

**REQUEST**

**FOR**

**QUALIFICATIONS**

***DISADVANTAGED BUSINESS ENTERPRISE CONSULTING  
SERVICES SMALL BUSINESS PARTICIPATION PROGRAM***

***RFQ NUMBER 25-0002 REBID***

**DUE DATE:**

**MARCH 27, 2025**

## TRANSMITTAL LETTER

February 18, 2025

Dear Respondent,

The Memphis-Shelby County Airport Authority (Authority) is seeking a qualified Respondent to provide Disadvantaged Business Enterprise Consulting Services Small Business Participation Program for the Authority. This Request for Qualifications (RFQ) is under the direction of the Business Diversity Development Department.

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

All Respondents are hereby notified that all updates, addenda and additional information, if any, shall be posted to the Authority website [www.flymemphis.com](http://www.flymemphis.com), and Respondents are responsible for checking the Authority website up to the time of the RFQ submission deadline.

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

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

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

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

Sincerely,

Kenneth Parrish, ACE  
Director of Procurement  
Memphis-Shelby County Airport Authority

## Table of Contents

1	Background.....	4
2	Request for Qualifications Timeline, Communications and Process .....	4
3	Respondent Assurances .....	8
4	State of Tennessee Purchasing Provisions .....	9
5	Buy Local Initiatives .....	10
6	Small Business Participation Program (SBPP) Requirements.....	10
7	Title VI Solicitation Notice .....	19
8	Insurance Requirements.....	19
9	Federal Fair Labor Standards Act .....	19
10	Security and Access .....	20
11	Terms of Performance .....	21
12	Scope of Services .....	23
13	Response Structure.....	24
14	Award.....	25
15	Request for Qualifications Forms.....	27
16	SBPP Forms.....	29
17	Sample Contract .....	38

## 1 BACKGROUND

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

The Airport is primarily an origin and destination (O&D) airport. MEM served a record 4.9 million O&D passengers in 2024.

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

## 2 REQUEST FOR QUALIFICATIONS TIMELINE, COMMUNICATIONS AND PROCESS

### 2.1 RFQ Timeline

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

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

February 18, 2025	Publication of Legal Notice
February 18, 2025	Release of RFQ Documents
February 26, 2025	Pre-Proposal Meeting 11:00 AM
March 06, 2025	Questions Due from Respondents by 4:30 p.m.
March 13, 2025	Questions and Answers posted on Authority website by 4:30 PM
March 27, 2025	Response Due to Authority by 2:00 PM
April 17, 2025	Oral Interviews with Selected Respondents (if required)
May 01, 2025	Anticipated Contract Commencement Date

## **2.2 Communication with the Authority during this RFQ**

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

## **2.3 Addenda**

All updates, addenda and other information, if any, shall be posted to the Authority's website, [www.flymemphis.com](http://www.flymemphis.com). Respondents are responsible for checking the Authority's website up to the time of the RFQ submission deadline.

## **2.4 Pre-Proposal Conference**

A pre-proposal conference will be held February 26, 2025, at 11:00 AM at the Authority's Board Room on the Mezzanine Level, Terminal B of the Memphis International Airport, 2491 Winchester Road, Memphis, TN 38116 All attendees must register at [www.eventbrite.com](http://www.eventbrite.com).

Respondents may also join the conference via Teams at the following link:

[Join the meeting now](#)

Meeting ID: 282 585 943 447

Passcode: YD7c5TB9

## **2.5 Questions Regarding RFQ**

Questions regarding this RFQ must be submitted in written form via email to Kenneth Parrish, at [Bids@flymemphis.com](mailto:Bids@flymemphis.com). Questions will be accepted until 4:30 PM, March 06, 2025. Answers will be provided by 4:30 PM, March 13, 2025. Answers will only be posted on the website, [www.flymemphis.com](http://www.flymemphis.com).

## **2.6 RFQ and Response Submissions**

A copy of this RFQ will be distributed to prospective Respondents. This RFQ also will be available on the Authority's website, [www.flymemphis.com](http://www.flymemphis.com).

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

All responses shall be sealed and clearly marked with the Respondent's name and address and the words "Disadvantaged Business Enterprise Consulting Services Small Business Participation Program" and "RFQ Number 25-0002 Rebid" on the outside of the envelope or container. The Respondent shall allow sufficient time to ensure receipt of the response. It is the sole responsibility of the Respondent to have the response delivered to the Authority at the address below before the closing hour and date given in this RFQ.

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

Responses must be received at the address below **before 2:00 PM Local Time on March 27, 2025**:

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

Attn: Request For Qualifications, Disadvantaged Business Enterprise Consulting Services Small Business Participation Program,  
RFQ Number 25-0002 Rebid

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

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

## **2.7 Rejection of Responses / Cancellation of RFQ**

The Authority reserves the right to reject any or all responses to this RFQ, including but not limited to, any response that contains exceptions to the minimum requirements and/or specifications or fails to meet the minimum requirements and/or specifications in whole or in part. Responses containing terms and conditions other than those specified herein may be considered nonresponsive. Partial or incomplete responses may be rejected. The Authority reserves the right to reject responses or penalize Respondents

who do not follow the requirements of the RFQ and, likewise, to waive any informalities, technicalities, or omissions therein. Responses having any erasures or corrections shall be initialed in ink by the Respondent. Unsigned responses will be considered nonresponsive.

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

**2.8 *RFQ to Bind Respondent***

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

**2.9 *Sole Responsibility***

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

**2.10 *Sole Contact***

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

**2.11 *Response Modification or Withdrawal***

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

**2.12 *Response Costs***

All costs incurred in preparing the response to this RFQ, participating in this process and negotiating with the Authority, whether or not a contract is awarded, shall be solely the responsibility of the Respondent. All materials and documents submitted by Respondents in response to this RFQ become the property of the Authority and shall not be returned to the Respondents.

### **2.13 Protest**

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

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

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

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

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

## **3 RESPONDENT ASSURANCES**

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

### **3.1 No Hidden Parties**

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

### **3.2 No Collusion in Any Form**

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

### **3.3 No Inducement to Submit False Proposals**

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



**3.4 No Inducement to Refrain from Response**

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

**3.5 No Financial Interest**

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

**3.6 No Contact**

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

**3.7 Addenda**

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

**4 STATE OF TENNESSEE PURCHASING PROVISIONS**

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

No Boycott of Israel. Pursuant to T.C.A. § 12-4-119, by submission of a response, each respondent certifies that their company is not currently engaged in, and will not for the duration of services herein engage in, a boycott of Israel.

## **5 BUY LOCAL INITIATIVES**

This is not a federally funded procurement. The Authority shall give a preference to businesses with their principal place of business in the County of Shelby, State of Tennessee in awarding contracts and making purchases whenever the application of such a preference is reasonable in light of the dollar-value of the bid that is received in relation to such expenditures and pursuant to the terms and conditions that are outlined in the adopted policy as amended. If applicable, the Authority may also give a preference to businesses operating in the County of Shelby, State of Tennessee, or to businesses with their principal place of business in the Memphis, TN-MS-AR Metropolitan Statistical Area.

## **6 SMALL BUSINESS PARTICIPATION PROGRAM (SBPP) REQUIREMENTS**

### **6.1 Overview**

The Authority operates a Small Business Participation Program (SBPP) to ensure full and fair opportunities in Authority contracting for small businesses. The Authority administers the SBPP program consistent with 49 CFR Part 26 as outlined below and otherwise indicated in the SBPP requirements. Only firms that are certified consistent with 13 CFR Part 121 or 49 CFR Part 26 will be certified as a Small Business Enterprise (SBE) or Disadvantaged Business Enterprise (DBE) for the purpose of SBPP requirements.

This section, entitled “Small Business Participation Program” is provided to assist Respondents. The information contained in this section is not intended to supplement or amend any federal regulation. All Respondents are responsible for compliance with all applicable rules and requirements.

### **6.2 SBPP Required Forms**

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

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

#### **6.2.1 BDPP/SBPP Assurance Statement/Letter of Intent**

The Respondent must submit an Assurance Statement for each SBE, which includes DBEs, 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 SBE should sign the Assurance Statement. The Respondent must submit the form provided in Section 16.1 below on Company Letterhead.

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

All portions of the Assurance Statement must be completed (including the description of work, the estimated contract amount, and the estimated dollar value of SBE participation for counting and goal purposes) before the Assurance Statement is signed by either the SBE or the Respondent. If the SBEs, 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 SBEs, and if applicable, the 2nd/3rd Tier Subcontractor’s signature(s) and a quote/proposal from the SBE as described above, the Respondent will be given 24 hours from the bid submission deadline to submit the completed Assurance Statement signed by the SBE 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 SBE signature. These signed Assurance Statements must be submitted pursuant to the same location and time restrictions that applied to the solicitation response.

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

**6.2.2 Respondent SBE Goals Accomplishment Statement**

The form provided in Section 16.2 must be submitted on Respondent’s letterhead.

**6.2.3 Business Diversity Development Program (BDPP)/Small Business Participation Plan (SBPP) Bidder’s List**

The form provided in Section 16.3 must be completed by Respondent.

**6.3 Small Business Enterprise (SBE) Voluntary Form**

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

**6.3.1 Voluntary Disclosure of Respondent Data**

If submitted, the form provided in Section 16.4 must be completed by respondent.

#### **6.4 SBPP Qualifications**

The Authority certifies all of its DBE's and Small Business Enterprises (SBE) through internal processes. The Authority compiles a directory of firms who have met the Authority's selection criteria for eligibility as SBE's. You can review the directory of certified firms for the Authority at our website [www.flymemphis.com](http://www.flymemphis.com) or obtain a copy of the directory by calling the Business Diversity Department at (901) 922-0255. The rules that govern eligibility and certification of SBE are found generally at 13 CFR Part 121. These rules define a SBE as a for-profit, small business concern which is at least fifty-one percent (51%) owned and controlled by individuals meeting the small business criteria. In addition, the personal net worth of the owners of the small business concern must not exceed two million forty-seven thousand dollars (\$2,047,000).

#### **6.5 SBE Liaison Officer**

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

#### **6.6 SBE 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 criteria for eligibility as a SBE or DBE. You can view the directory of certified firms at [www.flymemphis.com](http://www.flymemphis.com) or at [www.tdot.tn.gov](http://www.tdot.tn.gov). In order to be considered as meeting the SBE goal for this Contract, each business wishing to participate as a SBE, including DBEs, must be certified in accordance with 13 CFR Part 121 or 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 SBE goal in the solicitation. Each business wishing to participate as a SBE, including DBEs, must be certified by the time the responses are due.

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

For this Contract, the SBPP goal is established as 35%. In order to be responsive, a Respondent must either meet the goal or make good faith efforts to do so. Good faith efforts are defined in Appendix A to 49 CFR Part 26 and discussed in the following section.

If a Respondent's Assurance Statement proposes a SBE 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. The Authority reserves the right to request additional documentation or information from Respondent regarding its Assurance Statement and; if applicable, any good faith efforts documentation. If the Authority enters into a contract based on the Respondent's Goals Accomplishment Statement and documentation, the SBE percentage accepted by the

Authority will become a contractual requirement. If the Respondent's Assurance Statement proposes to attain a SBE percentage higher than the established goal, the established goal will remain the contractual requirement.

Respondents shall not contract with, demand, require or coerce a SBE into any agreement or into the signing of any Assurance Statement or any other document which prohibits the SBE from providing subcontracting quotations or doing business with other Respondents. The SBE shall be free to provide their services to any number of Respondents. To ensure that all obligations under sub-contracts awarded to a SBE are met, the Authority will review the agreement between the Respondent and SBE, and Respondent's SBE involvement efforts during the performance of the Contract.

#### **6.8 Good Faith Efforts Statement and Requirements**

Respondents must either meet the SBPP 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's Goals Accomplishment Statement. This statement should show that they took all necessary and reasonable steps to achieve the SBE goal, which could reasonably be expected to obtain sufficient SBE participation, even if they were not fully successful. The Respondent's 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 SBE participation and may be included in the Respondent's 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 SBE who have the capability to perform the work of the Contract. The Respondent must solicit this interest within sufficient time to allow the SBE to respond to the solicitation and take appropriate steps to follow-up on initial solicitations to determine interest.
- b. Selecting portions of the work to be performed by a SBE to increase the likelihood that the goals of the SBE will be achieved.
- c. Providing any interested SBE 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 SBE. It is the Respondent's responsibility to make a portion of the work available to SBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SBE subcontractors and suppliers, to facilitate SBE participation.

- e. Not rejecting any SBE as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- f. Making efforts to assist any interested SBE in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- g. Making efforts to assist any interested SBE in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Effectively using the services of available small business organizations and groups; local, state, and Federal small business assistance offices; and other organizations as allowed on a case-by-case basis to aid in the recruitment and placement of any SBE.

For each SBE listed as a regular dealer or distributor the Authority will make a preliminary counting determination to assess the SBE's eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in § 26.55(e)(2)(iv)(A), (B), and (C) and (e)(3) under the contract at issue. The Authority's preliminary determination shall be made based on the SBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the SBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, the Authority is required to make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the SBE supplier is consistent with the counting of such participation toward the contract goal.

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

#### **6.9 Administrative Reconsideration**

Within five (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](mailto: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. 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.

#### **6.10 Counting SBE Participation**

SBE participation shall be counted toward meeting the SBPP goal consistent with the regulations 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 SBE but also the total amount of SBE 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 SBE participation and in determining which sections of Part 26.55 you need to review in more detail:

a. When a SBE participates in a contract, you count only the value of the work actually performed by the SBE toward SBE 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 SBE's own forces. Include the cost of supplies and materials obtained by the SBE for the work of the contract, including supplies purchased or equipment leased by the SBE (except supplies and equipment the SBE subcontractor purchases or leases from the prime contractor or its affiliate).

2) Count the entire amount of fees or commissions charged by a SBE 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 SBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3) When a SBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward SBE goals only if the SBE's subcontractor is itself a SBE. Work that a SBE subcontracts to a non-SBE firm does not count toward SBE goals. a. When a SBE participates in a contract, you count only the value of the work actually performed by the SBE toward SBE 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 SBE's own forces. Include the cost of supplies and materials obtained by the SBE for the work of the contract, including supplies purchased or equipment leased by the SBE (except supplies and equipment the SBE subcontractor purchases or leases from the prime contractor or its affiliate).

5) Count the entire amount of fees or commissions charged by a SBE 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 the contract, toward SBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

6) When a SBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward SBE goals only if the SBE's subcontractor is itself a SBE. Work that a SBE subcontracts to a non-SBE firm does not count toward SBE goals.

b. When a SBE 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 SBE performs with its own forces toward DBE goals.

c. Count expenditures to a SBE contractor toward SBE goals only if the SBE 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 SBE trucking company is performing a commercially useful function see 49 CFR Part 26.55(d).

e. Count expenditures with SBEs for materials or supplies toward SBE goals as provided in 49 CFR Part 26.55(e). Please note that materials or supplies obtained from a SBE manufacturer are counted differently toward SBE 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 SBE 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 SBE 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 SBE subcontractor toward a contractor's final compliance with its SBE obligations on a contract until the amount being counted has actually been paid to the SBE.



**6.11 Sanctions for Non-Compliance**

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

- a. Withholding of payments to the Respondent under the Contract until the Respondent complies; and/or
- b. Cancellation, termination, or suspension of the Contract, in whole or in part; and/or
- c. Assessing sanctions; and/or
- d. Payment by the Respondent to the Authority of an amount equal to the difference in the SBE 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.

**6.12 Contract Assurance**

The successful Respondent, any successful subrecipient or successful subcontractor shall not discriminate based on race, color, national origin, or sex in the performance of this prime contract. The successful Respondent shall carry out SBPP requirements in the award and administration of Authority 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.

**6.13 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 SBE and non-SBE subcontractors.

Retainage will not be withheld on this project. No retainage will be withheld by MSCAA from progress payments due to 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.

#### **6.14 Termination of SBE Subcontracts**

The successful Respondent must not terminate a SBE subcontractor listed in response to this solicitation (or an approved substitute SBE 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 SBE subcontractor with its own forces or those of an affiliate, a non-SBE firm, or with another SBE firm.

The successful Respondent shall utilize the specific SBEs 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 SBE.

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 SBE 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 SBE subcontractor, the prime contractor must give notice in writing to the SBE 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 SBE five days to respond to the successful Respondent's notice. In response, the SBE 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 the 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 reward deletions of or substitutions for SBE firms put forward by offerors in negotiated procurements. The form provided in Section 16.5 and 16.6 must be completed by the Respondent.

#### **6.15 SBPP Requirements**

The Respondent shall carry out the SBPPP requirements, including applicable requirements of 49 CFR Part 26, in the award and administration of Authority contracts.

Respondent agrees to provide all its subcontractors and suppliers and to require all its subcontractors and suppliers on this project to provide a complete copy of the Business Diversity Development Program Requirements of the Contract to all those who provide supplies or work related to the Contract and to require all those providing supplies or work to be bound by these requirements as it relates to their work related to the Contract. The form provided in Section 16.7 must be completed by the Respondent.

## **7 TITLE VI SOLICITATION NOTICE**

The Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunities to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

## **8 INSURANCE REQUIREMENTS**

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

The insurance requirements are established in Section 18 of the Sample Contract, which is set forth in Section 17 below.

## **9 FEDERAL FAIR LABOR STANDARDS ACT**

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

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

## **10 SECURITY AND ACCESS**

### **10.1 General Requirements**

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

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

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

The successful Respondent will provide the Authority with a badge application signed by the Authorized Signatory of the successful Respondent.

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

All employees must be able to meet the requirements of the TSA in order to receive an airport identification badge. Individuals will be issued a badge by the Airport Identification Office only after they have met all necessary security and training requirements including the appropriate certifications of the fingerprint-based background check and the Security Threat Assessment. Authority shall be responsible for all fees associated with the successful Respondent's badge applications; Respondents should not include any costs for badge application fees in their proposals.

In order to ensure control and accountability of airport identification badges, the successful Respondent will notify the Authority of the termination of any employee immediately and submit written notification of badge status of terminated employees within twenty-four (24) hours to the Security Access Supervisor, Airport Identification Office. The Airport Identification Office shall be immediately notified if the badge is not recovered for any reason. Failure to recover the identification badge and return it to the Airport Identification Office will result in a one hundred dollar (\$100.00) fee assessed to the successful Respondent. The successful Respondent will also receive a Monthly Status Report and will verify accuracy of that report on a monthly basis.

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

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

\*Requires approval of the Director of Operations and Public Safety

### **10.2 Security Checkpoint Procedures**

Security Checkpoints are located throughout the MEM terminal building. These checkpoints prevent access to certain “restricted” areas. Personnel must have the proper photo identification badge, as described in Section 10 Security and Access, in order to access areas beyond these checkpoints.

### **10.3 Operations of Others**

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

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

## **11 TERMS OF PERFORMANCE**

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

### **11.1 Contract Negotiations and Contract Form**

One Respondent will be selected for contract negotiations in accordance with Section 14.4. Realizing that the final basis for agreement between the successful Respondent and the Authority must be a contract, Respondents shall indicate their willingness to negotiate a Contract acceptable to both Parties. This RFQ and specified portions of the successful Respondent’s response shall be incorporated into such Contract. The successful Respondent shall be required to execute a written contract with the Authority. The Authority will not execute the successful Respondent’s standard contract.

**11.2 Cancellation**

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

**11.3 Term of Contract**

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

**11.4 Convenience Termination of Contract**

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

**11.5 Payment and Billing Requirements**

**11.5.1 Invoice Submittal**

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

Finance Department - [acctpayable@flymemphis.com](mailto:acctpayable@flymemphis.com)

**11.5.2 Payment Terms**

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

**11.5.3 Taxes**

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

## 12 SCOPE OF SERVICES

- Create, implement, and oversee the DBE and ACDBE Goals, Methodology, Uniform Report and Short Fall Analysis Reports as required and meet following deadlines:

Report	Due Date	Comments
DBE Accomplishment Report	December 1	Due Annually
ACDBE/Car Rental Accomplishment Report	March 1	Due Annually
DBE Overall Goal & Methodology Report	August 1	Due Triennially
ACDBE/Car Rental Overall Goal & Methodology	August 1	Due Triennially
Community Participation Plan	September 30	Due Annually
Title VI and ADA Programs	September 30	Due Annually

- Provide technical knowledge and expertise relating to all regulations regarding DBE, ACDBE, Title VI and ADA programs
- Act as a liaison for when dealing with compliance issues involving the FAA and other governmental entities
- Ensure DBE, ACDBE, Title VI, and ADA programs are in compliance with federal and/or regulations
- Annual review of the Authority’s ACDBE & DBE Programs, standard operating procedures and forms to include updates as necessary based on changes in federal regulations, and/or organizational changes
- Annual review of the Authority’s Small Business Enterprise Programs, standard operating procedures and forms to include updates as necessary, and/or organizational changes
- Analyze MSCAA’s progress toward attainment of department goals (DBE, ACDBE, SBE, certifications, etc) and identify ways to improve progress.
- Provide training for BDD and Authority staff as it relates to new and impending changes in legislation or federal regulations
- Monitor and implement the Community Participation Plan as required
- Aid with MSCAA annual report on DBE and ACDBE goals, accomplishments, and overall program
- Assist with Disparity Study Process and its completion



## **13 RESPONSE STRUCTURE**

It is not the intent of the Authority to restrict response preparation; however, to enable the Authority to evaluate each response in a uniform manner, all Respondents shall structure their response by submitting one (1) marked as “original” and six (6) marked “copies” of the response each in a three-ring binder with marked reference tabs containing the data requested and the forms provided in Sections 15-16 below. Respondents shall also include a USB drive with a complete digital copy of their response. **Submit data as requested in the following sections:**

### **13.1 Table of Contents**

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

### **13.2 Tab A – Company Information**

Submitted under Tab A – Company Information, Respondent shall provide a brief company description, history, and financial status. In addition, Respondent must submit the requested information on the Respondent Information Form found in Section 15.1 below.

### **13.3 Tab B – References**

#### **13.3.1 Positive Comments**

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

#### **13.3.2 Negative Comments**

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

### **13.4 Tab C – SBPP Inclusion**

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

### **13.5 Tab D – Experience**

Respondent must demonstrate experience performing the Services as described in Section 12, Scope of Services. Proposal must include professional reference contact



information for five medium to large airports for whom the respondent has provided the requested services within the past 5 FAA Fiscal reporting years.

### **13.6 Tab E Contract Changes**

A sample contract for this solicitation may be found in Section 17 of this document. Please review the sample contract as it contains the Authority's standard terms and conditions. The Authority may negotiate additional terms with the chosen Respondent as appropriate, and these terms will be incorporated into the Contract. The Authority reserves the right to change the sample contract; however, if changes are requested to this sample contract by the Respondent, the Respondent must submit those proposed changes under Tab F - Contract Changes for review and possible approval by the Authority. If no changes are submitted, the Authority's interpretation will be the Respondent is accepting the Contract as shown in the sample contract. The successful Respondent will not be allowed to change the content of the sample contract terms which may be incorporated in the final Contract, unless those proposed changes are submitted under Tab F and approved by the Authority. **Do not return the sample contract with your response.**

### **13.7 Tab F – Executive Summary**

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

## **14 AWARD**

### **14.1 Solicitation**

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

### **14.2 Evaluation Criteria**

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

**14.2.1 Demonstrated ability to perform the service**

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

**14.2.3 Oral Presentations**

**14.2.4 Responses of references**

**14.2.5 Responsiveness, organization, and clarity of the submittal**

**14.3 Oral Presentation**

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

**14.4 Final Selection**

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

**14.5 The Authority's Right to No Award or Partial Award**

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

**14.6 Cancellation**

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

**14.7 Anticipated Contract Date**

The Authority anticipates the commencement date of the Contract to be May 01, 2025.

**15 REQUEST FOR QUALIFICATIONS FORMS**

**15.1 Respondent Information Form (Required)**

If Respondent is an INDIVIDUAL, fill out the following:

Individual's name: \_\_\_\_\_

If Respondent is a PARTNERSHIP, fill out the following:

Partner Name:

Partner Address:

_____	_____
_____	_____
_____	_____
_____	_____

If Respondent is a CORPORATION, fill out the following:

NAME OF CORPORATION PRESIDENT: \_\_\_\_\_

NAME OF CORPORATION SECRETARY: \_\_\_\_\_

All Respondents fill out the following:

NAME OF COMPANY: \_\_\_\_\_

PRINCIPAL BUSINESS ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

LOCAL STREET ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

FEDERAL TAX ID #: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ CELL NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

SIGNATURE OF RESPONDENT: \_\_\_\_\_

**15.2 Respondent Experience Table (Required)**

Service	Years' Experience Respondent	Years' Experience Subcontractor(s) (If applicable)
Overall experience with medium to large airports as described in section 12		
Oversee and perform the completion of the ACDBE/DBE/Car Rental Overall Goals, Methodology, Accomplishments and Short Fall Analysis Reports		
Responsible for the utilization of all FAA Reporting forms and formats as required for submittal of goals and accomplishments		
Assist with the maintenance of the ACDBE/DBE/Car Rental/SBPP and Title VI programs		
Provide technical knowledge and expertise relating to all federal programs and guidelines utilized by the Business Diversity Department		
Act as a liaison for the Authority when dealing with compliance issues involving the FAA and other governmental entities		
Offer guidance, assistance and direction with regard to the Disparity Study Process and its completion		
Provide training for Staff, Board, etc. as it relates to new and impending changes in legislation or federal regulations		
Assist Authority with future contracting including, but not limited to, concessions agreements, leases, and joint venture opportunities within the ACDBE/DBE Programs		
Assist Staff and provide suggestions with DBE language in legal notices, public notices, bid documents, etc. as needed		
Oversee stakeholders' meetings when necessary		
Provide assistance as it relates to the Unified Certification		
Provide any recommendations regarding modifications or corrections necessary for the Authority to become compliant with Federal DBE/ACDBE certification regulations		
Conduct reviews of DBE and ACDBE certification files of previously certified firms		

**16 SBPP FORMS**

**16.1 BDDP/SBPP Assurance Statement/Letter of Intent (Required)**

Submit on Company Letterhead for each SBE Subcontractor

<b>BDDP/SBPP ASSURANCE STATEMENT/LETTER OF INTENT</b>		
Project No./Name: _____		
<b>RESPONDENT:</b>		
Name of Firm: _____		
Address: _____		
City: _____	State: _____	Zip: _____
Telephone: _____		
Local Yes ___ No ___ DBE ___ SBE ___		
<b>SUBCONTRACT:</b>		
Name of Firm: _____		
Address: _____		
City: _____	State: _____	Zip: _____
Local Yes ___ No ___ DBE ___ SBE ___		
Description of work to be performed by SBE:		
_____		
_____		
_____		
The Respondent is committed to utilizing the above-named for the work described above. The estimated dollar value \$ _____, which is _____% of the total base bid proposal.		
<b>AFFIRMATION</b>		
The above-named DBE/SBE affirms that it will perform the portion of the contract for the estimated dollar value as stated above		
By: _____		
Signature of DBE/SBE and Title	Date	Name
By: _____		
Signature of 2 <sup>nd</sup> /3 <sup>rd</sup> Tier Subcontractor and Title	Date	Name
If the Respondent does not receive award of the prime contract, any and all representations in this letter of Intent and Affirmation shall be null and void. If Respondent does receive award of the prime contract, Respondent commits to using the SBE contractor listed and described to meet the SBE contract goal.		
By: _____		
Signature of Respondent and Title	Date	Name

**16.2 Respondent SBE Goals Accomplishment Statement (Required)**

Submit on Company Letterhead

**RESPONDENT SBE GOALS ACCOMPLISHMENT STATEMENT**

Project No./Name: \_\_\_\_\_

The undersigned 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 35% SBE utilization on this contract.
- The Respondent is unable to meet the SBE goal of 35% but is committed to a minimum of \_\_\_\_\_%

SBE 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 SBE's participation and compensation and how this has been determined to meet the specific goal requirements of this solicitation in whole or part.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If SBE 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 SBE firms identified in this proposal in the execution of this contract. If for any reason, one or more of the SBE(s) identified here are unable or unwilling to participate, the Respondent will make good faith efforts to replace the SBE with a similar SBE. The Authority SBE 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

**16.3 Business Diversity Development Program (BDDP/Small Business Participation Plan (SBPP) Bidder's List (Required)**

The Memphis Airport Authority (MEM) maintains bidding statistics, regarding ALL firms bidding on prime contracts and subcontracts on non-federal projects. 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 A= Less \$500k B=\$500K-\$1M; etc

\*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  
 F =Caucasian      G =African American      H = Hispanic/Latino American      I = Native American      J=Asian-Pacific American      K=Subcontinent Asian American      L=Other

**16.4 Voluntary Disclosure of Respondent Data (Voluntary)**

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

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



**16.5 Business Diversity Development Program (BDDP)/Small Business Participation Plan (SBPP) Termination Request**

Prior to submitting this form to Memphis-Shelby County Airport Authority (MSCAA), you must notify the BDDP/SBPP Firm in writing of your intent and allow the Firm five (5) days to respond. MSCAA must be copied on the notice to the firm. NOTE: The prime contractor may not submit a substitution request until after receiving an approved BDDP/SBPP termination.

Project ID:	Contract Amount:	Goal:
Prime Contractor:	Requestor:	
Email:	Phone:	

Committed BDDP/SBPP Firm:		
Original Contract Amount:		Remaining Contract Amount:
BDDP/SBPP Type:	<input type="checkbox"/> Subcontractor/Subconsultant <input type="checkbox"/> Material Supplier (60% credit)	<input type="checkbox"/> Professional Services <input type="checkbox"/> Trucking/Hauling Firm <input type="checkbox"/> Manufacturer Distributor
Scope of Work Description:		
Has BDDP/SBPP Firm been paid for completed work?	Yes	No / Remaining amount owed:
Is this request due to an MSCAA Change Order?	<input type="checkbox"/> Yes (provide info and statement of impact on BDDP/SBPP participation) <input type="checkbox"/> No (see below)	
If NO above, select the reason for the request: <b>(must attach a statement of facts and supporting documentation)</b>		
<input type="checkbox"/> BDDP/SBPP Firm requests removal <input type="checkbox"/> BDDP/SBPP Firm fails or refuses to perform work or furnish materials <input type="checkbox"/> BDDP/SBPP Firm is not a responsible contractor <input type="checkbox"/> Owner died or becomes disabled resulting in the BDDP/SBPP inability to complete the work on the contract	<input type="checkbox"/> BDDP/SBPP Firm is ineligible to receive DBE credit for the type of work required <input type="checkbox"/> Work performed by BDDP/SBPP Firm was unsatisfactory and not in accordance with plans and specifications <input type="checkbox"/> Other documented good cause	
Date determined BDDP/SBPP Firm unwilling, unable or ineligible:		
Will this request result in a BDDP/SBPP goal shortfall:	<input type="checkbox"/> No <input type="checkbox"/> Yes / Shortfall Amt:	(provide BDDP/SBPP utilization summary)

APPLICABLE NAICS CODES	
NAICS CODES:	DESCRIPTION:

<i>BDDP/SBPP Response</i>

<b>The undersigned acknowledges that they are authorized to submit this request as a representative of the stated prime contractor.</b>		
Requestor Signature:	Date:	
<b>For MSCAA Use Only</b>		
Notice of Intent provided to SBE:	Yes (date sent _____)	No (must be sent to SBE 5 days prior to Request)
All required documentation submitted with Request: <input type="checkbox"/> Yes <input type="checkbox"/> No (all documents must be submitted for review)		
Request Approved: <input type="checkbox"/> Yes <input type="checkbox"/> No	Reason:	
DBELO Signature:	Date:	

**16.6 Business Diversity Development Program (BDDP)/Small Business Participation (SBPP) Program Substitution Request**

Prior to submitting this form to Memphis-Shelby County Airport Authority (MSCAA), you must have an approved Termination form signed by the DBELO. Without an approved BDDP/SBPP termination request, a prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the committed BDDP/SBPP.

Project ID:	Contract Amount:	Goal:
Prime Contractor:	Requestor:	
Email:	Phone:	

New Committed BDDP/SBBP Firm:			
Original Contract Amount:		Remaining Contract Amount:	
BDDP/SBBP type:	<input type="checkbox"/> Subcontractor/Subconsultant <input type="checkbox"/> Material Supplier (60% credit)	<input type="checkbox"/> Professional Services <input type="checkbox"/> Trucking/Hauling Firm	<input type="checkbox"/> Manufacturer <input type="checkbox"/> Distributor
Scope of Work Description:			

APPLICABLE NAICS CODES	
NAICS CODE:	DESCRIPTION:

**THIS SECTION MUST BE COMPLETED IF REQUESTING A SUBSTITUTION OR IF TERMINATION WILL RESULT IN GOAL SHORTFALL (does not apply if shortfall due to MSCAA Change Order)**

Proposed BDDP/SBBP Substitute:			
Proposed BDDP/SBBP type:	<input type="checkbox"/> Subcontractor/Subconsultant <input type="checkbox"/> Material Supplier (60% credit)	<input type="checkbox"/> Professional Services <input type="checkbox"/> Trucking/Hauling Firm	<input checked="" type="checkbox"/> Manufacturer <input type="checkbox"/> Distributor
Proposed Scope of Work:			
Is the substitution a certified BDDP/SBPP? <input type="checkbox"/> Yes <input type="checkbox"/> No (must provide Good Faith Effort (GFE))			
Projected date for BDDP/SBPP substitute to commence work?			
<b>The undersigned acknowledges that they are authorized to submit this request as a representative of the stated prime contractor.</b>			
Requestor Signature:			Date:

<b>For MSCAA Use Only</b>	
Notice of Intent provided to Firm: <input type="checkbox"/> Yes (date sent _____) <input type="checkbox"/> No (must be sent to Firm 5 days prior to Request)	
All required documentation submitted with Request: <input type="checkbox"/> Yes <input type="checkbox"/> No (all documents must be submitted for review)	
Request Approved: <input type="checkbox"/> Yes <input type="checkbox"/> No	Reason:
DBELO Signature:	Date:

**16.7 Business Diversity Development Program (BDDP)/Small Business Participation Plan (SBPP) Requirements for Subcontracts**

Received: _____ Date: _____ Sr. Manager of BDD	Project Name: _____ Project No.: _____
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**BUSINESS DIVERSITY DEVELOPMENT PROGRAM (BDDP)/  
SMALL BUSINESS PARTICIPATION PLAN (SBPP) REQUIREMENTS FOR SUBCONTRACTS**

Memphis-Shelby County Airport Authority (MSCAA) operates a non-federal Business Diversity Development Program (BDDP) / SMALL BUSINESS PARTICIPATION PLAN (SBPP) to ensure full and fair opportunities in MSCAA contracting for small businesses defined by U.S. Small Business Administration (SBA). This document sets forth SBE provisions that must be included in all contracts and subcontracts for the subject project as required by non-federal regulations. **A SIGNED COPY MUST BE (1) 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 MSCAA SBPP 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 MSCAA SBE program rules and regulations, including but not limited to the following:

- Assurance** : The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of USDOT SBA size standard in the performance of this contract. 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**: 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**: The prime contractor may not terminate or substitute any approved BDDP/SBPP subcontractor listed in the Assurance Statement without prior written consent of MSCAA. The prime contractor must

follow the procedures set forth by MSCAA.

- 4. **Counting Participation:** BDDP/SBPP participation in a contract must be counted in accordance with and applicable guidance.
- 5. **BDDP/SBPP Independence:** An independent business is one of the viability of which does not depend on its relationship with another firm or firms.
- 6. **DBE Liaison Officer (DBELO):** For BDDP/SBPP 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](mailto: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 applicable MSCAA BDDP/SBPP program rules and regulations.**

PRIME CONTRACTOR: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_  
TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

SUBCONTRACTOR: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_  
TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

**17 SAMPLE CONTRACT**

**CONTRACT 25-0002 REBID**

**FOR**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONSULTING SERVICES**

**BY AND BETWEEN**

**THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY**

**AND**

**[VENDOR NAME]**

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

**WITNESSETH THAT:**

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

**1 PERFORMANCE**

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

**2 COMPENSATION**

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

deduct the amount owed from the Company's submitted invoice. The Contract number must be included on the invoice in order for the invoice to be considered properly submitted.

### **3 TERM AND RENEWAL**

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

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

### **4 TERMINATION OF CONTRACT**

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

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

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

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

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

### **5 UPON TERMINATION**

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

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

## **6 DEFAULTS AND REMEDIES**

### **6.1 DEFAULTS**

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

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

### **6.2 REMEDIES**

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

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



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

## **7 RIGHTS AND REMEDIES CUMULATIVE AND NOT EXCLUSIVE**

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

## **8 RECOVERY OF FEES AND EXPENSES**

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

## **9 WAIVER**

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

## **10 FORCE MAJEURE**

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

## **11 ASSIGNMENT**

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

## **12 SUCCESSORS AND ASSIGNS**

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

## **13 INDEPENDENT COMPANY**

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

## **14 NO FINANCIAL INTEREST**

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

## **15 INDEMNIFICATION**

- a. Company shall defend, indemnify, and hold harmless the Authority and its commissioners, officers, agents and employees, from and against all claims, damages, demands, liability, losses, acts of God, costs, fines, and expenses of any nature whatsoever, including reasonable attorneys' fees, arising out of or resulting from any negligent acts or omissions in connection with Company's performance of this Contract, to the extent caused in whole or in part by Company or its employees, officers, agents, or subcontractors, or

caused by others for whom Company is liable except to the extent of intentional misconduct of the Authority. The indemnity set forth in this section shall survive the expiration or earlier termination of this Contract.

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

## **16 LAWS, PERMITS AND LICENSES**

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

## **17 SMALL BUSINESS PARTICIPATION PROGRAM (SBPP) REQUIREMENTS**

### **17.1 OVERVIEW**

Small Business Participation Program (SBPP) to ensure full and fair opportunities in Authority contracting for small businesses. The Authority administers the SBPP program consistent with 49 CFR Part 26 as outlined below and otherwise indicated in the SBPP requirements. Only firms that are certified consistent with 13 CFR Part 121 or 49 CFR Part 26 will be certified as a Small Business Enterprise (SBE) or Disadvantaged Business Enterprise (DBE) for the purpose of SBPP requirements. The information contained in this section is not intended to, nor does it, supplement or amend any federal regulation. Company is responsible for compliance with all applicable federal and Authority rules and requirements.

### **17.2 IDENTIFICATION OF CONTRACT GOAL AND REQUIREMENTS**

For this Contract, the SBPP goal is established as 35 %. The SBPP goal shall apply to Change Orders

### **17.3 ASSURANCE REQUIRED BY 49 CFR 26.13**

The Contractor, any successful subrecipient or successful subcontractor shall not discriminate based on race, color, national origin, or sex in the performance of this prime contract. The Contractor shall carry out SBPP requirements in the award and administration of Authority 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:

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

**17.4 PROMPT PAYMENT/ RETAINAGE**

The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the Contractor 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 SBE and non-SBE subcontractors.

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

**17.5 TERMINATION OF SBE SUBCONTRACTS**

Contractor must not terminate a SBE subcontractor listed in response to this solicitation (or an approved substitute SBE 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 SBE subcontractor with its own forces or those of an affiliate, a non-SBE firm, or with another SBE firm.

Contractor shall utilize the specific SBEs 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 Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE.

The Authority may provide such written consent only if the Authority agrees, for reasons stated in the concurrence document, that the Contractor has good cause to terminate the SBE 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 SBE subcontractor, the prime contractor must give notice in writing to the SBE subcontractor, with a copy to the Authority, of its intent to request to terminate and/or substitute, and the reason for the request.

Contractor must give the SBE five days to respond to the Contractor's notice. In response, the SBE must advise the Authority and Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the 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 reward deletions of or substitutions for SBE firms put forward by offerors in negotiated procurements.

## **18 INSURANCE REQUIREMENTS**

See Exhibit C for Insurance Requirements.

## **19 DAMAGE TO AUTHORITY PROPERTY**

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

## **20 AUDIT**

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

## **21 GOVERNING LAW**

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

## **22 SURVIVAL OF OBLIGATIONS**

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

## **23 INCORPORATION OF AUTHORITY’S REQUEST FOR QUALIFICATIONS**

The Authority’s Request for Qualifications 25-0002 Rebid, shall be incorporated in its entirety herein by reference. Accordingly, the Company shall be obligated to meet all requirements including, but not limited to, SBPP requirements as described in the Request for Qualifications; provided, however, that where an express provision of this Contract conflicts with any provision of the Request for Qualifications, this Contract shall control.

## **24 INCORPORATION OF COMPANY’S RESPONSE**

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

## **25 UNCONDITIONAL OBLIGATION TO PROCEED**

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

## **26 CONTRACT DOCUMENTS**

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

- a. This Contract
- b. Exhibit A – Scope of Services
- c. Exhibit B – Schedule of Compensation
- d. Exhibit C – Insurance Requirements
- e. Exhibit D – Required contract provisions for Airport Improvement Program and for Obligated Sponsors
- f. Exhibit E – Company’s BDDP/SBPP Accomplishment Statement and Assurance Statement(s)
- g. Exhibit F – Business Diversity Development Program (BDDP)/Small Business Participation Plan (SBPP) Requirements for Subcontracts

## **27 SEVERABILITY**

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



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

**MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY**

**[VENDOR NAME]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: President and CEO

Title: \_\_\_\_\_

**Approved as to Content:**

By: \_\_\_\_\_

Title: Director of Government Affairs & Business Diversity Development

**Reviewed and Approved as to DBE Requirements:**

By: \_\_\_\_\_

Title: Senior Manager of Business Diversity Development

**Approved as to Form and Legality**

By: \_\_\_\_\_

Title: General Counsel



**EXHIBIT A**

**SCOPE OF SERVICES**

INSERT SCOPE OF SERVICES

**EXHIBIT B**

**SCHEDULE OF COMPENSATION**

INSERT SCHEDULE OF COMPENSATION

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

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

**C.1 MINIMUM SCOPE AND LIMITS OF INSURANCE**

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

**C.1.1 COMMERCIAL GENERAL LIABILITY**

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

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

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

**C.1.2 AUTOMOBILE LIABILITY**

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

**\$1,000,000** combined single limit each accident

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

**C.1.3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY**

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

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

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

**C.1.4 UMBRELLA LIABILITY**

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

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

**C.1.5 PROFESSIONAL LIABILITY INSURANCE**

Per Claim and in the Aggregate: \$ 1,000,000

Contractor must provide professional liability insurance appropriate for their profession. Architectural and engineering firms must provide coverage for liability arising out of design errors and omissions. The policies shall provide a three (3) year extended reporting period.

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

Any deductibles, self-insured retentions or self-insured programs must be declared to and approved in advance by the Authority and shall be fully disclosed and identified within the Certificate of Insurance. At the option of the Authority, Company shall reduce the deductible or

self-insured retention to a maximum of \$10,000 or eliminate such deductibles or self-insured retentions applicable to claims involving the Authority, its officials and employees, or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention amount.

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

### **C.3 OTHER INSURANCE PROVISIONS**

The required insurance shall contain the following additional provisions:

#### **C.3.1 ADDITIONAL INSURED**

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

#### **C.3.2 PRIMARY COVERAGE**

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

#### **C.3.3 SEVERABILITY OF INTEREST**

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

#### **C.3.4 WAIVER OF SUBROGATION**

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

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

insurance, except professional liability to which this requirement does not apply, maintained by the Company.

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

**C.3.5 NOTICE OF CANCELLATION**

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

**C.3.6 ACCEPTABILITY OF INSURERS**

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

**C.3.7 VERIFICATION OF COVERAGE**

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

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

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

**C.3.8 SUBCONTRACTORS**

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

**C.3.9 LEASED EMPLOYEES**

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

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

**C.3.10 NO REPRESENTATION OF COVERAGE ADEQUACY**

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

The insurance requirements set forth in minimum amounts shall not be construed to relieve Company for liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as is available to it under any other provision of the Contract. Any acceptance of certificates of insurance by the Authority shall in no way limit or relieve Company of its duties and responsibilities under the Contract, including the duty to indemnify and hold harmless the Authority.

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

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

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

**1 GENERAL CIVIL RIGHTS PROVISIONS**

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

This provision binds the Contractor and sub-tier contractors from the bid solicitation period through the completion of the Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964. If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor. The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

**2 TITLE VI COMPLIANCE WITH NON-DISCRIMINATION REQUIREMENTS**

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

**1. COMPLIANCE WITH REGULATIONS**

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

**2. NON-DISCRIMINATION**

The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination



prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

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

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

**4. INFORMATION AND REPORTS**

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

**5. SANCTIONS FOR NONCOMPLIANCE**

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

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

**6. INCORPORATION OF PROVISIONS**

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

litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

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

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

- (10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- (11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- (12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

#### **4 FEDERAL FAIR LABOR STANDARDS ACT**

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

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

#### **5 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

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

**EXHIBIT E**

**COMPANY'S BDDP/SBPP ACCOMPLISHMENT STATEMENT AND ASSURANCE STATEMENT(S)**

**EXHIBIT F**

**BUSINESS DIVERSITY DEVELOPMENT PROGRAM (BDDP)/**

**SMALL BUSINESS PARTICIPATION PLAN (SBPP) REQUIREMENTS FOR SUBCONTRACTS**