

ADDENDUM NUMBER ONE (1)

Date: January 15, 2020

Project Name: Fire Station #20
4445 Medgar Evers
Jackson, Mississippi

CCD Project No. Canizaro Cawthon Davis - 16004
City of Jackson - 15B7003.401

Copies To: All bid document holders of record
Owner
Civil Tech, Inc
Spencer Engineers, Inc.
Innovative Engineering Services, LLC
City Building Department

A Professional Association
Gregory D Cawthon AIA
T Steven Davis AIA

The following changes, additions, deletions, clarifications and/or substitutions to the project manual (including the Specifications) and Drawings dated January 15, 2018 and are hereby made part of the Contract Documents. Receipt of this addendum shall be acknowledged by inserting its number and date in the Bid Proposal Form where indicated.

REFER TO THE SPECIFICATIONS

- 1.1 Table of Contents, Division 0. Add attached "Advertisement for Bids" preceding Section 00213 Instructions to Bidders.
- 1.2 Table of Contents, Division 0 – Bidding Requirements, under Section 00732. Add: Attachment E and Attachment F.
- 1.3 Section 00213 – Instructions to Bidders, Article 1.13, Pre-Bid Conference. Revise sentence as follows: A pre-bid conference will be held on January 28, 2020, at 10 AM in the Andrew Jackson conference at the City of Jackson offices at 200 South President Street, Jackson, Mississippi.
- 1.4 Section 00213 - Instructions to Bidders, Part 3 - Submitting the Proposal Form, Article 3.1 Submittal, add paragraph A.
 - A. Bidders have the option to submit electronic bids which can be submitted at the web address indicated on the Advertisement for Bids. See attached "Advertisement for Bids".
- 1.5 Section 00732 - Special Conditions of the Contract, Part 1, Article 1.1, Paragraph C Attachments: Add "Attachment E" and "Attachment F".
- 1.6 Section 00732 – Special Condition of the Contract. Insert "Attachment E" - Davis Bacon Prevailing Wage Rate
- 1.7 Section 00732 – Special Condition of the Contract. Insert "Attachment F" after the Section Three Clause, page 10.

END OF ADDENDUM NUMBER ONE (1)

ADVERTISEMENT FOR BIDS AND NOTICE TO CONTRACTORS

Sealed bids will be received by the City Clerk of Jackson, MS, at 219 South President Street, Jackson, MS 39201 or at Post Office Box 17, Jackson, MS 39205 until **3:30 PM, local time, Tuesday, February 25, 2020** at which time bids will be publicly opened and read aloud for:

New Fire Station #20, 4445 Medgar Evers, Jackson, MS 39213
City of Jackson Project No. 15B7003-401

Proposals shall be submitted on forms furnished and sealed and deposited with City Clerk prior to the hour and date above designated. A copy of the construction documents (plans and/or specifications) for the construction being sought has been filed with the City Clerk of Jackson, MS. Official bid Documents can be downloaded from Central Bidding at www.centralbidding.com. Electronic bids and/or reverse bids can be submitted at www.centralbidding.com. For any questions relating to the electronic bidding process, please call Central Bidding at 225-810-4814. Questions regarding plan clarifications or requests for information should be directed to the architect as follows:

Canizaro Cawthon Davis
129 South President Street
Jackson, MS 39213

A copy of the Bid Documents (including plans and specifications for the Work) are being made available via digital and original paper copy. Plan holders are required to register and order bid documents from the Jackson Blueprint Online Plan Room website <http://planroom.jaxblue.com>. There is no charge for registration or to view the bid documents online. Bid documents are non-refundable and must be purchased through the website. All plan holders are required to have a valid email address for registration. A printed bid set is approximately \$130.00 plus shipping and applicable sales tax and an electronic downloadable set is \$20.00 plus applicable sales tax. For questions regarding website registration and online orders please contact Jackson Blueprint & Supply at (601)353-5803.

The City of Jackson hereby notifies all bidders that in compliance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d to 2000d-4 that all bidders will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

The City of Jackson is committed to the principle of non-discrimination in public contracting. It is the policy of the City of Jackson to promote full and equal business opportunity for all persons doing business with the City. As a pre-condition to selection, each contractor, bidder or offeror shall submit a completed and signed **Equal Business Opportunity (EBO) Plan Application**, with the bid submission, in accordance with the provisions of the City of Jackson's Equal Business Opportunity (EBO) Executive Order. Failure to comply with the City's Executive Order shall disqualify a contractor, bidder or offeror from being awarded an eligible contract. For more information on the City of Jackson's Equal Business Opportunity Program, please contact of the Division of Equal Business Opportunity at 601-960-1856. Copies of the Executive Order, EBO Plan Applications and a copy of the Program, as attached, are available at 200 South President Street, Second Floor, Jackson, Mississippi.

The City of Jackson, Mississippi (“City of Jackson”) is committed to cultivating and ensuring the quality of life of its citizens, through various programs, employment, initiatives, and assistance. The City encourages all persons, corporations, and/or entities doing business within the City, as well as those who seek to contract with the City on various projects and or conduct business in the City, to assist the City in achieving its goal by strongly considering City residents for employment opportunities.

Bid preparation will be in accordance with the Instructions to Bidders bound in the project manual. The City of Jackson reserves the right to reject any and all bids and to waive any and all irregularities in respect to any bid submitted or to accept any proposal which is deemed most favorable to the City of Jackson.

A PRE-BID CONFERENCE WILL BE HELD

The Notice of the Pre-Bid Conference date, time and place will be issued by Addendum. All Contractors who intend to submit “BIDS” are encouraged to attend.

Robert K. Miller
Director of Public Works

Vanessa Henderson
Deputy Director
Housing & Community Development

This Legal Notice will appear in the *Jackson Advocate*, *Northside Sun*, *La Noticia*, *Clarion Ledger* and the *Mississippi Link* on Thursday December 26, 2019 and Thursday January 2, 2020.

"ATTACHMENT E"

"General Decision Number: MS20200051 01/03/2020

Superseded General Decision Number: MS20190051

State: Mississippi

Construction Type: Building
BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

County: Hinds County in Mississippi.

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
0 01/03/2020

ENGI0624-007 01/01/2017

Table with 3 columns: Classification, Rates, Fringes. Rows include POWER EQUIPMENT OPERATOR, Crane, and Forklift.

* IRON0798-009 01/01/2019

Table with 3 columns: Classification, Rates, Fringes. Row includes IRONWORKER, REINFORCING.

PLUM0568-008 11/01/2017

Table with 3 columns: Classification, Rates, Fringes. Row includes PIPEFITTER.

SUMS2015-012 04/03/2017

	Rates	Fringes
BRICKLAYER.....	\$ 20.29	0.00
CARPENTER, Includes Drywall Hanging, and Form Work.....	\$ 15.33	4.42
CEMENT MASON/CONCRETE FINISHER...	\$ 16.92	0.00
ELECTRICIAN.....	\$ 23.40	8.02
IRONWORKER, STRUCTURAL.....	\$ 17.39	0.00
LABORER: Common or General.....	\$ 12.95	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 16.00	1.28
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 31.50	4.25
OPERATOR: Bulldozer.....	\$ 15.14	1.03
PAINTER (Brush and Roller).....	\$ 16.00	0.00
PLUMBER.....	\$ 19.78	2.14
ROOFER.....	\$ 16.93	0.00
SHEET METAL WORKER, Includes HVAC Duct Installation.....	\$ 18.00	0.35
TILE SETTER.....	\$ 18.00	0.00
TRUCK DRIVER: Dump Truck.....	\$ 14.47	0.41

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date

for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:


Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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 KeyCite Yellow Flag - Negative Treatment
Proposed Regulation

Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos)

24 C.F.R. Pt. 135, App.

Appendix to Part 135

Effective: January 6, 2016

[Currentness](#)

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 [§ 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 § 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 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 the competitive procurement methods authorized in [2 CFR 200.320](#).

- (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 ½ % 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 ([2 CFR 200.320](#)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(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 RFP 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 RFP.

Credits

[[80 FR 75936](#), Dec. 7, 2015]

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

Current through January 9, 2020; 85 FR 1128.

End of Document

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KeyCite Yellow Flag - Negative Treatment

Proposed Regulation

Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart B. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

24 C.F.R. § 135.30

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

Currentness

(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 § 135.5) and their contractors and subcontractors may demonstrate compliance with 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 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 § 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 § 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 [§ 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 [§ 135.40](#), which were provided in its efforts to comply with [section 3](#) and the requirements of this part.

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

Current through January 9, 2020; 85 FR 1128.

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Proposed Regulation

Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart B. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

24 C.F.R. § 135.32

§ 135.32 Responsibilities of the recipient.

Currentness

Each recipient has the responsibility to comply with [section 3](#) in its own operations, and ensure compliance in the 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 § 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 § 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 § 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

§ 135.32 Responsibilities of the recipient., 24 C.F.R. § 135.32


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.

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

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24 C.F.R. § 135.34

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

Currentness

(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;

(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 [§ 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.

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

Current through January 9, 2020; 85 FR 1128.

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Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart B. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

24 C.F.R. § 135.36

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

Effective: January 6, 2016

Currentness

(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 [§ 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 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 [2 CFR 200.318\(h\)](#)). 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.

Credits

[[80 FR 75936](#), Dec. 7, 2015]

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

Current through January 9, 2020; 85 FR 1128.



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Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart B. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

24 C.F.R. § 135.38

§ 135.38 Section 3 clause.

Currentness

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\(b\)](#).

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

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24 C.F.R. § 135.40

§ 135.40 Providing other economic opportunities.

Currentness

(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 management and maintenance positions within other housing developments; and hiring [section 3](#) residents in part-time positions.

(c) Other business related economic opportunities.

(1) 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.

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

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Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart A. General Provisions

24 C.F.R. § 135.1

§ 135.1 Purpose.

Currentness

(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.

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

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Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart A. General Provisions

24 C.F.R. § 135.2

§ 135.2 Effective date of regulation.

Currentness

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.

Credits


[[60 FR 28326](#), May 31, 1995]

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

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Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart A. General Provisions

24 C.F.R. § 135.3

§ 135.3 Applicability.

Currentness

(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

(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

§ 135.3 Applicability., 24 C.F.R. § 135.3


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.

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

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24 C.F.R. § 135.5

§ 135.5 Definitions.

Currentness

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 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 § 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 § 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:

(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 [§ 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 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 [§ 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.

Credits

[[61 FR 5206](#), Feb. 9, 1996]

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

Current through January 9, 2020; 85 FR 1128.

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Proposed Regulation

Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart A. General Provisions

24 C.F.R. § 135.7

§ 135.7 Delegation of authority.

Currentness


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.

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

Current through January 9, 2020; 85 FR 1128.

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Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart A. General Provisions

24 C.F.R. § 135.9

§ 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

Currentness

(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.

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

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Code of Federal Regulations Title 24. Housing and Urban Development Subtitle B. Regulations Relating to Housing and Urban Development Chapter I. Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Refs & Annos) Subchapter B. Employment and Business Opportunity Part 135. Economic Opportunities for Low- and Very Low-Income Persons (Refs & Annos) Subpart A. General Provisions

24 C.F.R. § 135.11

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

Effective: January 6, 2016

[Currentness](#)

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 2 CFR part 200, subpart D—

(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 2 CFR 200.319 that all procurement transactions be conducted in a competitive manner. Consistent with 2 CFR 200.319, 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 2 CFR 200.320, 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 (2 CFR part 200, subpart D). 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 2 CFR part 200, subpart D, [section 3](#) is a 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.

Credits

[[80 FR 75935](#), Dec. 7, 2015]

AUTHORITY: [12 U.S.C. 1701u](#); [42 U.S.C. 3535\(d\)](#).

Current through January 9, 2020; 85 FR 1128.

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