

**BID ENVELOPE**  
**MSCAA PROJECT NO. 10-1306-09**

NAME OF PROJECT: SUBSTATION 5B ADDITION - CONSTRUCTION

BIDS DUE: 4/18/2019 TIME: 2:00 PM Local Time

MEMPHIS SHELBY COUNTY AIRPORT AUTHORITY (MSCAA)  
 PROCUREMENT DEPARTMENT  
 MEMPHIS INTERNATIONAL AIRPORT  
 4121 Runway Road, Suite B  
 Memphis, TN 38118 (901) 922-8000

**BIDDER IDENTIFICATION:**

Bidder \_\_\_\_\_

Address \_\_\_\_\_

**TENNESSEE CONTRACTOR LICENSE INFORMATION:**

License Number \_\_\_\_\_

License Classification Applicable to Project \_\_\_\_\_

License Expiration Date \_\_\_\_\_

Dollar Limit \_\_\_\_\_

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

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

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

**BID ENVELOPE**

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

**DIVISION 0 – SECTION 00405**

**PROPOSAL**

Project Identification: **Substation 5B Addition - Construction**

Contract Number: MSCAA Project No. **10-1306-09**

**For Overnight Courier, U.S. Postal Service Mailing,  
or Hand Delivery Submit to:**

Memphis-Shelby County Airport Authority  
Memphis International Airport  
Procurement Department  
4121 Runway Road, Suite B  
Memphis, Tennessee 38118

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

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

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

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

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

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

ITEM NO.	DESCRIPTION	UNIT	EST. QUANT.	TOTAL EST. PRICE
1	Procurement and installation of a new Substation 5B, including all incidental work as detailed in the construction documents.	LS	1	\$ _____
2	Mobilization (Fixed Cost)	LS	1	\$ 50,000.00
3	Demobilization (Fixed Cost)	LS	1	\$ 30,000.00
<b>CONTRACT BASE BID TOTAL (TOTAL OF LINE ITEMS 1-3)</b>				<b>\$ _____</b>

**CONTRACT BASE BID TOTAL (TOTAL OF LINE ITEMS 1-3):**

\_\_\_\_\_ (use words)  
 \_\_\_\_\_  
 (\$ \_\_\_\_\_)

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

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

6. Bidder agrees that the Work: will be completed and ready for final payment within the calendar days (as described in Section 01100) after the date when the Contract Time commences to run. Bidder accepts the provisions of the Contract as to liquidated damages in the event of failure to complete the Work on time.

7. See Section 00200, INSTRUCTIONS TO BIDDERS, for a complete list of documents that are made a condition of this Bid.

8. Communications concerning this Bid shall be addressed to: \_\_\_\_\_ (Printed Name)

The address of Bidder indicated above, or

the following address: \_\_\_\_\_

email address: \_\_\_\_\_

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

Submitted on \_\_\_\_\_, 20\_\_\_\_.

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

If Bidder is:

An Individual

\_\_\_\_\_  
(Individual's Printed Name)

\_\_\_\_\_  
(Individual's Signature)

doing business as: \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No. \_\_\_\_\_ E-Mail \_\_\_\_\_

A Partnership

\_\_\_\_\_  
(Firm Name)

By: \_\_\_\_\_  
(Signature of General Partner and Printed Name)

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No. \_\_\_\_\_ E-Mail \_\_\_\_\_

A Corporation

\_\_\_\_\_  
(Corporation Name)

By: \_\_\_\_\_ Title: \_\_\_\_\_  
(Signature of person authorized to sign)

\_\_\_\_\_  
(Printed Name)

(Corporate Seal)

Attest: \_\_\_\_\_  
(Signature of Secretary) (Printed Name)

\_\_\_\_\_  
(State of Incorporation)

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No. \_\_\_\_\_ E-Mail \_\_\_\_\_

A Joint Venture

\_\_\_\_\_  
(Joint Venture)

By: \_\_\_\_\_  
(Signature of Joint Venturer) (Printed Name)

\_\_\_\_\_  
(Address)

Phone No.: \_\_\_\_\_ FAX No. \_\_\_\_\_ E-Mail \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Joint Venturer) (Printed Name)

\_\_\_\_\_  
(Address)

Phone No.: \_\_\_\_\_ FAX No. \_\_\_\_\_ E-Mail \_\_\_\_\_

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

**END OF SECTION 00405**

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**DIVISION 0 – SECTION 00410**

**PROPOSAL GUARANTEE**

KNOW ALL MEN BY THESE PRESENT, that we, the undersigned, \_\_\_\_\_

\_\_\_\_\_ as Principal, and

\_\_\_\_\_ as Surety, are

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

Whereas the Principal has submitted to Memphis-Shelby County Airport Authority a certain bid, attached hereto and hereby made a part hereof, to enter into a contract in writing for the Substation 5B Addition - Construction, MSCAA Project No. 10-1306-09.

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

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

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

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL

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

\_\_\_\_\_  
(Name and Title)

SURETY

SEAL

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

\_\_\_\_\_  
(Attorney-in-Fact)

**END OF SECTION 00410**



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**DIVISION 0 – SECTION 00440****BUY AMERICAN CERTIFICATION**

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

**CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter “X”.

- Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
  - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  2. To faithfully comply with providing US domestic products.
  3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
  4. To furnish US domestic product for any waiver request that the FAA rejects.
  5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 3 Waiver** - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “facility”. The required documentation for a type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Company Name

\_\_\_\_\_

Title

**END OF SECTION 00440**

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

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

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

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

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

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

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

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

**All portions of the Assurance Statement must be completed (including the description of work, the estimated contract amount, and the estimated dollar value of DBE participation for counting and goal purposes) before the Assurance Statement is signed by either the DBE or the Respondent. If the DBE’s, and if applicable the 2nd/3rd Tier Subcontractor’s, signature(s) can be obtained on the completed Assurance Statement before the bid**

**submission deadline, the Respondent should submit the fully-completed and fully-signed Assurance Statement. If the Respondent submits an Assurance Statement that is completed except for the DBE's, and if applicable, the 2nd/3rd Tier Subcontractor's signature(s) and a quote/proposal from the DBE as described above, the Respondent will be given 24 hours from the bid submission deadline to submit the completed Assurance Statement signed by the DBE and if applicable the 2nd/3rd Tier Subcontractor. Each Assurance Statement submitted during this 24 hour window must conform to the previously submitted Assurance Statement except for DBE signature. These signed Assurance Statements must be submitted pursuant to the same location and time restrictions that applied to the solicitation response and late signed Assurance Statements will only be accepted for good cause as determined solely by MSCAA.**

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

**Respondent DBE Goals Accomplishment Statement**

Submit on Company Letterhead

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

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

**Voluntary Disclosure of Respondent Data**

**Definition of Socially and Economically Disadvantaged**

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

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

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) “Black Americans” which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) “Hispanic Americans” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

- (iii) “Native Americans” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) “Asian-Pacific Americans” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U. S. Trust Territories of the Pacific islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) “Subcontinent Asian Americans” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

### **DBE Liaison Officer**

The DBE Liaison Officer is responsible for developing, implementing, and monitoring the DBE program on a day-to-day basis in coordination with other appropriate officials; carrying out technical assistance for a DBE ; and, disseminating information on available business opportunities so that a DBE is provided an equitable opportunity to bid on MSCAA contracts. The DBE Liaison Officer reports directly to the President of the MSCAA. For questions or information related to the DBE program, contact Joe Claiborne at (901) 922-2556.

### **DBE Certification**

MSCAA certifies all of its DBEs through internal processes. The MSCAA compiles a directory of firms who have met the selection criteria for eligibility as a DBE, including 49 CFR Part 26. You can review the searchable directory of certified firms for MSCAA at our website (<https://mscaa.mwdb.com/>). In the right hand column, you will find links to both the TN UCP Directory and the MSCAA DBE/ACDBE Directory. The TN UCP is a cooperative of entities which are recipients of federal funds that have developed a “one-stop shop” for certification throughout the State of Tennessee of which MSCAA is a certifying member. In order to be considered as meeting the DBE goal for a contract, each business wishing to participate as a DBE or a joint venture DBE, must either be:

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

Persons or entities who consider themselves a DBE but who are not certified by MSCAA, the TN UCP as a DBE, have not received affirmation from the MSCAA or the TN UCP that their certification from another entity is consistent with and acceptable to the MSCAA or the TN UCP will not be considered. Unless a firm meets the criteria above by the time the responses to this solicitation are due, its participation will not be considered as meeting the DBE goal in the solicitation. Each business wishing to participate as a DBE or a joint venture DBE must be certified at the time of bid opening and a current copy of the DBE’s certification must be attached to the Assurance Statement.

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

As an example: “For this contract, the DBE goal is established as **25%**.” In order to be responsive, a Respondent must either meet the goal or make good faith efforts to do so. Good faith efforts are defined in Appendix A to 49 CFR Part 26 and discussed in the following section.

If a Respondent’s DBE Assurance Statement proposes a DBE percentage less than the established goal, the Respondent must, at the time of making the response, submit appropriate documentation justifying its submitted DBE percentage. MSCAA reserves the right to request additional documentation or information from Respondent regarding its DBE Assurance Statement and, if applicable, any good faith efforts documentation. If MSCAA enters into a contract based on the Respondent’s DBE Goals Accomplishment Statement and documentation, the DBE percentage accepted by MSCAA will become a contractual requirement. If the Respondent’s DBE Assurance Statement proposes to attain a DBE percentage higher than the established goal, the established goal will remain the contractual requirement.

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

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

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

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

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

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

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

### **COUNTING THE DBE PARTICIPATION**

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

- (a) When a DBE participates in a contract or subcontract, the provider will count only the value of the work actually performed by the DBE toward the DBE goals. In a construction contract (and other similar contracts), this will include the work performed by the DBE's own forces and supplies purchased or equipment leased by the DBE as described below, especially (d)



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

### **SANCTIONS FOR NON-COMPLIANCE**

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

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

### **PROMPT PAYMENT/RETAINAGE**

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

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

Respondent (Contractor) will include the following paragraphs in all contracts and/or agreements related to the work [under this Contract] with subcontractors or suppliers and will require all its subcontractors and suppliers to include this paragraph in any contracts and/or agreements related to the work [under this Contract] with any other third parties and any other lower tier subcontractors or suppliers:

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

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

### **49 CFR Part 26**

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



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

**RESPONDENT DBE GOALS ACCOMPLISHMENT STATEMENT**

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

\_\_\_\_\_ The Respondent is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

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

**Please provide an explanation for the percentage quoted above:**

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

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

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

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

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

**Respondent’s Name:** \_\_\_\_\_

**State Registration No.:** \_\_\_\_\_

**Federal Tax ID No.:** \_\_\_\_\_

**By:** \_\_\_\_\_  
Signature and Title Date

**(SUBMIT THIS PAGE ON RESPONDENT’S LETTERHEAD)**

**VOLUNTARY DISCLOSURE OF RESPONDENT DATA**

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

Gender:        Male  
                  Female

Race:            Caucasian  
                  Black American  
                  Hispanic American  
                  Native American  
                  Subcont. Asian American  
                  Asian-Pacific American  
                  Other (please specify) \_\_\_\_\_

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

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

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

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

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

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