

## **INFORMATION PACKAGE**

**for responding to the**

**Request for *Statements of Qualifications* to provide**

**Professional Consulting Services**

**Aeronautical Obstruction Evaluations  
Memphis International Airport (MSCAA)**

**MSCAA PROJECT No. 22-1457-00**



**Responses due 2:00 PM local time on Tuesday, July 26, 2022**

**INSTRUCTIONS FOR SUBMITTALS**  
**to provide professional consulting services**  
**Aeronautical Obstruction Evaluations**

**MSCAA PROJECT No. 22-1457-00**

**WHEN:** Statements must be received by 2:00 PM local time on Tuesday, July 26, 2022

**WHERE:** **HAND DELIVERY or VIA OVERNIGHT COURIER**

MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
Procurement Department  
4150 Louis Carruthers Drive  
Memphis, TN 38118  
ATTN: MSCAA Project No. 22-1457-00

**HOW:** Response must be sealed, delivered via in person or overnight carrier and marked on the outside of the envelope, as follows:

**STATEMENT OF QUALIFICATIONS for:**  
**Aeronautical Obstruction Evaluations**  
**Project No. 22-1457-00**

**FORM:** Original one (1) hard copy and one (1) electronic copy, using the enclosed forms or electronic equivalent, only. Response must be complete and include the information requested in these instructions. No facsimile transmissions of responses will be accepted.

**UPDATES:** Respondents are hereby notified that all updates, addenda and additional information, if any, shall be posted to the MSCAA website and Respondents are responsible for checking the MSCAA website up to the deadline for submission of this RFQ.

**SUPPLEMENTAL INFORMATION:** The Authority reserves the right to request any supplementary information it deems necessary to evaluate the Respondent's experience, qualifications, clarify or substantiate any information contained in the Respondent's submittal.

**LEGAL NOTICE**  
**Request for Statement of Qualifications**  
**MSCAA Project Number 22-1457-00**  
**Aeronautical Obstruction Evaluations**

Statements of Qualifications for Aeronautical Obstruction Evaluations will be received by the Memphis-Shelby County Airport Authority (Authority), Procurement Department, 4150 Louis Carruthers Road, Memphis, TN 38118, until **2:00 PM local time on Tuesday, July 26, 2022**. The Information Package, including a description of the scope of services, the selection criteria, the required response format, and additional instructions may be obtained on the Authority's website at [www.flymemphis.com](http://www.flymemphis.com) on or after **Tuesday, June 28, 2022**.

All Respondents are responsible for checking the Authority's website up to the submission deadline for any updates, addenda or additional information. The successful Respondent must meet the DBE participation goal for this project, which is 4%, and sign a contract with the Authority that includes Federal Aviation Administration provisions, if applicable, regarding Buy American Preference, Foreign Trade Restriction, Davis-Bacon, Affirmative Action, Debarment and Suspension, and Drug-Free Workplace, all of which are incorporated herein by reference.

The Authority reserves the right to reject any or all responses to this request in whole or in part; to waive any informalities, technicalities, or omissions related to this request; and to reject responses on any other basis authorized by the Authority's purchasing policies.

The Authority is an equal opportunity employer and prohibits discrimination based on the grounds of age, race, sex, color, national origin, disability, marital status, military service, or sexual orientation in its hiring and employment practices and in the admission to, access to, or operation of its programs, services, and activities.

By order of:  
Scott A. Brockman, A.A.E.  
President and CEO  
Memphis-Shelby County Airport Authority

## **GENERAL INFORMATION**

MSCAA intends to select one qualified consultant, or proposed team of consultants, to provide the services described herein. The descriptions given are intended to convey an overall scope of services so that each respondent might address its experiences and present its expertise in dealing with the items mentioned. Responding firms should pay close attention to the “Submittal Requirements”, and any other information that has been provided. The responding firm’s ability to follow these instructions and to present its SOQ in a clear and concise manner will be considered during the initial screening and evaluation. The original one (1) hard copy and one (1) electronic copy of the completed, signed *Statement of Qualifications* should be submitted by 2:00 PM local time on Tuesday, July 26, 2022.

## **SCOPE OF SERVICES**

The scope of services shall include all work associated with providing complete services required to document the status of runway approach surfaces, for all runways in the Memphis-Shelby County Airport Authority jurisdiction, including the runways at Memphis International, General DeWitt Spain and Charles W. Baker Airports, as defined by the Federal Aviation Administration (FAA) in Federal Air Regulation (FAR) Part 77. Acceptable methods of data collection include ground based terrestrial photography and surveying techniques, digital and scanned aerial film imagery, matrix and push-broom digital airborne sensors, small- and medium-format metric cameras, close-range imagery, orthophotos, LiDAR, synthetic aperture radar, RPC satellites, or other technologies. The overall contract with MSCAA will be for an initial one year period with options for renewal for four additional periods of one year each.

## **SELECTION PROCEDURES**

*Statements of Qualifications* will be solicited from all firms or proposed teams that wish to be considered for the services outlined in this Scope of Services. One consultant or team will be selected by MSCAA based on a review of submitted statements. Statements submitted by the deadline established in these instructions will be reviewed and evaluated by MSCAA in accordance with the listed criteria. MSCAA will make the selections based on material submitted and optional telephone and/or in-person interviews. When citing recent project experience, respondents must provide current names and telephone numbers of knowledgeable project-owner representatives as references.

Following the evaluation of submittals by the selection committee, the firms will be ranked for the project. Upon approval, the staff will attempt to negotiate a fee and scope for the required services with the top ranked firm. If a mutually satisfactory fee is negotiated, it will be submitted to MSCAA’s Capital Program Executive Staff or its Board of Commissioners for approval. If these efforts are unsuccessful with the initial firm, negotiations shall cease with that firm and begin with the next ranked firm, and so on, until a satisfactory agreement has been reached and approved.

## **SUBMITTAL REQUIREMENTS**

To expedite the evaluation of Submittals, each Submitting Firm must organize its Submittal into the following sections. Submittals which do not follow the specified format as outlined in the evaluation criteria section may be deemed unresponsive and disqualified from the process. In addition, failure on the part of a Submitting Firm to provide the required documentation may be cause for rejection of the Submittal. In the event of any conflict between any of the Submittal documents, resolution thereof shall be at MSCAA's sole discretion.

### **A. General Submittal Instructions**

1. Submit the original one (1) hard copy and one (1) electronic copy of the Submittal and the required attachments in 8-1/2 x 11 inch 3-ring binders with all pages numbered sequentially.
2. The submittal and attachments cannot exceed thirty (30) single-spaced pages, and must be typewritten.
3. Use at least a 10-point font and 1/2 inch margins on all Submittal documents.
4. Electronic copy shall be PDF format and provided on USB Flash Drive.

### **B. Required Submittal Components**

1. Cover Letter (maximum 2 pages), to provide an introductory statement and summary of the Submittal. It must include contact information for any questions regarding the Submittal. The Cover Letter will not count toward the page limit.
2. Complete the Standard Form 330, "Architect-Engineer Qualifications," Part I with Attachments E and F (original and electronic copy) in the specified format and include the following information. The thirty (30) page limit applies to the entire Form 330 Part I, including Sections E and F for the prime consultant. Resumes and Example Projects (Sections E and F) for sub-consultants may be included, at the option of the prime consultant, if space permits. Standard Form 330, Part II, should also be included for the prime consultant and for any sub-consultants following Resumes and Example Projects but Part II forms will not count toward the thirty (30) page limit.
  - a) Submitting Firms must be able to show at least five (5) years of verifiable and continuous experience in analyzing potential runway approach obstructions while utilizing data collection technology as specified in the scope of services. Specify the types of services provided by the Submitting Firm for each project and for personnel assigned to it.
  - b) Provide a detailed review of other services completed by the Submitting Firm, including experience on Airport Improvement Projects funded with aviation-related grants, including size, scope, date completed and results.
  - c) Provide a summary of the Submitting Firm's knowledge and experience with FAA and airport-specific design and construction standards policies, rules and regulations.
  - d) Summarize the Submitting Firms' experience working in partnership and/or subcontracting with DBE's and related entities. Include information regarding DBE responsibilities on projects, internships or other activities which promote the development of DBE partnerships.
  - e) Identify the Submitting Firm's projects currently in progress and explain how the Submitting Firm and program team plan to overcome any schedule conflicts that may inhibit the team's ability to perform the services desired.
  - f) Summarize the qualifications and experience of the key staff that will be assigned to the project team and their role. Identify who will make up the full time, management and support staff.
  - g) Provide a proposed organization chart that lists key staff plus any sub-consultant

- staff, lines of supervision and communication and the role of each proposed sub-consultant in the program. Clearly indicate any firms which are certified DBE's.
- h) Provide a brief summary of the proposed sub-consultants including staff names, expertise, experience, roles, and estimated percentage of time to be dedicated to the program.
3. The attached forms in the Disadvantaged Business Enterprise (DBE) Requirements section (DBE Assurance Statement/Letter of Intent; Respondent DBE Goals Accomplishment Statement; Title VI Civil Rights Act of 1964 Compliance; and Information on All Firms Considered for Professional Services) must be completed by all Respondents. Note: The Respondent may not be able to fill in the dollar amount and percentage for the anticipated work to be performed by each DBE firm. Notwithstanding, the DBE signature as well as the signature of the Respondent is required at time of Submittal. In addition, the Respondent should list information for every firm that may be considered for Respondent's team on this project, even if Respondent ultimately decides not to include the firm as part of Respondent's final program team on the form entitled "Information on All Firms Considered for Professional Services". The forms found in the DBE Requirements section are not considered part of the 30 page submittal limits. See the Disadvantaged Business Enterprise (DBE) Requirements section for detailed information on the submission of these forms.

### **EVALUATION CRITERIA FOR CONSULTANT SELECTION**

MSCAA will review all Submittals for completeness and adherence to the requirements of this SOQ. Submittals that do not follow the specified format may be deemed unresponsive and disqualified from the process. MSCAA has established the following specific criteria to evaluate Submittals. The evaluation factors are listed in order of importance. Each criteria category will be given a score based on a compilation of the factors, but the factors are not individually weighted.

1. **EXPERIENCE AND QUALIFICATIONS OF KEY STAFF/EMPLOYEES (0-20 points)**
  - a. The specific, recent experience of the project director, the project manager, and other key team personnel for the particular project.
  - b. Be specific about prior airport experience in analyzing potential runway approach obstructions as well as responsibilities assumed by each of the team personnel.
  - c. Recognition of key personnel of successful completion of major project design and coordination, and confidence in duplicating the success.
  - d. Listing of successful projects of similar size and scope.
2. **EXPERIENCE AND QUALIFICATIONS OF SUBMITTING FIRM (0-30 points)**
  - a. Respondent team's specialized experience and technical competence in analyzing potential runway approach obstructions, and meeting project schedules.
  - b. Respondent staffing levels and respective firm size as relevant to primary designer's tasks / lead responsibilities for the overall program.
  - c. Clarity of the organizational chart and assignment of responsibilities.
3. **PROPOSED SUB-CONSULTANT QUALIFICATIONS AND STAFF (0-25 points)**
  - a. Experience and qualifications of proposed sub-consultants in their respective areas of expertise and relative value added to design team.
  - b. Prior years and type of project experience with the Respondent and other sub-consulting firms.
  - c. Clarity and quality of the sub-consultant organizational chart and responsibilities.

- d. Staffing level and firm size as relevant to the assigned responsibilities
- 4. BUSINESS AND FINANCIAL REFERENCES (0-15 points)
  - a. Type and level of references provided by Respondent.
  - b. Quality of feedback from references for Respondent on experience and performance.
- 5. DBE PARTICIPATION (0-10 points)
  - a. Disadvantaged Business Enterprise’ participation in similar, previous projects, and the commitment to do the same at Memphis.
  - b. Respondent’s track record of meeting DBE goals on prior projects.

**PROJECT SCHEDULE**

**Receive Statements: ..... 2:00 PM local time on Tuesday, July 26, 2022**  
**Selection Interviews (if required) ..... August 2022**  
**Final Selection: ..... August 2022**  
**Award of Contract: ..... September 2022**  
**Notice to Proceed (NTP) ..... T.B.D.**

**SUBMITTALS REQUIRED DURING INTERVIEW**

A copy of Respondent’s Financial Statements for the most recent three (3) years will be required during the interview process. The Authority prefers Audited Financial Statements, but will accept Reviewed Financial Statements performed by an independent Certified Public Accountant. However, if neither of these is currently available, please submit the Respondent’s Federal Tax Returns, and all supporting schedules, for the most recent three (3) years.

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

The MSCAA hereby notifies that it will review and award bids in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4a and Title 49, Part 26, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such Act. The MSCAA further notifies all Respondent’s that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises (DBEs) will be afforded full opportunity to submit material in response to this invitation and will not be discriminated against on the grounds of age, race, sex, color, national origin or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. The DBE participation goal for this contract is 4% in accordance with the requirements of the contract.

It is the policy of MSCAA that small business concerns owned and controlled by socially and economically Disadvantaged Business Enterprises (DBE’s), have the maximum opportunity to participate in the performance of contracts with MSCAA. Accordingly, a percentage requirement for DBE participation on this project has been established at 4%. Respondents must indicate that they plan to meet these requirements by including information on the DBE firms to be employed in the project. It is not mandatory that all specifics of DBE participation be provided with the RFQ; a statement as to the general means, location, and amount of DBE participation offered will suffice for initial considerations. If selected, the respondent MUST provide required documentation with specific details for matching or exceeding the DBE goals prior to signing the contract.

**INFORMATION ON ALL FIRMS CONSIDERED FOR PROFESSIONAL SERVICES**

In order to expand the Authority's database of firms providing professional services, the Respondent must submit a completed form, "Information on All Firms Considered for Professional Services" found in the attached Disadvantaged Business Enterprise (DBE) Requirements section. Respondent should list information for every firm that may be considered for Respondent's team on this project, even if Respondent ultimately decides not to include the firm as part of Respondent's final program team.

**CONTACT OF AIRPORT STAFF AND BOARD OF COMMISSIONERS**

All firms are hereby placed on notice that neither the MSCAA Board of Commissioners, nor its employees or agents shall be lobbied either individually or collectively regarding this RFQ. Respondents, consultants and their agents are hereby advised that they are not to contact members of the MSCAA Board of Commissioners or staff members for such purposes as holding meetings of introduction, dinners, submission of information that is not part of the RFQ response, etc. if they intend to submit, or have made a submittal for consideration. Employees, agents and representatives from firms submitting qualifications for this project shall not undertake any activities or actions to promote or advertise their submittal to the Board of Commissioners or airport staff members.

***ANY FIRM CONTACTING INDIVIDUALS MENTIONED HEREIN SHALL BE IN VIOLATION OF THIS WARNING AND MAY BE DISQUALIFIED FROM FURTHER CONSIDERATION.***

**PROJECT DESCRIPTION****Aeronautical Obstruction Evaluations  
Memphis International Airport  
MSCAA Project No. 22-1457-00**

Memphis International Airport, "America's Aerotropolis", is a powerful driver of economic activity in the Memphis region. The Airport is operated by the Memphis-Shelby County Airport Authority and is the headquarters for the FedEx air cargo operation; an important destination for multiple airlines; and home of a state-of-the art Air National Guard facility. The Airport also houses numerous ancillary support facilities; two fixed base operations adjacent to the Airport; and two general aviation facilities at off-site locations.

The primary objective of the Aeronautical Obstruction Evaluations is to document the status of runway approach surfaces, for all runways in the Memphis-Shelby County Airport Authority jurisdiction, including the runways at Memphis International, General DeWitt Spain and Charles W. Baker Airports, as defined by the Federal Aviation Administration (FAA) in Federal Air Regulation (FAR) Part 77.



## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

MSCAA operates a federal Disadvantaged Business Enterprise (DBE) Program and a non-federal Business Diversity Development Program (BDDP) to ensure full and fair opportunities in MSCAA contracting for businesses owned by socially and economically disadvantaged individuals. Memphis-Shelby County Airport Authority (MSCAA) 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 MSCAA or Tennessee Department of Transportation Unified Certification Program (TN UCP), 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 MSCAA rules and requirements.

It is a requirement that all Respondents providing services for the MSCAA take all reasonable steps to ensure that DBE 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 MSCAA. Failure to timely submit requested documentation, cooperate with MSCAA or answer inquiries truthfully will be considered a material contract breach and may result in termination.

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

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

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

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

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

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

**Respondent DBE Goals Accomplishment Statement**

Submit on Company Letterhead

**Information on All Firms that Provide Bids or Quotes**

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

**Voluntary Disclosure of Respondent Data**

**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:

- (i) “Black Americans” which includes persons having origins in any of the Black racial groups of Africa;
- (ii) “Hispanic Americans” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) “Native Americans” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) “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;
- (v) “Subcontinent Asian Americans” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

### **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 MSCAA contracts. The DBE Liaison Officer reports directly to the President of the MSCAA. For questions or information related to the DBE program, contact Joe Claiborne at (901) 922-2556.

### **DBE Certification**

MSCAA certifies all of its DBEs through internal processes. The MSCAA compiles a directory of firms who have met the selection criteria for eligibility as a DBE, including 49 CFR Part 26. You can review the searchable directory of certified firms for MSCAA at our website (<https://mscaa.mwdbe.com/>). In the right hand column, you will find links to both the TN UCP Directory and the MSCAA DBE/ACDBE Directory. The TN UCP 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 MSCAA is a certifying member. In order to be considered as meeting the DBE goal for a contract, each business wishing to participate as a DBE or a joint venture DBE, must either be:

- (1) **certified by the MSCAA or the TN UCP** in accordance with 49 CFR Part 26, or;
- (2) **receive affirmation from the MSCAA or the TN UCP** that their certification from another entity is consistent with and acceptable to the MSCAA or the TN UCP.

Persons or entities who consider themselves a DBE but who are not certified by MSCAA, the TN UCP as a DBE, have not received affirmation from the MSCAA or the TN UCP that their certification from another entity is consistent with and acceptable to the MSCAA or the TN UCP 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 at the time of bid opening and a current copy of the DBE's certification must be attached to the Assurance Statement.

### **Identification of Contract Goal and Requirements**

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

If a Respondent's DBE Assurance Statement proposes a DBE percentage less than the established goal, the Respondent must, at the time of making the response, submit appropriate documentation justifying its submitted DBE percentage. MSCAA 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 MSCAA enters into a contract based on the Respondent's DBE Goals Accomplishment Statement and documentation, the DBE percentage accepted by MSCAA 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 MSCAA 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 MSCAA any situation in which regularly scheduled progress payments are not made to a DBE. If, in the opinion of the MSCAA, the Respondent has made significant deviations from the DBE program commitments, it shall be considered a breach of contract.

### **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 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 MSCAA or the TN UCP 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 bid submission, MSCAA 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 MSCAA will make.

### **COUNTING THE 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.

### **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, MSCAA 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 MSCAA 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 MSCAA, which dollar value shall be considered liquidated damages for failure to perform the requirements of this Contract and for which Respondent and all of its subcontractors agree to be bound.

### **PROMPT PAYMENT/RETAINAGE**

The 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 MSCAA.

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 Respondent (Contractor) and approved in writing by an MSCAA Vice-President or higher prior to the delay or withholding of any payments under this provision.

Respondent (Contractor) will include the following paragraphs in all contracts and/or agreements related to the work [under this Contract] with subcontractors or suppliers and will require all its subcontractors and suppliers to include this paragraph in any contracts and/or agreements related to the work [under this 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 MSCAA and approved in writing by an MSCAA Vice-President or higher prior to the delay or withholding of any payments under this provision.”

#### **49 CFR Part 26**

The Respondent shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of MSCAA 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 this contract to all those who provide supplies or work related to this contract and to require all those providing supplies or work to be bound by these requirements as it relates to their work related to this contract.



Project No. \_\_\_\_\_

**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 for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_, which is \_\_\_\_\_% the total base bid proposal.**

**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<sup>nd</sup>/3<sup>rd</sup> Tier Subcontractor                      Date                      Name  
and Title

**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

**(SUBMIT ON RESPONDENT'S LETTERHEAD FOR EACH DBE SUBCONTRACTOR.)**

Project No. \_\_\_\_\_

**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 4% DBE utilization on this contract.

\_\_\_\_\_The Respondent is unable to meet the DBE goal of 4% 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 dollar value of DBE’s participation and compensation 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

(SUBMIT THIS PAGE ON RESPONDENT’S LETTERHEAD)

**VOLUNTARY DISCLOSURE OF RESPONDENT DATA**

For Title VI Compliance, we ask for **voluntary disclosure** of the following information:

Gender:        Male

                  Female

Race:           Caucasian

                  Black American

                  Hispanic American

                  Native American

                  Subcont. Asian American

                  Asian-Pacific American

                  Other (please specify) \_\_\_\_\_

**(DO NOT SUBMIT THIS PAGE ON LETTERHEAD)**

**Information on All Firms that Provided Bids or Quotes to:**

This requirement applies to all firms, regardless of whether they are subs or primes, regardless of the gender or race of their owners, and regardless of whether they are ultimately chosen to participate in the contract. Please list below the name, address, phone number and contact person for every firm that provided you a bid or a quote on this project – even if you ultimately decided not to use the firm in preparing your final bid. The first line should be used for the **prime contractor** on this project. All sections must be completed to the best of your ability.

MSCAA Proj./Bid No.: \_\_\_\_\_

Name of Firm	Selected? Y/N	Full Address of Firm	Point of Contact	Phone No.	DBE? Y/N	Firm Age	AGRR *
						yrs	
						yrs	
						yrs	
						yrs	
						yrs	
						yrs	
						yrs	
						yrs	
						yrs	
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						yrs	
						yrs	
						yrs	
						yrs	
						yrs	

\*Footnote: Please enter the letter for the category that best identifies your annual gross revenue.  
 AGRR =Annual Gross Revenue Ranges:  
**A** = Less than \$500,000    **B** = \$500,000 - \$1 Million    **C** = \$1 - \$2 Million    **D** = \$2 - \$5 Million    **E** = Over \$5 Million