

Section 3 Policy for Covered HUD Funded Activities

This Section 3 policy pertains to training, employment contracting, and other economic opportunities arising in connection with the expenditure of Federal housing assistance and community development assistance that is used in conjunction with the following activities:

- Housing rehabilitation,
- Housing construction, and
- Other public construction.

All Recipients and Sub-recipients of Section 3 Covered Assistance (including but not limited to contractors, sub-contractors, developers, grantees, CHDOs, non-profits, and local government entities) must be in compliance with the provisions of this policy in order to be eligible for DCA awards.

TABLE OF CONTENTS	PAGE
BACKGROUND	2
I. Applicability	2
II. Definitions	2
III. Goals of the Section 3 Regulation	6
IV. Sub-Recipient Responsibilities	6
V. Sub-Recipient & Contractor Responsibilities	8
VI. Preferences and Eligibility	9
VII. Other Economic Opportunities	10
VIII. DCA Section 3 Responsibilities	10
IX. Complaints and Compliance	10
X. DCA Standard Section 3 Operating Procedures	12
• Section 1 – Sub-Recipients & Contractors: Hiring	12
• Section 2 – Sub-Recipients & Contractors: Procurement	13
• Section 3 – Sub-Recipients & Contractors: Contracting	15
• Section 4 - Solicitation Package and Certification Documents	
○ Mandatory Section 3 Solicitation Package	
○ Section 3 Clause	
○ Section 3 Solicitation Overview and Instructions to Contractors	
○ Section 3 Contract Compliance Cure & Termination Process	
○ Section 3 Self Certification & Action Plan Form	
○ Previous Certification Form	
○ Assurance of Compliance Certification Form	
○ Resident Self Certification & Skills Data Form	

BACKGROUND ON THE SECTION 3 REGULATION:

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992 (Section 3), is to “ensure that employment and other economic opportunities generated by certain HUD financial funding shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed toward low and very low-income persons, particularly those who are recipients of government funding for housing and to Business Concerns which provide economic opportunities to low- and very low-income persons.”

Consistent with 24 CFR Part 135, as a recipient of HUD Housing and Community Development Funding, the State of Georgia Department of Community Affairs (DCA) requires fulfillment of Section 3 obligations on all contracts subject to 24 CFR Part 135 that make use of that assistance. These policies are implemented for contract amounts as specified in 24 CFR Part 135 whether it is designated as housing construction, housing rehabilitation, lead based paint abatement, or other public construction project. DCA works to ensure the provision of employment, training, contracting, and other economic opportunities to low-income persons. In doing so, DCA utilizes Section 3 as a means of promoting stability and self-sufficiency of Section 3 Residents. Implementation procedures may be amended periodically by DCA to ensure that the policy requirements are being met and/or to enhance the efficiencies of compliance.

PART I. APPLICABILITY:

Section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992. Section 3, as amended, requires that economic opportunities generated by Federal Housing and Community Development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

Section 3 requirements apply to **all** projects and activities funded in whole or in part with covered funds and the **entire** project budget is then subject to Section 3.

PART II. DEFINITIONS:

Please refer to the 24 CFR 135.5 for a full list of prevailing definitions found in the regulation.

Employment Opportunities Generated by Section 3 Covered Assistance: All employment opportunities generated by the expenditure of applicable Federal Section 3 covered funding (i.e.,

Housing and Community Development Funding) and, with respect to Section 3 covered Housing and Community Development Funding, all employment opportunities arising in connection with Section 3 Covered Projects.

Full-Time: For sub-recipients and contractors, this term refers to an employee assigned to a position who regularly works a minimum of forty (40) hours per week on a continuous basis. For DCA, this term refers to an employee who is assigned to an unclassified position who regularly works a minimum of forty (40) hours per week on a continuous basis. Regular full-time employees will be eligible to receive full State-sponsored benefits and accrue any form of service credit.

Housing and Community Development Funding: Resources from the U.S. Department of Housing and Urban Development (HUD) covered by Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) include Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Solutions Grant (ESG), Housing Opportunities for Persons with AIDS (HOPWA), and Neighborhood Stabilization (NSP) programs, as well as certain grants awarded under HUD Notices of Funding Availability (NOFAs). The requirements for Section 3 only apply to the portion(s) of covered funding used for project/activities involving housing construction, rehabilitation, demolition, and/or other public construction.

Low Income Person: A person whose household (including single persons) has a total income that does not exceed 80% of the median income for the project area.

New Hires: Full-time employees for at-will, permanent, temporary or seasonal employment opportunities for any Section 3 covered contract.

Recipient: An entity which receives Section 3 covered assistance directly from HUD (i.e., DCA) or from any another recipient (e.g., local government, PHA or other public body, public or private non-profit 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). For the purpose of this policy, the phrase, “any other recipient” will carry the same definition as “Sub-recipient”.

Resident Owned Business (ROB): A Business Concern owned or controlled by low- or very low-income residents who reside within the legal boundaries where the funds are expended. A ROB must meet these requirements: (a) at least 51% owned and operated by Section 3 residents, and (b) whose management and daily business operations are controlled by one or more such individuals. For purposes of Section 3 compliance, a ROB must also meet Subpart A to the definition of a Section 3 Business Concern.

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

Section 3 Business Concern: As defined by HUD, an entity:

- A. That is Fifty-one (51%) percent or more owned by Section 3 Residents; or
- B. Whose permanent, full-time employees includes persons, at least 30 percent of whom are current Section 3 Residents, or were Section 3 Residents within three (3) years of the date of first employment with the Business; or
- C. That provides evidence of a commitment to subcontract in excess of 25 percent of the total contract award amount (including any modifications) to Section 3 Business Concerns as defined in A or B. Example: If the Contract Amount is \$1,000,000, the contractor must subcontract in excess of 25%, or greater than \$250,000, to a Section 3 Business Concern (s) as defined in A or B in this part.

Section 3 Clause: The contract provisions and sanctions set forth in 24 CFR 135.38

Section 3 Covered Activity: Any activity that involves housing construction, rehabilitation, or other public construction funded by Section 3 covered assistance.

Section 3 Covered Assistance: The requirements of part 135 apply to Recipients of covered Section 3 Housing and Community Development Funding for which the amount of the assistance exceeds \$200,000. These requirements also apply to contractors and subcontractors performing work on projects using Federal Housing and Community Development Funding from DCA for which the Recipient's award exceeds \$200,000 and the contract or subcontract exceeds \$100,000. If the Recipient's award of assistance exceeds \$200,000, but the contracts and subcontracts do not exceed \$100,000, then only the Recipient is subject to the Section 3 requirements. The Recipient's responsibility includes awarding contracts, to the greatest extent feasible, to Section 3 business concerns.

Section 3 Covered Contract: 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 for the purchase of supplies and materials except whenever a contract for materials includes the installation of the materials.

Section 3 Covered Project: 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 applicable Federal Housing and Community Development Funding.

Section 3 Joint Venture: 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:

- Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- Performs at least 25% of the work and is contractually entitled to compensation proportional to its work.

Very Low-Income Person: A person whose household (including single persons) has a total income that does not exceed 50% of the median family income for the project area.

PART III. GOALS OF THE SECTION 3 REGULATION:

DCA's Section 3 protocol seeks to aid Section 3 residents to the greatest extent feasible in three ways, listed in order of preference:

A. Hiring low- and very low-income workers

DCA requires that a sub-recipient and its contractors make every effort within their disposal to attempt to hire at least 30% Section 3 residents of the aggregate number of full-time new hires, with a preference for Section 3 residents in this order:

- 1: Residents of HUD-assisted housing
2. Residents at the site where the work is being performed
- 3: Residents of the city where the work is being performed
- 4: Residents of the county where the work is being performed

B. Awarding contracts to Section 3 business concerns

DCA requires that the sub-recipient and its contractors make every effort within their disposal to award at least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction, and other public construction, to Section 3 business concerns. DCA also requires that the sub-recipient and its contractors make every effort within their disposal to award at least 3% of the total dollar amount of all "Other" Section 3 covered contracts.

C. Providing other economic opportunities

If a sub-recipient or contractor identifies a greater need, other training and employment opportunities may be provided to substitute for goals A and B. In such cases, a sub-recipient or contractor must provide training and other employment opportunities as

described in Part VII equal to or exceeding 3% of the total contract award in order to meet this goal.

PART IV. SUB-RECIPIENT RESPONSIBILITIES:

The sub-recipient of DCA Housing and Community Development Funding accepts the responsibility of not only enforcing the Section 3 requirements, but also for pro-actively providing notice, encouraging, and facilitating compliance with Section 3 subject to the definition of a Section 3 Covered Project. The sub-recipient will have fulfilled this responsibility when they can provide evidence that the following have occurred in the case of every contract and sub-contract solicitation that exceeds the threshold requirements of 24 CFR Part 135:

The following actions are required for all contract and sub-contract solicitations:

- A) Notifying Section 3 residents of opportunities through posting of job openings in community sources that are generally available to low income residents and the general public, including but not limited to: the local community newspaper; the most widely distributed newspaper; the management office of the local housing authority, or homeless agency, or/local low-income housing community; the local workforce board; the local office of the Georgia Division of Family and Children Services; and the local office of the Georgia Department of Public Health serving the county in which the project is located.
- B) Conveying that the contract work is a Section 3 Covered Contract in any advertisement for bids and proposals by placing the following language in each advertisement/public notice and website: **“This project is covered under the requirements of Section 3 of the HUD Act of 1968.”**
- C) Notifying contractors of Section 3 requirements in any pre-bid meeting held.
- D) Incorporating the HUD mandated Section 3 clauses in all contracts where the work to be performed 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).
- E) Providing Resident Certification and Affidavit forms for employment at the sub-recipient’s business offices and allowing applications to be submitted at appropriate local locations.
- F) Encouraging the training of Section 3 residents by the contractors.
- G) Reporting quarterly on its efforts regarding Section 3 implementation on the DCA prescribed mechanism or form.

- H) Refusing to award contracts to businesses or persons that have previously violated Section 3 requirements.
- I) Using the attached Solicitation Package for each procurement associated with a covered project indicating that the work to be performed is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C.170lu (Section 3).
- J) Documenting actions taken to comply with Section 3 requirements including all results and impediments using the DCA prescribed mechanism or form.

Sub-recipients also must implement at least one (1) of the following actions:

- K) Facilitating an opportunity fair annually for contractors to meet interested Section 3 residents for possible employment. A list can be developed as a resource for the sub-recipient and contractors when seeking to hire Section 3 workers in the future.
- L) When employment opportunities arise or are anticipated, posting all job sites funded by DCA with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting. The sign should be no smaller than 24" x 24" in Black ink and specifically read:

"This project is covered under Section 3 of the HUD Act of 1968 which requires that any new hiring opportunities first be directed to low- and very low-income persons in this community. Please contact (list the contact person name and number) for information on any employment, contracting and sub-contracting opportunities."

PART V. SUB-RECIPIENT AND CONTRACTOR RESPONSIBILITIES:

All sub-recipients and contractors must submit prior to an award exceeding \$100,000 the prescribed forms in the attached solicitation package describing their proposal to implement Section 3. Omission of a satisfactorily completed solicitation package prior to award makes that contractor ineligible for award. Regardless of the amount of the potential contract award, all sub-recipients and contractors that wish to claim a Section 3 preference must submit with any bid or proposal the *Section 3 Self-Certification and Action Plan* and the *Section 3 Business Concern Self Certification* that is part of the attached solicitation package. Prior to award of a contract exceeding \$100,000, the remainder of the solicitation package must be prepared in its entirety. No preference may be claimed after bids are opened.

The only safe harbors for determining whether Section 3 requirements have been met are the following:

- A. The 30% new hiring of Section 3 Residents goal;

- B. The 10% Section 3 Business Concern Contracting for Building Trades Work goal; and,
- C. The 3% Section 3 Business Concern Contracting for “Other” Covered Contracts goal.

As DCA does not execute final funding contracts, it is reliant upon the compliance of its sub-recipient and/or contractor(s) to execute DCA’s Section 3 initiatives. If the goals above cannot be met by the sub-recipient and/or contractor, the sub-recipient and/or contractor must provide documentation explaining why those numerical goals could not be met, including a description of any actions taken, any impediments encountered, and any other economic opportunities provided (See Part VII – Other Economic Opportunities). This documentation must be submitted to DCA for review and approval. DCA will take each sub-recipient’s explanation into consideration when making the determination of compliance.

In addition to the notice requirements for both hiring and contracting, other examples of activities to demonstrate effort to comply with the Safe Harbor Limits are listed in the appendix to part 135 of the Code of Federal Regulations—24 CFR Part 135 and include:

- 1. Distributing or posting flyers advertising positions to be filled;
- 2. Contacting the local government or housing authority for a list of residents who have expressed interest in Section 3 employment;
- 3. Holding job informational meetings for residents, contractors, etc...;
- 4. Contacting agencies administering HUD YouthBuild programs and requesting their assistance in recruiting HUD YouthBuild program participants for training and employment positions.

PART VI. PREFERENCES AND ELIGIBILITY:

Note: All persons who are recipients of housing assistance from the government are Section 3 residents. Residents of HUD assisted housing are top priority Section 3 residents (Tier One). HUD assisted housing includes: (A) public Housing, (B) Housing Choice Voucher holders, (C) substance abuse rehabilitation housing, (D) domestic violence shelters, (E) transitional housing facilities, (F) homeless shelters, and (G) veterans housing. The businesses owned by Section 3 residents (ROBs) are top priority business concerns (Tier One). When employment or contracting opportunities are offered and all requirements are met and remain equal, HUD assisted housing residents and ROBs within the area of the project shall be provided preference over other Section 3 residents/business concerns and non-Section 3 residents/business concerns.

- A) Regarding the hiring of Section 3 residents, preference, in the following order, shall be given to those residents who live:
 - 1. In HUD assisted housing.
 - 2. At the site where the work is being performed.
 - 3. In the city where the work is being performed.
 - 4. In the county where the work is being performed.

- B) Regarding the contracting opportunities for Section 3 business concerns, preference shall be given to business concerns, in the order of preference described in Section A of Part VI, Preference and Eligibility, meeting these definitions and in this order:
1. Resident Owned Businesses (ROBs) owned and operated at 51% by Section 3 Residents.
 2. Businesses that employ Section 3 residents at no less than 30% of the contractors aggregate full time staff.
 3. Contractors that at the time of bid show evidence (meaning the specific name and preference met) of their intent to award no less than 25% of their total award to Section 3 business concerns.
- C) A Section 3 resident seeking employment must fulfill the requirements of the sought position and, if asked, must provide evidence of their Section 3 status (e.g., proof of residency in public housing development; evidence of participation in a HUD YouthBuild program operated in the metropolitan area (or non-metropolitan county) where the Section 3 covered assistance is spent; evidence that the individual resides in the Section 3 area and is a low or very low-income person as defined in Section 3(b) (2) of the U.S. Housing Act of 1937). Recipient agencies may choose to allow prospective Section 3 residents to self-certify their eligibility. Any self-certification should include a statement of penalty for falsifying information. A Section 3 Business Concern seeking to win a contract must fulfill the requirements of the contract and, if asked, provide evidence of their Section 3 status.

PART VII. OTHER ECONOMIC OPPORTUNITIES:

The Other Economic Opportunities provision may only be used when a contractor or sub-recipient desires to claim a preference under Part VI and cannot comply with the hiring or subcontracting goals set forth in the Preference Tier structure, or, based on observed special needs, has concluded that providing Other Economic Opportunities will be a greater benefit to Section 3 Residents or Businesses. Whenever the Other Economic Opportunities provision is employed, the actions must equal or exceed 3% of the total contract value including all labor and material costs as well as any change orders to these costs.

Firms that will provide other economic opportunities will be responsible for soliciting and contracting a qualified firm/individual experienced in providing a Georgia Department of Labor Approved training curriculum consistent with Section 3 requirements of 135.11 in the area of Section 3 resident training in the following areas:

- Employment Readiness and Professional Development
- Section 3 Small Business Concern Development Training
- Computer Literacy and Data Entry Skills Training

- Employment Skills Training (Any Viable Employment Field)
- Other training curriculum approved by DCA

The acceptability of these efforts will be determined by DCA in the case of a sub-recipient, and by the sub-recipient in the case of a contractor, or in cases of a complaint, by HUD.

PART VIII. DCA SECTION 3 RESPONSIBILITIES:

To Be Added.

PART IX. COMPLAINTS AND COMPLIANCE:

Any Section 3 resident or business concern that feels that the Section 3 regulations were not complied with may file a complaint directly to the Assistant Secretary for Fair Housing and Equal Opportunity at the following address (or as otherwise directed by HUD):

Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Regional Field Office
40 Marietta Street, NW
Atlanta, Georgia 30303

The complaint must be in writing and be received within 180 days from the date of the action upon which the complaint is based. It should include the complainant's name and address, the sub-recipient's or contractor's name and address, and a description of the acts in question. The complainant will receive a response from HUD within 10 days in which further investigation will be explained.

PART X. DCA STANDARD SECTION 3 OPERATING PROCEDURES

Policy Effective Date: _____, 20__ Procedural Change Date: _____, 20__

Procedure Title: Section 3

This operating procedure is tied to the Operating Policy on Section 3 designed to achieve and maintain compliance with the HUD Act of 1968 revised in 1992 and in 1994.

The procedures contained within are relative to the Section 3 daily operations in:

- Hiring
- Procurement
- Contracting
- Compliance Management
- Solicitation Package and Certification Documents

Section 1 – Sub-Recipients and Contractors: Hiring

This procedure encompasses all full time employment types including, long term, short term, temporary and special assignments. In the process of seeking new employees for the sub-recipient, contractor, or subcontractor, the following procedures should be followed in an effort to create as many employment opportunities for Tier 1 HUD direct beneficiaries:

Step 1: Post the position in community sources that are generally available to low income residents and the general public. It is required that a minimum of three (3) of the following listed sources will be exercised at least once prior to extending an offer of employment to anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e., Department of Labor)
- F) Local office of the Georgia Division of Family and Children Services
- G) Local office of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

Step 2: Be certain to list in the notice that the position is a **“Section 3 Covered Position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply.”**

Step 3: In reviewing all applicants, be certain to first select candidates that best fit the position requirements. If a Tier I resident is identified as a qualified candidate, all things being equal with others in consideration, a preference for employment should be given to the Section 3 Resident based on the Policy order established in Part VI – Preferences and Eligibility.

Step 4: In cases where a sub-recipient or contractor establishes a relationship and requirement with any temporary employment agency contractor, the temporary employment agency contractor or temporary employment agency must require placements to its sub-recipient or contractors to complete the Self Certification form clarifying their qualifications as a qualified Section 3 Resident. Any person certifying as a qualified Section 3 Resident must be given Preference for any Section 3 covered assignment with the sub-recipient or contractor providing they meet all other position requirements.

Section 2 –Sub-Recipients and Contractors: Procurement

Whenever a contract opportunity is solicited, these steps must be followed in order to comply with DCA’s Section 3 Policy.

ROB Verification: Whenever ROB status is sought, the sub-recipient or contractor staff shall request address and ownership verification of the 51% Owner/Operator rule as stated in the HUD Act of 1968. Use of the **“Section 3 Self-Certification Form”** attached to this policy is an acceptable statement of address and business data, when presented along with all other required incorporation documents, including any Letter of Issuance of a Federal Employer Identification Number (FEIN) and state Articles of Incorporation.

Step 1: *This step is only applicable when a public housing authority is involved in the transaction.* During the development process of any solicitation or work project, there should be a determination as to whether or not the work can be and/or should be isolated to Resident Owned Businesses (ROB’s) under the **24 CFR Part 963.12 Alternative Procurement Method**. If so, then Steps 2-8 should be followed with respect for **ROB’s ONLY**. Keep in mind, a qualified ROB can be one that is a Joint Venture Partnership where a non-ROB can participate at no more than 49% ownership, operations and profit. A statement where both parties have committed to these terms is required as validation of ROB status.

Step 2: As a direct method of encouraging greater participation and election of Section 3 Preference by contractors, DCA requires that all sub-recipient and contractors conduct at least one pre-bid meeting or workshop to facilitate the meeting of contractors (large and small) in hopes that more opportunities will be afforded all parties in covered DCA funded contracts. These

steps must be in compliance with State of Georgia procurement laws. Where a conflict occurs, the sub-recipient or contractor should not conduct such acts that would constitute a violation.

Step 3: Post the contract opportunity in community sources that are generally available to Section 3 Businesses, low income residents and the general public. It is required that a minimum of three (3) of the listed sources will be exercised at least once prior to entering into a contract with anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e. Georgia Department of Labor)
- F) Local Office of the Georgia Division of Family and Children Services
- G) Local Offices of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

DCA recommends that all such posting periods shall last at least one calendar week.

Step 4: The sub-recipient or contractor must place a notice of the contracting opportunity(ies) in any public housing resident newsletters, notices or bulletins as may be available and must check the HUD Section 3 Business Registry to determine if there are any Section 3 businesses in the County where the work will be performed. If there are Section 3 businesses in the County that may be able to perform the work, the sub-recipient or contractor must provide a copy of the contracting opportunity(ies) (e.g., bid notices) to the Section 3 businesses. See the HUD Section 3 Business Registry at: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.

Step 5: All ads must include a notice that the contract opportunity is a **“Section 3 Covered Contract and that Section 3 Business Concerns are encouraged to apply.”**

Step 6: All procurements must include the attached **“Solicitation Package”** for sub-recipients and contractors to complete and return with their applications/responses. Any application/response claiming a preference must include the satisfactorily completed *Section 3 Self-Certification and Action Plan* and the *Section 3 Business Concern Self Certification*.

Step 7: In reviewing the solicitation responses, any contractors that claim a preference and are identified as qualified Section 3 Concerns should be reviewed and if legitimate, granted a Preference in contracting, all other things being equal.

Step 8: When procurements require point scores as part of the award process, the sub-recipient or contractor shall ensure that a method of providing Preference exists based on the solicitation

criteria to secure the most qualified firm or individual for the contract. Under no circumstances shall a contract be awarded to a firm (Section 3 or Non-Section 3) if they fail to meet minimum standards or do not score high enough to surpass “competitive range” scoring. **Section 3 Preference only is to be considered after all other relative quantitative and qualitative factors have been scored and weighted.**

Step 9: All solicitations exceeding \$100,000 shall require that applicants/respondents prior to award convey prior compliance with Section 3 on any HUD funded contract. **If a contractor has not complied on any HUD funded contract effective on or after January 1, 2014, they should be considered non-responsive.**

Step 10: All solicitations exceeding \$100,000 must include a certification of prior compliance with HUD Section 3 for all HUD funded contracts effective on or after January 1, 2014 as a requirement for award. See the attached form titled: “Previous Compliance Certification.”

Section 3 - Sub-Recipients and Contractors: Contracting

Step 1: In addition to the required Section 3 contract language provided in 24 CFR §135.38, the following language is to be added to all new contracts effective immediately:

“All contractors claiming a Preference in contracting by meeting any of the three qualifications including: a Resident Owned Business, Hiring/Employing 30% of New Hires, and/or sub-contracting at least 25% of their total award to a Section 3 Concern, shall maintain that status throughout the life of the contract. Failure to meet this requirement will result in penalties up to and including contract termination.”

Step 2: Any sub-recipient or contractor claiming a Preference **must be in compliance prior to the issuance of a notice to proceed** by DCA, sub-recipient, or contractor based on the policies established for the applicable DCA funding program.

Step 3: The sub-recipient or contractor must maintain compliance. If at any time a sub-recipient or contractor fails to bring the contract into compliance, DCA, the sub-recipient, or contractor must withhold all future payments until the contract is in compliance or until other penalties have been levied as stated below.

DCA, the sub-recipient, or the contractor shall execute these remedies to achieve compliance in this order:

- A. Based on the first observation or report of non-compliance with Section 3, the sub-recipient or contractor will be sent an e-mail by the compliance manager notifying them of their non-compliance issue. The sub-recipient or contractor will have until the next payroll or 10 business days, whichever is less, to bring the contract into compliance and/or justify in writing why they cannot meet compliance requirements.

- B. DCA, the sub-recipient or contractor must render a response to the violating party within 10 business days of receipt of the violating party's letter of reason for non-compliance. If DCA, the sub-recipient, or the contractor deems the reason to be unacceptable, at its option, DCA, the sub-recipient, or the contractor can extend the response period one time for up to 5 business days to allow the violating party to identify and secure other compliance options.
- C. If the violating party fails to take any corrective action to bring the contract into compliance within the allotted time, or DCA, the sub-recipient, or the contractor rejects any of the corrective plans and justifications for non-compliance, DCA, the sub-recipient, or the contractor will either terminate the contract immediately or impose liquidated damages equal to the number of days out of compliance divided by the total contract period multiplied by the contract amount. For example, if a violating party is out of compliance for 30 days of a total contract period of 120 days and as part of total contract of \$600,000, then the liquidated damages will equal 25% (30/120) of the total contract amount (\$600,000), or \$150,000. At DCA's determination, any liquidated damages received must be paid to the sub-recipient or DCA, at DCA's determination, and be used to promote economic opportunities for Section 3 Residents and Business Concerns.

DCA, the sub-recipient, or the contractor will hold **all funds due to the violating party until such time that a financial workout is completed.**

Additionally the violating party may be banned by DCA, the sub-recipient, and the contractor on future HUD funded projects.