this package and apply to this proposal.

Respondent's Name: _____

State Registration No.: _____

Federal Tax ID No.: _____

By: _____
Signature and Title Date

14.4 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)	_____

15 SAMPLE CONTRACT

CONTRACT 22-0003

FOR

DBE CONSULTING SERVICES

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 DBE Consulting 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 two (2) 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 for (2) Renewal Terms. The Contract shall be amended to reflect any negotiated and agreed upon Compensation for any such extension of this Contract.

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 35%. 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 QUALIFICATIONS

The Authority's Request for Qualifications 22-0003 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 Qualifications provided, however, that where an express provision of this Contract conflicts with any provision of the Request for Qualifications this Contract shall control.

24 INCORPORATION OF COMPANY'S RESPONSE

Company's timely response to the Authority's Request for Qualifications ("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 – 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,

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: Director of Government Affairs & Business Diversity Development

Reviewed and Approved:

By: _____

Title: Senior Manager of Business Diversity Development

Approved as to Form and Legality

By: _____

Title: General Counsel

EXHIBIT A

SCOPE OF SERVICES

INSERT SCOPE OF SERVICES

EXHIBIT B

SCHEDULE OF COMPENSATION

INSERT 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
\$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 Per occurrence, bodily injury and property damage liability

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:

\$500,000 each accident
\$500,000 disease policy limit
\$500,000 disease each employee

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

\$3,000,000 per claim
\$3,000,000 annual aggregate

C.1.5 PROFESSIONAL LIABILITY INSURANCE

\$1,000,000 per claim

\$3,000,000 for contract period plus number of years to statute of repose in TN

Contractor must provide professional liability insurance appropriate for their profession. The policies shall provide a three (3) year extended reporting period.

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.