



ADR Consultants, LLC

RFP NO.9282012A

PRE DEMOLITION INVESTIGATION AND SURVEY OF ASBESTOS AND HAZARDOUS MATERIALS FOR THE STATE OF MICHIGAN LAND BANK FAST TRACK AUTHORITY

Issued by ADR Consultants, LLC

State of Land Bank Fast Track Authority
Investigation and Survey of Asbestos/Hazardous Materials of Residential and Commercial
Buildings

ADR Consultants, LLC (ADR) requests qualifications from qualified firms for Investigation and Survey of Asbestos/Hazardous Materials to be performed as part of the MLB's Blight Elimination Program. Investigation and Survey activities will include residential and commercial buildings. Bidders are invited to review this solicitation and, if interested, complete and return one original and two copies, and one flash drive containing a PDF copy, of the qualifications documents on or before 2:00 p.m., on October 5th, 2012 to the:

Michigan Land Bank
Cadillac Place
3022 West Grand Blvd, Suite 4-600
Detroit, Michigan 48202
Attention: Barry Ellentuck - ADR

Firms deemed to be qualified to provide the services specified in this Request for Qualifications will be placed on a list of qualified firms and be awarded work. Performance on projects assigned once awarded may affect the ability to be awarded future demolition work if the work performed is not satisfactorily performed. There is no guarantee of work as a result of being placed on a list of qualified vendors.

If a contract is awarded as a result of this Request for Qualifications, it will be a contract which is negotiated with the awardee based on the model MLB services contract.

Please review the attachments carefully to determine if you possess the necessary manpower, resource and abilities to meet project deadlines identified in this solicitation prior to responding to this Request for Qualifications.

CRITICAL DATES

Identified below are the critical dates associated with this Request for Qualifications. Further details and requirements are contained in the specific sections or attachments included in this package.

- Request for Qualifications Issued September 27, 2012
- Question Deadline October 2, 2012
- Qualifications Due Date October 5, 2012

Interested parties are encouraged to submit questions regarding the Request for Qualifications no later than 5pm October 2, 2012 via email to: Barry Ellentuck at barryse@adrllc.net. Responses to questions will be provided to all on record as having received a copy of the Request for Qualifications.

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SECTION 1

PROGRAM GOALS AND OBJECTIVES

Investigation and Survey of Asbestos/Hazardous Materials of residential and commercial properties is being undertaken as an approved eligible activity under the State of Michigan Land Bank's Authority's (MLB) Demolition Program. Therefore, the purpose of this Request for Qualifications is to secure the services of contractors that can carry out Investigation and Survey of Asbestos/Hazardous Materials activities as identified within this solicitation. All Investigation and Survey of Asbestos/Hazardous Materials activities will be carried out both within Detroit boundaries and throughout the State. Funding for sources for services to be provided include but are not limited to:

- Mortgage Settlement funds
- General Funds

SECTION 2

MINIMUM QUALIFICATIONS

Qualifications will only be accepted from those firms demonstrating a minimum of five (5) years of relevant experience and sufficient capitalization to provide the services sought in the Request for Qualifications for projects of similar scope and size.

Vendors responding to this Request for Qualifications must have a valid License issued by the State of Michigan to perform the services specified in the scope of work at the time of proposal submission. **A copy of the license shall be included with your sealed proposal.** Vendors must also provide ADR with their intent to comply with all HUD Section 3 requirements should they be awarded a contract to provide the services specified in the Request for Qualifications and this program requires Section 3 compliance.

SECTION 3

SCOPE OF WORK & FOR RESIDENTIAL AND COMMERCIAL BUILDINGS

Description: The services required consist of investigation and survey of asbestos/hazardous materials activities that include residential and commercial buildings as directed by ADR. All structures will be located in Michigan with funds targeted specifically within City of Detroit boundaries as well as blight elimination activities throughout the State

Please see Exhibit A for the detailed scope of services.

SECTION 4

PERFORMANCE REQUIREMENTS

It is expected that at least 50 structures for Investigation and Survey of Asbestos/Hazardous Materials will be awarded per contract. ADR will identify structures for investigation and survey work will be provided to Contractors on a routing basis normally in groups of ten. Emergency investigations and surveys will be assigned on an individual basis.

If unforeseen circumstances arise or work must be performed outside of the Contractors usual workweek, modifications to schedules may be requested and written approval must be received in writing from the ADR authorized representative.

SECTION 5 OTHER TERMS AND CONDITIONS

In addition, to the scope of services identified in Section 4 of the Request for Qualifications, contractors must comply with other federal and administrative requirements which will ensure that all work is performed and carried out to ensure timely and effective performance. Contract terms will be further detailed in the final contract executed between ADR and the contractor. Contractual requirements include;

1. Project Oversight - The contractor is be responsible for:
 - a.) Providing and maintaining all qualified personnel, equipment, materials and other resources necessary to perform activities identified in Section 4, Scope of Services in a timely manner.
 - b.) Ensuring all appropriate operational control of investigation and survey activities assigned, initiating all necessary measures to ensure adequate quality control, which includes but not limited to: completion of all documentation, maintaining document controls and records related to activities carried out.
 - c.) Identifying a Project Manager or designated representative who will serve as the Contractor's contact person and has final authority for the Contractor on all matters relating to the contract.
 - d.) Coordinating with ADR on matters relating to project requirements, completion and actions that require immediate attention or that impact on the results or quality of the work to be performed
 1. Records and Documentation - The contractor will maintain current, accurate and complete records according to ADR's investigation and survey standards and in compliance with all applicable federal, state and local requirements. All files must be available for immediate review and inspection by the authorized representative of ADR or its funders. All records under this contract will become the property of the ADR. Records must be maintained for a period of four years from the date of last payment under the contract.
 2. Compensation is based on the approved schedule of fees, satisfactory completion of work and the submission of a properly executed and completed request for payment form..
 3. Rescheduling, postponement and Termination- ADR reserves the right, in part or in whole, to reschedule, indefinitely postpone work, or terminate the services of any contract that is entered into between the Contractor and ADR. Contracts may be terminated for any of the following circumstances; failure of the Contractor to perform the services detailed in the executed contract, including any modifications, failure of the Contractor to meet performance requirements or any other terms or conditions of the contract. ADR has the right to terminate a contract at any time at its convenience by giving the Contractor ten (10) business days written notice of termination for convenience

4. Except as provided in the contractor's proposal and approved by ADR, the Contractor cannot reassign or transfer work to subcontractors without authorization from ADR.
5. The Contractor is responsible for the accuracy of the work performed and is required to make all necessary revisions or corrections resulting from errors and omissions on the part of the Contractor without additional compensation. Acceptance of the work by ADR will not relieve the Contractor of the responsibility for subsequent correction of any such errors and omissions and the clarification of ambiguities.
6. Contractor is required to maintain insurance during the term of the contract award, at its expense; a.) Worker's Compensation insurance with Michigan statutory limits and Employer's Liability insurance with minimum limits of \$500,000.00 each accident, \$500,000.00 each disease, \$500,000.00 each disease/each employee, b.) Commercial General Liability insurance with combined single limits of \$1,000,000 per occurrence subject to a minimum aggregate limit of \$2,000,000, c.) Automobile Liability insurance covering all owned, hired and non-owned vehicles with personal protection insurance and property protection insurance to comply with the provisions of the Michigan No-Fault Insurance Act, including residual liability insurance with a minimum combined single limit of \$1,000,000.00. Performance and Payment Bond - The Contractor shall secure Surety Bonds in the form of: a Performance Bond for One Hundred percent (100%) of the Contract price and Payment Bond for One Hundred percent (100%) of the Contract price. Bonds requirements shall increase consistent with any Contract price increases.
7. Conflict of Interest – The contractor agrees to comply with applicable conflict of interest provisions outlined in 24 CFR Part 85 and 24 CFR 570.
8. Permits - It is the vendor's responsibility to obtain all permits necessary to perform the work specified in the Request for Qualifications and assume any fees associated with doing so
9. As required, the contractor must comply with HUD Section 3 requirements, as described in Appendix D
10. No reimbursement is contemplated to be paid for travel under contracts awarded.
11. Term of Agreement - The term of the contract is two years.
12. Contracts will become effective on ADR's notice to proceed date and execution by both parties after all required documentation is received.
13. Governing Laws and Regulations - The Contractor will be required to comply with all applicable Federal, State and local requirements identified in the executed contract.

SECTION 6 SELECTION CRITERIA

Following receipt of the vendor's qualifications, ADR will evaluate each response. All qualifications that meet the minimum requirements of the Request for Qualifications will be evaluated. Any qualifications determined to be non-responsive to the specifications or other requirements, including instructions governing submission and format, will be disqualified unless

ADR determines, in its sole discretion, that non-compliance is not substantial or that an alternative proposed by the vendor is acceptable. ADR reserves the right to request clarification of qualifications submitted. If this is necessary it will be done in writing with request for a written response by the vendor within a specified period of time.

Upon contract award, ADR Consultants, LLC and the vendor shall execute a Services Contract, which shall contain all contractual terms and conditions in a form provided by ADR. No contract shall become effective until the contract has been approved and executed by ADR Consultants, LLC. Prior to completion of this approval process, the vendor shall have no authority to begin work under the contract. ADR Consultants, LLC shall not authorize any payments to the vendor prior to such approval; nor shall ADR incur any liability to reimburse the vendor regarding any expenditure for the purchase of materials or the payment of services.

The contractor shall be deemed authorized to begin work under the contract once the requirements of the aforementioned paragraph have been satisfied and upon written receipt of said contract. Vendors shall be eligible to submit proposals for investigation and survey projects issued by ADR as specified herein for a period of two years. ADR may, at its discretion continue to qualify firms to provide the services specified in the RFQ on an ongoing basis.

Qualifications received will be evaluated based upon the vendor's ability to:

- Meet the minimum qualifications specified in the bid documents
- The bidders demonstration of its organizations capacity, including financial and staff resources to provided the requested services as evidenced by the submission of a statement of qualifications to be included with the sealed bid submitted
- Past performance of the contractor including but not limited to quality of control that is proposed by the bidder in addressing the scope of work and requirements. The bidder's demonstration of relevant experience in performing and successfully completing investigation and survey and clearance projects including work previously performed for others.
- Ability to meet production goals and timelines and availability to complete work in the assigned timeframes
- Evidence of intent to comply with all HUD Section 3 requirements.

SECTION 7 SUBMISSION REQUIREMENTS AND INSTRUCTIONS

Bidders responding to this Request for Qualifications must complete and submit all required forms, documents or additional information requested. Vendors shall submit one original and two (2) copies plus one on a flash drive (pdf format) of their Request for Qualifications response. Bidder's responses to this Request for Qualifications must be submitted in a sealed envelope, which is clearly marked on the outside of the sealed package with the following information:

- REQUEST FOR QUALIFICATIONS# 9282012A
- Investigation and Survey of Asbestos/Hazardous Materials of Residential and Commercial Buildings
- Company's Name and Address
- Proposal Due Date
- Attention: Barry Ellentuck - ADR

The proposal must be received no later than 2:00 P.m. on October 5, 2012 at:

Michigan Land Bank
Cadillac Place
3022 West Grand Blvd, Suite 4-600
Detroit, Michigan 48202
Attention: Barry Ellentuck - ADR

Qualifications can be mailed to the above address or may be delivered in person. If mailed, responses must be received on or before 2pm p.m. Faxed qualifications will not be accepted. Qualifications received after the deadline will be rejected. ADR will publicly record all qualifications received on October 5, 2012 at 2:00 p.m. at the address referenced above. This will be the vendor's opportunity to be informed as to what firms submitted a response to the Request for Qualifications. Qualifications will NOT be opened or read. ADR is not responsible for any unmarked qualifications or undelivered qualifications regardless of the circumstances.

Qualifications must be signed by an officer or representative of the company who is authorized to bind the company to an agreement obligation with ADR. Qualifications submitted by partnership or joint venture must list the full names and addresses of all parties.

Qualifications received become the property of ADR. ADR is not responsible for any costs associated with the News releases regarding the selections and any issues related to this Request for Qualifications are made only with the prior approval of ADR and the MLB. All firms submitting qualifications will be notified of ADR's recommendation. Failure to submit a complete application may result in the disqualification of the bidder's submission.

ADR may make changes to the requirements of this Request for Qualifications as deemed necessary. Such changes, if made will be in writing, issued through the Purchasing Division and will be sent to each vendor who is on record as having received a copy of the Request for Qualifications from the Purchasing Division. If changes are made, ADR may, at its discretion, extend the time allowed for submission of qualifications. Bidders are required to advise ADR prior to the Request for Qualifications deadline of any changes in the principal officers, organization, financial ability of, or any other facts presented in the qualifications with respect to the Bidder or the qualifications immediately upon occurrence.

PART 1
Organizational Information

Bidder's Exact Legal Name: _____
(Must be Bidder's name as reflected on its organizational documents, i.e. not a DBA)

List the U.S. State in which Bidder's Legal Entity is organized: _____

Bidder's Type of Legal Entity (check one)

- | | |
|--|--|
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Limited Liability Corporation |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Limited Liability Partnership |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Other: _____ |

Certificate of Good Standing
Bidder's Taxpayer ID No.

Bidder's Address:

Street **City** **State** **Zip Code**

Bidder's Website Address: _____
Email Address: _____

Phone Number: () _____

Contact Information:

Name: _____

Phone Number: _____

Email address: _____

Address if different from above:

If this is a joint application, include an additional sheet providing all information above.

PART 2
Documents Required for Submission with Qualifications

Bidder's Name: _____

These documents must be submitted and found acceptable. Failure to submit, incomplete information or documents found to be unacceptable will result in disqualifying the bidder's qualifications. No additional review for experience or other factors will be considered.

1. Certificate of Good Standing (Corporation) or Certificate of Existence (Limited Liability Company) issued by the Michigan Secretary of State (If Respondent is a joint venture, a Certificate of Good Standing or Certificate of Existence, as applicable, must be submitted for each entity comprising the joint venture.)
2. Evidence of Insurance: Commercial General Liability with limits not less than \$2,000,000; Workers Compensation and Employers Liability with limits not less than \$500,000; and, Automobile Liability with limits not less than \$1,000,000 per occurrence.
3. proposer's have the financial stability and wherewithal to assure good faith performance.
4. Three (3) references of related projects of similar scope and size, including date of project, contact person and phone number, and a brief description of the project.
5. Conflict of Interest Statement & Supporting Documentation: Respondent shall disclose any professional or personal financial interests that may be a conflict of interest in representing ADR and The State of Michigan. In addition, all Respondents shall further disclose arrangement to derive additional compensation from various investment and reinvestment products, including financial contracts.
6. Evidence of Bonding Capacity
7. Evidence of intent to comply with HUD Section 3 requirements
8. Signature Page
9. Bidders Qualification and Documentation Information
10. One original and two (2) copies plus one on a flash drive of the Qualifications response
11. Identify types and sources of equipment applicable to perform investigation and survey activities identified under scope of work.
12. Non-Collusion Affidavit

**PART 3
Affidavit**

**INVESTIGATION AND SURVEY OF ASBESTOS/HAZARDOUS MATERIALS OF
RESIDENTIAL AND COMMERCIAL BUILDINGS
REQUEST FOR QUALIFICATIONS NO. 9282012A**

Contractor Name

State of Michigan)
County of)

_____being duly sworn,

deposes and says that he/she

() Is the above named Contractor

() Is the authorized representative of the above named Contractor

The Contractor further states that before submitting his/her proposal for the Work, he/she reviewed the Standard Specifications for the Investigation and Survey of Asbestos and Hazardous, prepared by ADR, dated _____ and all bulletins issued thereto as stated in the Proposal Form.

Further, the Contractor certifies that he/she

- fully understood all provisions stated in those Specifications
- has had prior experience in the type of Work required by the Contract Documents and that he has the necessary finances, personnel and working organization and equipment available to execute the proposed Work in accordance with the requirements of the Contract Documents.
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any state or federal agency within the past three (3) years

Signed _____

Subscribed and sworn to before me this _____ day of 2012

_____my commission expires,

Notary Public _____ County, Michigan.

NOTARY SEAL:

PART 4
Completeness Checklist

Use this form to check to ensure that all documents are included with your submission

- _____ Part 1 – Organizational Information
- _____ Part 2 – Required Documents for Submission
- _____ Part 3 – Affidavit
- _____ Part 5 - Non-Collusion Affidavit
- _____ Appendix C HUD Section 3 Intent to Comply Affidavit

PART 5 - NON-COLLUSION AFFIDAVIT OF PRIME PROPOSER

State of Michigan)

County Wayne)

_____ being first duly sworn, deposes and says that:

He / She is, _____, of
(Owner, Partner, Officer, Representative, Agent)

(Contractor that has submitted the attached Proposal)

He / She is fully informed respecting the preparation and contents of the attached, Proposal and of all pertinent circumstances respecting such Proposal.

Such Proposal is genuine and is not a collusive or sham proposal.

Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including the person making this statement, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Proposer, Firm or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer, Firm or person to fix the price or prices in the attached Proposal or the Proposal of any other Proposer, or to fix any overhead, profit or cost element of the bid price or the bid price of any other Proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Michigan Land Bank, ADR or any person interested in the proposed Contractor; and

The price or prices quoted in the attached Proposal are fair and proper and are not tainted by a collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, partners, employees, or parties in interest, including the person making this statement.

(Signature)

(Title)

Subscribed and sworn to before me this _____ day of, 2010

_____ my commission expires,

Notary Public _____ County, Michigan.

NOTARY SEAL:

APPENDIX A - DEFINITIONS

1. DEFINITIONS

Capitalized terms, or pronouns defined herein, or used in the remaining Contract Documents, incorporated by reference, shall have the definitions set forth herein unless a different meaning is made clear by the context.

ADR – Means ADR Consultants, LLC a private company contracted by the Michigan Land Bank to provide demolition Technical Assistance.

ADEQUATELY WET – means sufficiently mixed or penetrate with liquid to prevent the release of particulates or visible emissions.

ASBESTOS CONTAINING MATERIAL (ACM) – includes both friable (i.e., easily crumbled or reduced to particles) asbestos-containing material or Class I non-friable asbestos-containing material.

BACKFILL- means filling the Open Hole left after removal of the Foundation to Final Grade level, with approved Backfill material according to the Specifications.

BULLETINS- means any additional Contract provisions, changes, revisions or clarifications of the Contract Documents issued in writing by the Director; on behalf of the MLB, to prospective proposers prior to the receipt of the qualifications.

CAPACITY- means the ability of a Contractor to perform all required services in a specific time frame as determined by ADR.

CHANGE ORDERS- means any material change to the overall scope of the Contract, which requires prior approval by the MLB. Example: changes in Contract price, which may result from changes in Scope of Work requirements.

MLB- means the Michigan Land Bank, a municipal corporation.

COMPLETE WORK- means the Contractor's compliance with all licensing, permit, safety, and environmental requirements as well as site clearance, demolition of all buildings to include exterior walls, basement walls, basement foundations, footings, and slab-on-grade, appurtenances, contiguous buildings, fences, concrete walks, drives, transportation of debris, and backfilling and finishing the site surface with a Final Grade.

CONTRACT or CONTRACT DOCUMENTS- means all directions, requirements, standards, terms and conditions of performance as specified in this REQUEST FOR QUALIFICATIONS in addition to any additional Contract provisions, changes, revisions or clarifications authorized by the Director or the Director's designee.

CONTRACTOR- means the individual or legal entity contracting with ADR for performance of the prescribed Work.

DRAWINGS or CONTRACT DRAWINGS- means those drawings specifically entitled, dated and listed in this RFQ, the Contract or any Bulletin.

EMERGENCY- means any building of such questionable structural integrity that it is deemed to be in imminent danger of collapse as determined by a Michigan Land Bank Building Official.

EMERGENCY DESIGNATED STRUCTURES – any building declared an Emergency that is awarded to a Contractor for demolition in accordance with these Specifications.

EXTRA WORK- means Work other than that expressly stated or implied in the Contract Documents at the time of execution of the Contract.

HAZARDOUS MATERIALS- explosives, pyrotechnics, flammable gas, flammable compressed gas, nonflammable compressed gas, flammable liquid, combustible liquid, oxidizing materials, poisonous gas, poisonous liquid, irritating material, etiologic material, radioactive material, corrosive material, or liquefied petroleum gas. Michigan Fire Prevention Code, Public Act 207 of 1941 Also see Title 48 CFR, Part 171.8, Part 172.101, 40 CFR 26.13, and 49 CFR 171.8.

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP) - are air quality standards issued under the Clean Air Act for emissions standards set by the United States Environmental Protection Agency (EPA) for an air pollutant not covered by The National Ambient Air Quality Standards (NAAQS) that may cause an increase in fatalities or in serious, irreversible, or incapacitating illness.

NOTICE- means written notice.

PERMIT – is an official certificate, that authorizes performance of a specified activity (i.e., construction, repair, demolition), issued by the approving authority with proper jurisdiction.

REQUEST FOR PAYMENT- means an invoice submitted by the Contractor for Work performed under the Contract.

RESPONSIBLE PROPOSER- is a Contractor possessing the demonstrated judgment, skill, ability, capability, experience and integrity, requisite and necessary to perform the Work to standards and in the specified time, without regard to competing Contract commitments. See e.g., MCL 123.501

RESPONSIVE PROPOSAL- is a proposal that conforms, in all-material aspects, to the terms, conditions, specifications and requirements of the solicitation. See e.g., MCL 123.502

SCOPE OF WORK- encompasses all Contract performance requirements expressly stated or implied that are required to be furnished and completed by the Contractor in order to properly satisfy all Contract terms and conditions, except “Extra Work” as defined herein.

SITE- means the area bounded by the perimeter of the address supplied in the Contract or Notice to Proceed in which the Contractor has agreed to confine its operations. In special cases it may include other adjacent areas as may be designated by the Director or the Director's designee.

SPECIFICATIONS- means all of the directions, requirements, standards, terms and conditions of performance as specified in this REQUEST FOR QUALIFICATIONS and the other Contract Documents.

SUBCONTRACTOR- means a person, firm, or corporation, other than the Contractor or its employees that Contracts with the Contractor to furnish, labor, labor and materials, or labor and equipment, at the site, but shall not include one who merely furnishes materials or equipment. All subcontractors shall be approved in advance by the Department.

TOXIC MATERIALS- means any of 77 toxic substances and 63 flammable substances under the accident prevention provision of Section 112(r) of the Clean Air Act (CAA) and listed in Title 40, Part 68 of the Code of Federal Regulations (CFR); that in sufficient concentration, alone or in combination, poses a severe threat of gross damage to or destruction of the health, safety, or welfare of human, animal, or desirable plant life, or of the environment. Also see, Michigan Fire Prevention Code, Michigan Public Act 207 of 1941. It is important to note that Toxic Materials are a sub-set of Hazardous Materials consequently regulations concerning such substances are thoroughly addressed at the State and Federal Levels.

UNBALANCED PROPOSAL- is a Proposal offer that contains a substantial variation in price to the extent that it affects the proposal process by giving the Proposer an advantage or benefit not allowed other Proposers.

WORK- is the explicit and implicit Contract Requirements as defined in the Scope of Work.

“Additional Services” shall mean any *Services* addition to those set out in *Exhibit A* which are related to fulfilling the objectives herein stated, are not contained in the original *Services* as designated in this *Contract* or any *Exhibit* thereto and are agreed upon by the parties by written *Amendment*.

“Associates” shall mean in reference to the *Contractor*, its personnel, employees, consultants, subcontractors, agents, parent company, or any entities associated, affiliated, or subsidiary to the *Contractor*, now existing or hereinafter created, their agents and employees.

“Contractor” shall mean the contracting party hereto, whether incorporated as a firm or individual, or whether a partnership or any combination thereof, and its heirs or successors, personnel, representatives, executors, administrators and assigns.

“Exhibit A” sets forth the Scope of Services and all pertinent data relating to performance of the Services.

“*Exhibit B*” sets forth the method of payment for the *Contract*, hourly rates, if any, and all the reimbursable expenses allowable, if any, to be paid to the *Contractor* in the performance of the *Services* set forth in this *Contract*.

“*Records*” shall mean all books, ledgers, journals, accounts, documents, records and all other collected data wherein are kept all entries reflecting the carrying out of the objectives and related *Services* in this *Contract*.

“*Reimbursable Expenses*” shall mean any additional costs, including, but not limited to, travel reproduction, out-of-pocket expenditures and all approved *Contractor* costs of whatever kind or nature incurred by the *Contractor* in its performance of the *Services* herein as provided for in *Exhibit B*.

“*Services*” shall mean all work that is expressly set forth in the Scope of *Services* included in *Exhibit A* or impliedly required to be performed by the *Contractor* in order to achieve the objectives of this *Contract*.

“*Subcontractor*” shall mean any person, firm or corporation, other than employees of the *Contractor*, who or which contracts with the *Contractor*, directly or indirectly, to perform in part or assist the *Contractor* in achieving the objectives of this *Contract*.

“*Work Product*” shall include all finished or unfinished original documents or copies, (when originals are unavailable) of data studies, briefs, drawings, maps, models, photographs, files, records, computer printouts, estimates, memoranda, computations, papers, supplies, notes, recordings, videotapes, and other materials prepared by the *Contractors* under this *Contract*.

APPENDIX B

HUD SECTION 3 COMPLIANCE ACKNOWLEDGMENT AND

INTENT TO COMPLY

(OWNER/DEVELOPER/GENERAL CONTRACTOR)

Submitted by:

Name of Owner/Developer: _____

Address: _____

E-mail: _____ **Telephone:** _____

Contact Name: _____ **Title:** _____

Name of General Contractor: _____

Address: _____

E-mail: _____ **Telephone:** _____

Contact Name: _____ **Title:** _____

Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u (Section 3), 24 CFR 135

HUD Section 3 promotes local economic development, neighborhood economic improvement, and individual self-sufficiency by ensuring employment and other economic opportunities generated by certain HUD financial assistance are directed to low-income persons and businesses which hire them.

HUD Section 3 requirements apply to projects receiving in excess of \$200,000 in federal assistance for housing construction, re-construction, conversion, rehabilitation, de-construction, demolition, or public construction and apply to contractors and sub-contractors when any contract or subcontract exceeds \$100,000 for a project in excess of \$200,000.

General Statement

_____, as the OWNER/DEVELOPER,
and

_____, as the GENERAL CONTRACTOR are committed to comply with the HUD Section 3 Act, the Section 3 regulations, and the Michigan Land Bank HUD Section 3 requirements. It is our desire to work together to ensure compliance, to the greatest extent feasible, through the awarding of contracts for work and services to HUD Section 3 Business Concerns, and to provide employment and training to HUD Section 3 residents and eligible individuals.

**HUD Section 3 Compliance Goals
Employment and Training:**

To demonstrate compliance with HUD Section 3 regulations, it is desirous to employ HUD Section 3 residents or eligible individuals as 30% of the aggregate number of new hires and to provide training to those new hires. We agree to provide information regarding existing employees and projected hiring needs as a part of the Michigan Land Bank HUD Section 3 Strategic Compliance Plan 1 when submitting proposals for HUD covered contracts.

Contracting:

To demonstrate compliance with HUD Section 3 regulations, the Michigan Land Bank shall attempt to award at least 10% of the total dollar amount of all HUD Section 3 covered contracts for building trades work, and at least 3% of the total dollar amount of all other HUD Section 3 covered contracts (i.e., professional services) to HUD Section 3 Business Concerns for non-construction purposes. As the Owner/Developer/General Contractor, we agree to award sub-contracts at least 10% of the total dollar amount for building trades work to HUD Section 3

¹ A template of the Michigan Land Bank Section 3 Compliance Plan is available on the Michigan Land Bank Purchasing website.

business concerns and at least 3% of the total dollar amount for non-construction work to HUD Section 3 business concerns.

Section 3 Business Concerns²

Section 3 Business Concerns receive a preference in HUD contracting opportunities.

HUD Section 3 Clause

_____ The following contract provisions, 24 CFR 135.38 (A-G), are required to be included in all solicitations and HUD Section 3 Covered Contracts. These provisions must be included in all contracts executed by the Michigan Land Bank as well subsequent contracts executed by Contractors, Sub-contractors and any party where HUD Section 3 covered funds are utilized:

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very-low income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

² If you would like to check your eligibility as a HUD Section 3 Business Concern, verify at the HUD website. Determine your business concern's eligibility by completing the online Section 3 Business Concerns worksheet. Select Vendor Information to review the HUD Section 3 Business Concerns worksheet.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to this provision of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

If awarded a HUD funded contract, I will a) insert the HUD Section 3 Clause language into all HUD Section 3 covered contracts and subcontracts b) submit and implement, to the greatest extent feasible, a Michigan Land Bank Section HUD Section 3 Strategic Compliance plan which will form of our contractual obligations to the Michigan Land Bank c) submit all required employment and contracting documentation; and d) take affirmative actions to comply with all HUD Section 3 notification, information, attain and report monthly efforts toward achieving established HUD Section 3 hiring and contracting compliance goals and reporting obligations.

OWNER/DEVELOPER: _____

(Print/type name)

By: _____ Date: _____

(Signature and title)

GENERAL CONTRACTOR: _____

(Print/type name)

By: _____ Date: _____

(Signature and title)

Witness: _____ Date: _____

Notarized by: _____ Date: _____

EXHIBIT A - SCOPE OF SERVICES

1. **Overview.** The Consultant investigate ADR demolition and renovation projects assigned to it, identify asbestos and hazardous materials that may be present at the project site, quantify the amounts of those materials, recommend methods for their proper removal and disposal, supervise their removal and disposal, and provide related services with respect to support activities and documentation.

The actual removal and disposal of said materials is not a part of this Contract and shall be undertaken by one or more Abatement Contractors. Due to conflict of interest concerns, the Consultant shall not be allowed to perform work for ADR as an Abatement Contractor on properties where the Consultant performed the Asbestos Survey.

2. **Consultant Qualifications.** The Consultant must have experience in identifying asbestos and hazardous materials.

The Consultant must be experienced with all the abatement requirements of Federal, State and Local laws, ordinances, rules and regulations concerning the abatement of asbestos and hazardous materials.

The consultant must have significant recent experience in the abatement of asbestos and hazardous materials in conformance with all current OSHA, NIOSH, and NESHAP regulations.

The consultant must have an AIHA certified hygienist and must be a State of Michigan Department of Consumer and Industry Service Accredited Asbestos Inspector.

3. **Services Required.** ADR anticipates that it will assign the Consultant to multiple project sites at a time. After the consultant completes its work at the project site or sites assigned to it, ADR may in its sole discretion assign the consultant additional project sites.

The services required under the proposed contract are described below, with respect to each project site. The consultant shall perform the work described for each project site assigned to it. The Consultant shall attend all meetings with ADR and all related public hearings. The Consultant shall keep written records of all such meetings and submit periodic reports as may be requested by ADR.

The services required under the proposed contract are divided into three (3) phases, as described below, with respect to each project site. The Consultant shall perform the work described in each of these phases for each project site assigned to it. Throughout each phase the Consultant shall attend

all meetings between ADR and the Abatement Contractor assigned to the project site and all related public hearings. The Consultant shall keep written records of all such meetings and submit periodic reports as may be requested by ADR.

Phase I -Investigations and Recommendations:

The Consultant shall comply with the following requirements:

- Conduct a thorough inspection of the affected facility or facility components for the presence of asbestos and hazardous material prior to any demolition or renovation activity. The survey shall include inspection, identification, and quantification of all friable and Class I and Class II non-friable asbestos containing material and of all suspected hazardous waste, and any physical sampling of materials. The survey shall be documented with the following information and provided in both PDF and written format for each address:
 - 1) The name, address, and telephone of the person who conducted the survey;
 - 2) A written statement of the qualifications of the person who conducted the survey.
 - 3) The dates the survey was conducted.
 - 4) A listing of all suspected materials containing any asbestos or hazardous waste and samples taken. Listing to include sample identification number, the sample location, the sample description, the friability of the sample (asbestos), the sample condition and other comments regarding each sample collected.
 - 5) The name, address, and telephone of any laboratory used to conduct analyses of materials for asbestos and hazardous waste content.
 - 6) A statement of qualification of the laboratory which conducted analyses;
 - 7) A list of the test methods used, including sampling protocols and laboratory methods of analysis, test data, and any other information used to identify or quantify any material containing asbestos and/or hazardous waste.
 - 8) Photographs of the facility, sampling locations, and suspected asbestos containing material and/or hazardous waste.
 - 9) Completion of a chain-of-custody form documenting the sample transport process, and submittal of the samples to the laboratory.
 - 10) Laboratory results of the samples collected.
 - 11) Recommendations for notification required by NESHAP, 40 CFR 61, Subpart M and the Michigan Department of Environmental Quality.
 - 12) Recommendations and options regarding appropriate methods of abating the asbestos and hazardous material at the site.

The Management Plan shall also include an assessment of the risks involved in removing, disposing of and otherwise abating the asbestos and hazardous materials at the project site in question and a discussion of legal and insurance considerations.

Phase II – Preparation of Abatement Documents:

The Consultant shall prepare an Abatement Plan for use by the Abatement Contractor that will actually perform the abatement work at the project site. The Abatement Plan shall include detailed specifications for the procedures to be used in removing and disposing of asbestos and hazardous materials at the project site. The specifications shall include but not be limited to the following topics:

- a. Materials and equipment to be used.
- b. Work area pre-cleaning methods.
- c. Worker decontamination enclosure.
- d. Waste container pass-out airlock.
 - e. Barriers between the work area and occupied areas.
 - f. Maintenance of enclosures.
 - g. Testing enclosures.
- h. Commencement of work.
- i. Alternative procedures.
- j. Work area entry and exit procedures.
- k. Respiratory protection requirements.
- l. Removal procedures.
- m. Encapsulation procedures.
- n. Enclosure procedures.
- o. Clean-up procedures.
- p. Clearance air monitoring.
- q. Disposal procedure and requirements.
- r. Lockdown and sprayback procedures.
- s. Reestablishment of work area and systems.

Phase III - Abatement Support Services:

The Consultant may be required to supervise the removal and disposal of asbestos, and provide related services with respect to support activities and documentation.

Consultant may be required to ensure the Abatement Contractor performs the abatement work at the location in a manner conforming to the Abatement method Consultant has recommended. Support activities shall include but not be limited to the following services:

1. Review and approval of all schedules, methods, equipment, apparatus and activities proposed by Abatement contractor.
2. Preparation of completion checklist and acceptance requirements.
3. Implementing medical monitoring procedure.
4. Monitor abatement project.
5. Laboratory services.

While the Consultant will not be responsible for day-to-day abatement activities, the Consultant shall be required to periodically visit the project site, attend meetings, and ensure the Abatement Contractor complies with the Abatement Plan prepared in Phase II.

***The Consultant will be required to provide final inspection and air clearance.**

Records of all work performed by the Consultant in Phase III shall be forwarded to the MLB.

4. Notice to Proceed. The Consultant shall commence performance its services under this Contract upon receipt of a written Contract. The Contract will identify the project site at which the Consultant shall perform its services. The Consultant shall adhere to the schedule for the completion of services as set forth in the Contract.
5. Adherence to Laws and Regulations.
 - a. The Consultant shall comply with, and shall require its Associates to comply with, all applicable federal, state and local safety, health, and environmental laws, regulations, permits, ordinances and orders (Safety Regulations@), particularly those Safety Regulations relating to asbestos. In addition, with respect to each project site to which the Consultant shall monitor the work of the Abatement Contractor at that project site to ensure the Abatement Contractor complies with said Safety Regulations.

- b. By way of example and not by way of limitation, the Consultant shall have the responsibility of being familiar with, complying with, and ensuring that its Associates and the Abatement Contractor comply with, all requirements of the federal regulations on asbestos such as those currently set forth in 40 C.F.R. part 61, subpart M, or which may hereafter be in effect. Consequently shall take particular care to ensure that Consultant, its Associates, and the Abatement Contractor adhere to following:
- (a) Thoroughly inspect the project site prior to commencement of demolition or renovation, as required by 40 C.F.R.'61.145(a);
 - (b) Provide written notice of intention to demolish or renovate, as required by 40 C.F.R. '61.145(a) and (b), to the Wayne County Air Quality Management Division, or to any other entity the United States Environmental Protection Agency may designate as its authorized representative;
 - (c) In the written notice of intention to demolish or renovate, estimate the amount of Regulated Asbestos-Containing Material to be removed and estimate the amount of Category I and Category II non-friable Asbestos-Containing Material that will not be removed before demolition, as required by 40 C.F.R.'61.145(b)(4)(vi);
 - (d) Ensure that no Regulated Asbestos-Containing Material is stripped, removed, or otherwise handled or distributed unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the relevant provisions of 40 C.F.R. part 61 and the means of complying with them, is present, as required 40 C.F.R.'61.145(c)(8);
 - (e) Remove all Regulated Asbestos-Containing Material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal, as required by 40 C.F.R.'61.145(c)(1);
 - (f) Follow all procedures for asbestos emission control set forth in 40 C.F.R.'61.145(c);
 - (g) Comply with Appendix A to 40 C.F.R. part 61 subpart M, headed Interpretive Rule Governing Roof Removal Operations@;
 - (h) Follow all disposal procedures set forth in 40 C.F.R.'61.150;
 - (i) In the event that air cleaning methods are used to control asbestos emissions, comply with air-cleaning requirements set forth in 40 C.F.R.'61.152;

- (j) Comply with 49 C.F.R. parts 171 and 172, which regulate the transportation of asbestos-containing waste material and related matters, to the extent those regulations apply to the activities of Consultant, its Associates, or the Abatement Contractor; and
- (k) Conform to workers' safety health regulations as specified in 29 C.F.R."1910.1001 and. 1926.1101.

6. Term. The term of this Contract shall extend for one (1) year from the date of approval. The MLB shall have the options to extend the contract for an additional one-year period.

EXHIBIT B - FEE SCHEDULE

I. General

- (a) The Contractor shall be paid for those Services performed pursuant to the Contract amount, for a one year period and for any one-year extension, beginning on the date this Contract is approved by ADR.
- (b) Payment for the proper performance of the Services shall be contingent upon receipt by ADR of an Invoice for Payment. The Invoices must be received by ADR not more than five (5) days after the completion of services and signed by an authorized officer or designee of the Contractor.

II. Project Fees

POSITION	HOURLY RATE
Principal or Project Manager	\$ _____
Certified Industrial Hygienist	\$ _____
Certified Hazardous Manager	\$ _____
Industrial Hygienist	\$ _____
Building/Hazardous Inspector	\$ _____
Project Designer/Manager	\$ _____
Air Monitoring/Hygiene Technician	\$ _____
Reports/Editing	\$ _____
Clerical	\$ _____
Report copy (each)	\$ _____
Total Inspection Cost of an average 1,500 Sq Ft Residential Structure:	
Including all labor & Materials w/ 1 written and 1 Electronic (PDF) report	\$ _____
20 Lab samples (3 day)	\$ _____
Air Monitoring	\$ _____
Total	\$ _____
Inspection capacity Per Week	_____
Individual Project Completion (inspection to report) timeline (days)	_____

TESTING RATES

Air Samples-PCM-24 hours Turnaround	\$ _____
Air Samples-PCM-3 days Turnaround	\$ _____
Bulk Samples-PLM-24 hours Turnaround	\$ _____
Bulk Samples-PLM-3 days Turnaround	\$ _____
Air Monitoring –(on site) per 8 hr/day	\$ _____

LABORATORY ANALYSIS RATES

PCB Wipe Samples	\$ _____
Lead Paint (chips & Wipes)	\$ _____
EP ToxiMLB	\$ _____
TCLP-Full	\$ _____
Metal	\$ _____
Volatiles	\$ _____
Semi-Volatiles	\$ _____
Reactivity	\$ _____
Pesticides (8080)	\$ _____
Herbicides (8150)	\$ _____
Ignitability (Flash Point)	\$ _____
Organic Analysis-601,602	\$ _____
Organic Analysis-8020, 8021	\$ _____
Other Analysis = Cost Plus 15%	

EXHIBIT C - HUD SECTION 3 FEDERAL REGULATIONS

[Code of Federal Regulations]
[Title 24, Volume 1]
[Revised as of April 1, 2010]
From the U.S. Government Printing Office via GPO Access
[CITE: 24CFR135]

[Page 703-721]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER I--OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 135_ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS--Table of Contents

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135.90 Reporting.

135.92 Recordkeeping and access to records.

Appendix to Part 135

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Source: 59 FR 33880, June 30, 1994, unless otherwise noted.

Effective Date Note: At 59 FR 33880, June 30, 1994, part 135 was revised effective August 1, 1994 through June 30, 1995. At 60 FR 28325, May 31, 1995, the effective period was extended until the final rule implementing changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992 is published and becomes effective.

Subpart A_General Provisions

Sec. 135.1 Purpose.

(a) Section 3. The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

(b) Part 135. The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

Sec. 135.2 Effective date of regulation.

The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

[60 FR 28326, May 31, 1995]

Sec. 135.3 Applicability.

(a) Section 3 covered assistance. Section 3 applies to the following HUD assistance (section 3 covered assistance):

(1) Public and Indian housing assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance:

(i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);

(ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and

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(iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

(2) Housing and community development assistance. Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects;

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; and

(iii) Other public construction.

(3) Thresholds--(i) No thresholds for section 3 covered public and Indian housing assistance. The requirements of this part apply to section 3 covered assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by section 3, regardless of the amount of the contract or subcontract.

(ii) Thresholds for section 3 covered housing and community development assistance--(A) Recipient thresholds. The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds \$200,000.

(B) Contractor and subcontractor thresholds. The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.

(C) Threshold met for recipients, but not contractors or subcontractors. If a recipient receives section 3 covered housing or community development assistance in excess of \$200,000, but no contract exceeds \$100,000, the section 3 preference requirements only apply to the recipient.

(b) Applicability of section 3 to entire project or activity funded

with section 3 assistance. The requirements of this part apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.

(c) Applicability to Indian housing authorities and Indian tribes. Indian housing authorities and tribes that receive HUD assistance described in paragraph (a) of this section shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) Other HUD assistance and other Federal assistance. Recipients, contractors and subcontractors that receive HUD assistance, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

Sec. 135.5 Definitions.

The terms Department, HUD, Indian housing authority (IHA), Public housing agency (PHA), and Secretary are defined in 24 CFR part 5.

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the

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ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with

State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of "section 3 business concern" in this section.

Contract. See the definition of "section 3 covered contract" in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Employment opportunities generated by section 3 covered assistance means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in Sec. 135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with section 3 covered projects (as described in Sec. 135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project.

Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing authority (HA) means, collectively, public housing agency and Indian housing authority.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

Housing development means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild programs mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian tribes shall have the meaning given this term in 24 CFR part 571.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income person. See the definition of "section 3 resident" in this section.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood area means:

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(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.204(c)(1).

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Nonmetropolitan county means any county outside of a metropolitan area.

Other HUD programs means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for "section 3 covered projects," as defined in this section.

Public housing resident has the meaning given this term in 24 CFR part 963.

Recipient means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means a business concern, as defined in this section--

(1) That is 51 percent or more owned by section 3 residents; or

(2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or

(3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

Section 3 clause means the contract provisions set forth in Sec. 135.38.

Section 3 covered activity means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

Section 3 covered assistance means: (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;

(2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;

(3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act;

(4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; or

(iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. ``Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). ``Section 3 covered contracts" also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the

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purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 joint venture. See Sec. 135.40. Section 3 resident means:

(1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income

families; or

(ii) A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Section 8 assistance means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR part 882, subpart G.

Service area means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

Very low-income person. See the definition of "section 3 resident" in this section.

Youthbuild programs. See the definition of "HUD Youthbuild programs" in this section.

[59 FR 33880, June 30, 1994, as amended at 61 FR 5206, Feb. 9, 1996]

Sec. 135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; provided however, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may not be redelegated by the Assistant Secretary.

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Sec. 135.9 Requirements applicable to HUD NOFAs for

section 3 covered programs.

(a) Certification of compliance with part 135. All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to funding awards made under the NOFA. Additionally the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) Statement of purpose in NOFAs. (1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed \$200,000, the NOFA must include a statement that one of the purposes of the assistance is to give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(c) Section 3 as NOFA evaluation criteria. Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be assigned, will be specified in the NOFA.

Sec. 135.11 Other laws governing training, employment, and contracting.

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) Procurement standards for States and local governments (24 CFR 85.36)--(1) General. Nothing in this part 135 prescribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR 85.36(c)

that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) Flexible Subsidy Program. Multifamily project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d), and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) Procurement standards for other recipients (OMB Circular No. A-110). Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A-110, section 3 is a

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Federal statute that expressly encourages a geographic preference in the evaluation of bids or proposals.

(c) Federal labor standards provisions. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a--276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in "approved apprenticeship and training programs," as described in paragraph (d) of this section.

(d) Approved apprenticeship and trainee programs. Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.

(e) Compliance with Executive Order 11246. Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended by Executive Order 12086, and the Department of Labor

regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

Subpart B_Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

Sec. 135.30 Numerical goals for meeting the greatest extent feasible requirement.

(a) General. (1) Recipients and covered contractors may demonstrate compliance with the "greatest extent feasible" requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical targets.

(b) Training and employment. The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) Numerical goals for section 3 covered public and Indian housing programs. Recipients of section 3 covered public and Indian housing assistance (as described in Sec. 135.5) and their contractors and subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:

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(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one period beginning in FY 1996;

(iii) 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.

(2) Numerical goals for other HUD programs covered by section 3. (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the

contract or subcontract awards do not meet the threshold specified in Sec. 135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;

(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:

(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.

(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in Sec. 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and

(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.

(c) Contracts. Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in Sec. 135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

(d) Safe harbor and compliance determinations. (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.

(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or

contractor also can indicate other economic opportunities, such as those listed in Sec. 135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.

Sec. 135.32 Responsibilities of the recipient.

Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the

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operations of its contractors and subcontractors. This responsibility includes but may not be necessarily limited to:

(a) Implementing procedures designed to notify section 3 residents about training and employment opportunities generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

(b) Notifying potential contractors for section 3 covered projects of the requirements of this part, and incorporating the section 3 clause set forth in Sec. 135.38 in all solicitations and contracts.

(c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in Sec. 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of section 3 residents and contract award to section 3 business concerns that exceed those specified in Sec. 135.30;

(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.

(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

(f) A State or county which distributes funds for section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in 135.30 regardless of the number of local governments receiving funds from the section 3 covered assistance which meet the thresholds for applicability set forth at 135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

Sec. 135.34 Preference for section 3 residents in training and employment opportunities.

(a) Order of providing preference. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority provided in paragraph (a) of this section.

(1) Public and Indian housing programs. In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

- (i) Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);
- (ii) Residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance (category 2 residents);
- (iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);
- (iv) Other section 3 residents.

(2) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:

- (i) Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents); and
- (ii) Participants in HUD Youthbuild programs (category 2 residents).
- (iii) Where the section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority;

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(iv) Other section 3 residents.

(3) Recipients of housing assistance programs administered by the Assistant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located.

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located.

(b) Eligibility for preference. A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a section 3 resident, as defined in Sec. 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

(c) Eligibility for employment. Nothing in this part shall be construed to require the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

Sec. 135.36 Preference for section 3 business concerns in contracting opportunities.

(a) Order of providing preference. Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(1) Public and Indian housing programs. In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses);

(ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) Housing and community development programs. In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

(iii) Other section 3 business concerns.

(b) Eligibility for preference. A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in Sec. 135.5.

(c) Ability to complete contract. A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested,

sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to

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perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36(b)(8)).) This regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

Sec. 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where

the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Sec. 135.40 Providing other economic opportunities.

(a) General. In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) Other training and employment related opportunities. Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring section 3 residents in

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management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) Other business related economic opportunities. (I) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 963 regarding HA contracts to HA resident-owned businesses. A recipient or contractor may

employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A section 3 joint venture means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

Subpart C [Reserved]

Subpart D_Complaint and Compliance Review

Sec. 135.70 General.

(a) Purpose. The purpose of this subpart is to establish the procedures for handling complaints alleging noncompliance with the regulations of this part, and the procedures governing the Assistant Secretary's review of a recipient's or contractor's compliance with the regulations in this part.

(b) Definitions. For purposes of this subpart:

(1) Complaint means an allegation of noncompliance with regulations of this part made in the form described in Sec. 135.76(d).

(2) Complainant means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

(3) Noncompliance with section 3 means failure by a recipient or contractor to comply with the requirements of this part.

(4) Respondent means the recipient or contractor against which a complaint of noncompliance has been filed. The term "recipient" shall have the meaning set forth in Sec. 135.7, which includes PHA and IHA.

Sec. 135.72 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of

allegations of noncompliance made under Sec. 135.76, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 2 CFR part 2424 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any

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period of debarment, suspension, or otherwise ineligible status.

[59 FR 33880, June 30, 1994, as amended at 72 FR 73493, Dec. 27, 2007]

Sec. 135.74 Section 3 compliance review procedures.

(a) Compliance reviews by Assistant Secretary. The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) Form of compliance review. A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) Where compliance review reveals noncompliance with section 3 by recipient or contractor. Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) Continuing noncompliance by recipient or contractor. A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor. Where appropriate, debarment, suspension, and

limited denial of participation may be applied to the recipient or the contractor, pursuant to HUD's regulations at 2 CFR part 2424.

(e) Conducting compliance review before the award of assistance. Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) Consideration of complaints during compliance review. Complaints alleging noncompliance with section 3, as provided in Sec. 135.76, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations in this part.

[59 FR 33880, June 30, 1994, as amended at 72 FR 73493, Dec. 27, 2007]

Sec. 135.76 Filing and processing complaints.

(a) Who may file a complaint. The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by an individual representative of section 3 business concerns.

(b) Where to file a complaint. A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC, 20410.

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(c) Time of filing. (1) A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges noncompliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the complaint may be closed.

(d) Contents of complaint--(1) Written complaints. Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant's name and address;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) Amendment of complaint. Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure, technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

(e) Resolution of complaint by recipient. (1) Within ten (10) days of timely filing of a complaint that contains complete information (in accordance with paragraphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient's contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(f) Informal resolution of complaint by Assistant Secretary--(1) Dismissal of complaint. Upon receipt of the recipient's written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant

Secretary shall review the complaint to determine whether it presents a valid

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allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the complaint fails to present a valid allegation of noncompliance with section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) Informal resolution. Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the section 3 covered assistance was provided.

(3) Effective date of informal resolution. The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.

(g) Sanctions. Sanctions that may be imposed on recipients that fail to comply with the regulations of this part include debarment, suspension and limited denial of participation in HUD programs.

(h) Investigation of complaint. The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary's discretion, the investigation would further the purposes of section 3 and this part.

(i) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(j) Judicial relief. Nothing in this subpart D precludes a section 3 resident or section 3 business concerning from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

(Approved by the Office of Management and Budget under control number 2529-0043)

Subpart E_Reporting and Recordkeeping

Sec. 135.90 Reporting.

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3. Where the program providing the section 3 covered assistance requires submission of an annual performance report, the section 3 report will be submitted with that annual performance report. If the program providing the section 3 covered assistance does not require an annual performance report, the section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

(Approved by the Office of Management and Budget under control number 2529-0043)

Sec. 135.92 Recordkeeping and access to records.

HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are

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maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

Appendix to Part 135

I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents

- (1) Entering into "first source" hiring agreements with organizations representing Section 3 residents.
- (2) Sponsoring a HUD-certified "Step-Up" employment and training program for section 3 residents.
- (3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.
- (4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information

about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in Sec. 135.34) reside.

(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

(6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a section 3 project is located.

(9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one

of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102, and Sec. 905.201(a)(6).)

(16) Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.

(17) Undertaking job counseling, education and related programs in association with local educational institutions.

(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents

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previously hired for employment opportunities.

(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.

(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

II. Examples of Efforts To Award Contracts to Section 3 Business Concerns

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).

(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.

(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2

business concerns.

(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(15) Developing a list of eligible section 3 business concerns.

(16) For HAs, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.

(17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.

(19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.

(20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.

(21) Actively supporting joint ventures with section 3 business concerns.

(22) Actively supporting the development or maintenance of business

incubators which assist Section 3 business concerns.

III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the section 3 contracting preference for each of

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the competitive procurement methods authorized in 24 CFR 85.36(d).

(1) Small Purchase Procedures. For section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.

(i) Solicitation. (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

- the section 3 covered contract to be awarded with sufficient specificity;
- the time within which quotations must be submitted; and
- the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) Award. (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered,

including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) Procurement by sealed bids (Invitations for Bids). Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid--

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

x=lesser of:

When the lowest responsive bid is less than \$100,000. 10% of that bid or \$9,000.

When the lowest responsive bid is:

At least \$100,000, but less than \$200,000. 9% of that bid, or \$16,000.

At least \$200,000, but less than \$300,000. 8% of that bid, or \$21,000.

At least \$300,000, but less than \$400,000. 7% of that bid, or \$24,000.

At least \$400,000, but less than \$500,000. 6% of that bid, or \$25,000.

At least \$500,000, but less than \$1 million. 5% of that bid, or \$40,000.

At least \$1 million, but less than \$2 million. 4% of that bid, or \$60,000.

At least \$2 million, but less than \$4 million. 3% of that bid, or \$80,000.

At least \$4 million, but less than \$7 million. 2% of that bid, or \$105,000.

\$7 million or more..... 1 1/2% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) Procurement under the competitive proposals method of

procurement (Request for Proposals (RFP)). (i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

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(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFQ shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFQ.