

BID ENVELOPE
MSCAA PROJECT NO. 18-1421-01

NAME OF PROJECT: CHARLES BAKER AIRPORT - RW 18 APPROACH CLEARING-CONSTRUCTION

BIDS DUE: Tuesday, February 11th, 2025
Time

TIME: 2:00 PM Local

MEMPHIS SHELBY COUNTY AIRPORT AUTHORITY (MSCAA)
 PROCUREMENT DEPARTMENT
 MEMPHIS INTERNATIONAL AIRPORT
 4150 Louis Carruthers Drive
 Memphis, TN 38118 (901) 922-8000

BIDDER IDENTIFICATION:

Bidder _____

Address _____

TENNESSEE CONTRACTOR LICENSE INFORMATION:

License Number _____

License Classification Applicable to Project _____

License Expiration Date _____

Dollar Limit _____

SUBCONTRACTORS (OR PRIME CONTRACTORS) TO BE USED ON THIS PROJECT IN THE BELOW LISTED CAPACITIES:

Note: Where applicable, one contractor/subcontractor performing electrical, plumbing, heating, ventilation, air conditioning, and masonry work must have its license number, applicable classification, expiration date and dollar limit on the BID ENVELOPE containing the BID PROPOSAL. **Prime contractors** who are to perform the electrical, plumbing, heating, ventilation, air conditioning or masonry work **MUST** list themselves as "Self-Perform" in the Sub-contractor list below.

	Sub-contractor List	License No.	Applicable Classification	Expiration Date	Dollar Limit
Electrical					
Plumbing					
Heating					
Ventilation					
Air Conditioning					
Masonry					

BID ENVELOPE

COMPLETE THIS FORM AND ATTACH IT TO THE OUTSIDE OF THE BID ENVELOPE. PLEASE REVIEW INSTRUCTIONS TO BIDDERS FOR BID PACKAGE DELIVERY AND FOR OTHER INFORMATION AND CONDITIONS. MSCAA RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO REJECT AND DISQUALIFY YOUR BID IF YOU, YOUR PARENT, SUBSIDIARY, AFFILIATE, OR PREDECESSOR IN INTEREST OR ANY OF YOUR SUBCONTRACTORS, SUPPLIERS, AND/OR THEIR PARENTS, SUBSIDIARIES, AFFILIATES OR PREDECESSORS IN INTEREST HAVE PENDING LITIGATION OR CLAIMS WITH THE MSCAA.

DIVISION 0 – SECTION 00405

PROPOSAL

Project Identification: **Charles Baker Airport - RW 18 Approach Clearing-Construction**

Contract Number: MSCAA Project No. **18-1421-01**

**For Overnight Courier
or Hand Delivery Submit to:**

Memphis-Shelby County Airport Authority
Memphis International Airport
Procurement Department
4150 Louis Carruthers Drive
Memphis, Tennessee 38118

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Legal Notice to Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for seventy-five (75) days after the day of Bid opening. Bidder will sign and submit the Construction Contract with the Bonds and other documents required by the Bidding Requirements, within ten (10) days after the date of Owner's Notice of Award.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Contract that:

- (a) Bidder has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged):

Date	Number
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

- (b) Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

- (c) Bidder has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in Division 0 and Division 1 Specifications, and accepts the determination set forth in General Provision Section 20 paragraph 20-06 of the extent of the technical data contained in such reports and drawings upon which Bidder is entitled to rely.
- (d) Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in (c) above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of General Provision Section 20 paragraph 20-06; and no additional examination, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.
- (e) Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- (f) Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- (g) Bidder has given Owner or Engineer written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Owner or Engineer is acceptable to Bidder.
- (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

4. Bidder will complete Base Bid Work for the following price(s).

UNIT PRICE SCHEDULE – BASE BID

ITEM NO.	PAY ITEM	DESCRIPTION	UNIT	EST. QUANT.	UNIT PRICE	TOTAL EST. PRICE
1	1000-01	MOBILIZATION (FIXED AMOUNT)	LS	1	\$ _____	\$ _____
2	1000-03	PERMITS	LS	1	\$ _____	\$ _____
3	1000-04	BONDS	LS	1	\$ _____	\$ _____
4	2000-01	SILT FENCE	LF	7,000	\$ _____	\$ _____
5	2000-02	MULCH SOCKS	LF	6,500	\$ _____	\$ _____
6	2000-03	HIGH VISIBILTY FENCE	LF	6,500	\$ _____	\$ _____
7	2000-04	CONSTRUCTION EXIT	EACH	1	\$ _____	\$ _____
8	2000-05	INLET PROTECTION	EACH	4	\$ _____	\$ _____
9	2000-07	SEDIMENT TRAPS	EACH	1	\$ _____	\$ _____
10	2000-08	STREAM CROSSING*	EACH	2	\$ _____	\$ _____
11	2000-09	PHASE 1 (CUT AND STUMP REMOVAL)	AC	18	\$ _____	\$ _____
12	2000-10	PHASE 2 (WETLANDS AND STREAMS)	AC	42	\$ _____	\$ _____
13	2000-11	TREE REMOVAL FROM SITE	CY	150	\$ _____	\$ _____
14	2000-12	GRADING-LEVELING	AC	18	\$ _____	\$ _____
15	2000-13	SEEDING, FERTILIZING, AND MULCHING WITH MULCH MATERIAL	AC	18	\$ _____	\$ _____
16	2000-14	WATERING	LS	1	\$ _____	\$ _____

*20' of HDPE Pipe (Two 48" pipe) and Gravel Crossing that is 16' wide, 18' deep and 65' across

CONTRACT BASE BID TOTAL (TOTAL OF LINE ITEMS 1-16) \$ _____

CONTRACT BASE BID TOTAL (TOTAL OF LINE ITEMS 1-16):

_____ (use words)

(\$ _____)

- 5. The Owner reserves the right to reject any or all bids in whole or in part and to waive any informalities, technicalities, or omissions therein.

It is intention of the Owner to award a contract based upon the lowest responsive bid on the lump sum base bid. Bidder understands and agrees that, after a review of all the bids, the Owner will select the lump sum base bid that best suits the Owner's needs within the sole discretion of the Owner.

- 6. Bidder agrees that the Work: will be completed and ready for final payment within the calendar days (as described in Section 01100) after the date when the Contract Time commences to run. Bidder accepts the provisions of the Contract as to liquidated damages in the event of failure to complete the Work on time.
- 7. See Section 00200, INSTRUCTIONS TO BIDDERS, for a complete list of documents that are made a condition of this Bid.

- 8. Communications concerning this Bid shall be addressed to: _____
(Printed Name)

The address of Bidder indicated above, or

the following address: _____

email address: _____

- 9. The terms used in this Bid which are defined in General Provision Section 10 of the Specifications included as part of the Contract Documents have the meanings assigned to them in the Division 0 and Division 1 Specifications.

Submitted on _____, 20____.

- 10. The undersigned Bidder confirms that (1) neither Bidder nor any of Bidder’s potential subcontractors or suppliers have pending claims or litigation, arbitration, or other dispute resolution proceedings where the Owner and Bidder or Bidder’s potential subcontractors or suppliers are parties; or (2) such claims or proceedings are pending and Bidder is disclosing same through its own writing and/or the writing of Bidder’s potential subcontractors or suppliers and submitting same to Owner with this proposal submittal.

If Bidder is:

An Individual

(Individual's Printed Name)

(Individual's Signature)

doing business as: _____

Business address: _____

Phone No.: _____ FAX No. _____ E-Mail _____

A Partnership

(Firm Name)

By: _____
(Signature of General Partner and Printed Name)

Business address: _____

Phone No.: _____ FAX No. _____ E-Mail _____

A Corporation

(Corporation Name)

By: _____ Title: _____
(Signature of person authorized to sign)

(Printed Name)

(Corporate Seal)

Attest: _____
(Signature of Secretary) (Printed Name)

(State of Incorporation)

Business address: _____

Phone No.: _____ FAX No. _____ E-Mail _____

A Joint Venture

(Joint Venture)

By: _____
(Signature of Joint Venturer) (Printed Name)

(Address)

Phone No.: _____ FAX No. _____ E-Mail _____

By: _____
(Signature of Joint Venturer) (Printed Name)

(Address)

Phone No.: _____ FAX No. _____ E-Mail _____

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF SECTION 00405

DIVISION 0 – SECTION 00410

PROPOSAL GUARANTEE

KNOW ALL MEN BY THESE PRESENT, that we, the undersigned, _____
_____ as Principal, and
_____ as Surety, are

hereby held and firmly bound unto Memphis-Shelby County Airport Authority as Owner, in the sum of _____ for the payment of which, well and truly to be made, the said Principal and Surety hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Whereas the Principal has submitted to Memphis-Shelby County Airport Authority a certain bid, attached hereto and hereby made a part hereof, to enter into a contract in writing for the Charles Baker Airport - RW 18 Approach Clearing-Construction, MSCAA Project No. 18-1421-01.

NOW, THEREFORE, if said bid shall be rejected, or in the alternate, if said bid shall be accepted and the Principal shall execute and deliver a contract in accordance with the terms of the Contract Documents and shall furnish a bond for its faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers,

this _____ day of _____, 20_____.

PRINCIPAL

By: _____

(Name and Title)

SURETY

SEAL

By: _____

(Attorney-in-Fact)

END OF SECTION 00410

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DIVISION 0 – SECTION 00445**DISADVANTAGED BUSINESS ENTERPRISE
(DBE) REQUIREMENTS**

MSCAA operates a federal Disadvantaged Business Enterprise (DBE) Program¹ to ensure full and fair opportunities in MSCAA contracting for businesses owned by socially and economically disadvantaged individuals. Only firms that are certified consistent with 49 CFR Part 26 and the 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 race, color, national origin or sex. 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. (49 CFR Part 26.53(b)) 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 RFOs 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

¹ The Authority also operates a non-federal Business Diversity Development Program (BDDP). The Authority administers the BDDP Program according to federal regulations, primarily 49 CFR Part 26.

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 two million forty-seven thousand dollars (\$2,047,000).

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 –

- a. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (1) “Black Americans” which includes persons having origins in any of the Black racial groups of Africa;
 - (2) “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;
 - (3) “Native Americans” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (4) “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;

- (5) “Subcontinent Asian Americans” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives islands, Nepal or Sri Lanka;
- (6) Women;
- (7) 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

For questions or information related to the DBE program, contact Regina Armstrong, the Senior Manager of Business Diversity Development at (901) 922-0255.

DBE CERTIFICATION

The Authority is a certifying member of the Tennessee Department of Transportation Unified Certification Program (TNUCP). TNUCP is a cooperative of entities that are recipients of federal funds that have developed a “one-stop shop” for certification throughout the State of Tennessee. The Authority compiles a directory of firms who have met the TNUCP’s selection criteria for eligibility as a DBE, including 49 CFR Part 26. You can view the directory of certified firms at www.flymemphis.com or at www.tdot.tn.gov. 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 be certified by a TNUCP certifying member in accordance with 49 CFR Part 26. Out of state firms may be granted reciprocity by a TNUCP certifying member with an existing certification from their home state. Unless a firm is certified by a TNUCP certifying member 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.

Identification of Contract Goal and Requirements

For this Contract, the DBE goal is established as **20%**. 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 showing good faith efforts to meet the established goal.. 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.

GOOD FAITH EFFORTS STATEMENT AND REQUIREMENTS

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 with their offer for the subcontractor.
- 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.

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.

ADMINISTRATIVE RECONSIDERATION (49 CFR PART 26.53(d))

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

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

COUNTING THE DBE PARTICIPATION

DBE participation shall be counted toward meeting the DBE goal as outlined in 49 CFR Part 26, specifically 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. 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, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by [paragraph \(a\)\(2\)](#) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- (3) 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 DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. a. When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
- (4) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- (5) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (6) 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 DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- b. When a DBE performs as a participant in a joint venture, 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. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. For the definition and explanation of a commercially useful function see 49 CFR Part 26.55(c).
- d. To determine whether a DBE trucking company is performing a commercially useful function see 49 CFR Part 26.55(d).
- e. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in 49 CFR Part 26.55(e). Please note that materials or supplies obtained from a DBE manufacturer are counted differently toward DBE goals than a DBE regular dealer. It is imperative that the bidder consult federal regulations for counting differences.
- f. If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR Part 26 Subpart D at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i).
- g. Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
- h. Do 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-COMPLIANCE²

In case of the Respondent's non-compliance with DBE 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) Assessing sanctions; and/or
- d) 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, which dollar value shall be considered liquidated damages if the Authority determines that Respondent failed to make good faith efforts in meeting the Contract's DBE goal.

CONTRACT ASSURANCE (49 CFR PART 26.13)

The Contractor and any sub-recipient or subcontractor shall adhere to and ensure the following clause is included in every contract and subcontract.

The successful Respondent, any successful subrecipient or successful subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this prime contract. The successful Respondent shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the successful Respondent 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:

- (a) Withholding monthly progress payments;
- (b) Assessing sanctions;
- (c) Liquidated damages; and/or
- (d) Disqualifying the Contractor from future bidding as non-responsible.

PROMPT PAYMENT/RETAINAGE

The successful Respondent 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 successful Respondent receives from MSCAA. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the MSCAA. When MSCAA has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the MSCAA. This clause applies to both DBE and non-DBE subcontractors.

² The Authority applies Sanctions for Non-Compliance to its BDDP.

Retainage will not be withheld on this project. No retainage will be withheld by MSCAA from progress payments due the successful Respondent. Retainage by the successful Respondent or subcontractors is prohibited, and no retainage will be held by the successful Respondent from progress payments due to subcontractors.

TERMINATION OF DBE SUBCONTRACTS

The successful Respondent must not terminate a DBE subcontractor listed in response to this solicitation (or an approved substitute DBE firm) without prior written consent of Authority. This includes, but is not limited to, instances in which the successful Respondent seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The successful Respondent shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent as provided in 49 CFR §26.53(f). Unless prior written consent is provided pursuant to 49 CFR §26.53(f), the successful Respondent shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Authority may provide such written consent only if the Authority agrees, for reasons stated in the concurrence document, that the successful Respondent has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

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

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

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

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.

DBE ASSURANCE STATEMENT/LETTER OF INTENT

RESPONDENT:

Name of Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

DBE:

Name of Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

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 2nd/3rd 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. If the Respondent does receive award of the prime contract, Respondent commits to using the DBE subcontractor listed and described above to meet the DBE contract goal, pursuant to 49 CFR Part 26.

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 20% 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 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)

Project No. _____

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)

Received: _____ Sr. Manager of BDD	Date: _____	Project Name: _____ Project No.: _____
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DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS FOR SUBCONTRACTS

Memphis-Shelby County Airport Authority (MSCAA) operates a federal Disadvantaged Business Enterprise (DBE) Program to ensure full and fair opportunities in MSCAA contracting for businesses owned by socially and economically disadvantaged individuals, which is governed by 49 CFR Part 26. This document sets forth DBE provisions that must be included in all contracts and subcontracts for the subject project as required by federal regulations. **A SIGNED COPY MUST BE (1) SUBMITTED TO THE MSCAA DBE LIAISON OFFICER AND (2) INCLUDED IN YOUR SUBCONTRACT AS AN EXHIBIT TO ANY UNDERLYING AGREEMENT FOR THE SUBJECT PROJECT.**

The undersigned parties agree and acknowledge that this document shall be deemed to form, be read and construed as, as if stated verbatim therein, part of any agreement between the parties related to the subject project. This document is an agreement wherein the parties accept, agree to, and incorporate federally mandated contractual provisions into any underlying agreement for the subject project as well as acknowledge applicable federal and local DBE rules and regulations. **THE TEXT CONTAINED IN THIS DOCUMENT CANNOT BE REVISED, ALTERED, OR OTHERWISE MODIFIED BY THE PARTIES. THIS IS A FINAL DOCUMENT.**

Any subcontract for the subject project shall be governed by regulations set forth in 49 CFR Part 26 and MSCAA DBE program rules and regulations, including but not limited to the following:

- Assurance** (49 CFR 26.13(b)): The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: 1) Withholding monthly progress payments; 2) Assessing sanctions; 3) Liquidated damages; and/or 4) Disqualifying the contractor from future bidding as non-responsible.
- Prompt Payment** (49 CFR 26.29): The prime contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 15 days after the prime contractor’s receipt of payment for that work from MSCAA. A subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by MSCAA. When MSCAA has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause and written approval of the MSCAA. Retainage will not be withheld on this project. No retainage will be withheld by the MSCAA from progress payments due the prime contractor. Retainage by the prime or subcontractors is prohibited. No retainage will be held by the prime from progress due subcontractors.
- Termination/Substitution** (49 CFR 26.53): The prime contractor may not terminate or substitute any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MSCAA. The prime contractor must follow the procedures set forth in 49 CFR 26.53(f).
- Counting Participation**: DBE participation in a contract must be counted in accordance with 49 CFR 26.55 and applicable guidance.
- DBE Independence**: Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. Determination of ownership and control of a DBE is governed by 49 CFR 26.71.
- DBE Liaison Officer (DBELO)**: For DBE-related questions, issues, and disputes, please contact the MSCAA DBELO (contact information found at <https://flymemphis.com/business-diversity-development-program/>). The current DBELO is Regina Armstrong, who may be reached at 901-922-0167 or rarmstrong@flymemphis.com.

This document shall control and supersede any inconsistency, conflict or ambiguity contained in any underlying agreement between the parties for the subject project as to the procedures, processes, or subject matter set forth in this document or otherwise governed by 49 CFR Part 26 and/or other applicable MSCAA DBE program rules and regulations.

1/14/202

MSCAA 18-1421-01

PRIME CONTRACTOR: _____

SUBCONTRACTOR: _____

SIGNATURE: _____

SIGNATURE: _____

TITLE: _____ DATE: _____

TITLE: _____ DATE: _____

Information on All Firms that Provided Bids or Quotes to:

The Memphis Airport Authority (MEM) maintains bidding statistics, regarding ALL firms bidding on prime contracts and subcontracts on US Department of Transportation (DOT) assisted projects in accordance to the federal regulation 49 CFR Part 26.11. This information will only be used for statistical purposes per 49 CFR Part 26.11 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.

Firm Name	PRIME /SUB	POC	DBE Y/N	RACE*	GENDER	ADDRESS 1	CITY	STATE	ZIP	TELEPHONE	SCOPE OF WORK	EMAIL ADDRESS	NAICS CODE	FIRM AGE YRS	AGR*

*Enter the letter for the category that best identifies your Annual Gross Revenue (AGR): A = Less than \$500,000 B = \$500,000 - \$1 Million C = \$1 - \$2 Million D = \$2 - \$5 Million E = Over \$5 Million

*Enter the letter for the category that best identifies race/ethnicity: F =Caucasian G =African American H = Hispanic/Latino I = Other