

MISSISSIPPI STATE PORT AUTHORITY
SECTION 3 POLICIES AND PROCEDURES

INTRODUCTION

The Port of Gulfport Restoration Program (“PGRP”) is a multifaceted effort to rebuild and restore the Port of Gulfport after the damage sustained during Hurricane Katrina on August 29, 2005. The PGRP is funded by Community Development Block Grant - Disaster Recovery (“CDBG-DR”) funds received by the Mississippi State Port Authority (“MSPA”) from the Department of Housing and Urban Development (“HUD”) through the Mississippi Development Authority (“MDA”).

As recipients of HUD financial assistance, MSPA and the contractors and subcontractors (referred to collectively herein as “Contractors”) working on the PGRP are subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (“Section 3”). Section 3 requires that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, 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.

This document does not constitute the Section 3 Plan for MSPA. The Section 3 Plan for MSPA and the PGRP is a separate and distinct document. The intention of this document is to set forth the policies and procedures to which MSPA and its Contractors shall adhere in order to achieve full compliance with the requirements of Section 3.

PART 1

SECTION 3 RESIDENT OUTREACH

POLICY

It is the intent of the Mississippi State Port Authority (MSPA) to continue its good faith, comprehensive and continuing efforts to achieve its Section 3 goals through the implementation of its Section 3 Plan. A key component of this effort is the notification of Section 3 Residents regarding all Section 3 covered employment and related job training opportunities, and MSPA will employ the following procedures to provide such notification.

PROCEDURE

Pursuant to the MSPA Section 3 Resident outreach policy set forth above, MSPA shall actively seek to identify Section 3 Residents located in the PGRP project area and notify these Section 3 Residents of employment opportunities stemming from the PGRP in accordance with the following procedure:

Utilization of Local Media:

1. MSPA Compliance will be responsible for the effective utilization of local media, both electronic and print, to inform Section 3 residents of the Port's Section 3 policy and to market and promote contract and training opportunities.
2. Media sources will be selected in order to achieve the widest circulation amongst Section 3 residents.
 - a. Media Sources to be considered: *The Sun Herald; What's Happening Now in The Sun Herald; WLOX announcement; flyers in local public housing authorities; Youthbuild Program; MSPA website and Facebook page.*

Utilization of Pathways to the Port:

1. MSPA Compliance will monitor PGRP contractors for documentation that the contractors are reporting their employment opportunities to the Workforce Development Coordinator for posting with the MS WIN Job Center.
2. MSPA Compliance shall encourage contractors to review the MS WIN Job Center job-seeker postings provided by the MSPA or the Workforce Development Coordinator prior to filling any position for the Project.

Direct Communication with Public Housing Authority Residents and Previously Certified Section 3 Residents:

1. MSPA Compliance will, on a quarterly basis, conduct area workshops for Public Housing Authority Residents and local Section 3 Residents for the purpose of identifying local Section 3 Residents, educating individuals on Section 3 and highlighting any upcoming Section 3 employment and training opportunities at the PGRP. At each such workshop, MSPA Compliance will collect Section 3 Resident Certifications from participants who qualify as Section 3 Residents and include these

individuals in MSPA's Section 3 Resident Database. Prior to each Section 3 Resident Workshop, MSPA shall ensure that local Public Housing Authorities are made aware of the Workshop, its purpose and the economic opportunities available to qualified Section 3 Residents.

2. MSPA Compliance will, on a monthly basis, disseminate the most recent version of the Section 3 Resident Database to PGRP Contractors for their use in notifying Section 3 Residents of employment and training opportunities as they become available.
3. MSPA Compliance will require each Contractor to use the Section 3 Resident Database as a first-source hiring tool and submit evidence of its use to MSPA Compliance as a component of the Contractor's Section 3 Monthly Status Report.
4. MSPA Compliance will require each Contractor to contact local Public Housing Authorities whenever employment or training opportunities arise. As in the case of the Section 3 Resident Database, MSPA Compliance will require Contractors to utilize direct communication with Public Housing Authorities as a first-source hiring tool and submit evidence of such communication with their Section 3 Monthly Status Reports.
5. MSPA Compliance will also provide informational materials regarding Section 3, as well as notice of any employment and training opportunities of which MSPA Compliance is aware, to community groups, local media, and the Mississippi Department of Employment Security. The materials will also be conspicuously posted on the MSPA website.

PART 2

SECTION 3 BUSINESS OUTREACH

POLICY

It is the intent of the Mississippi State Port Authority (MSPA) to continue its good faith, comprehensive and continuing efforts to achieve its Section 3 goals through the implementation of its Section 3 Plan. MSPA's Section 3 Business outreach policy is another essential component of its Section 3 Plan. A key component to this effort is the notification of Section 3 businesses regarding all Section 3 covered contracting opportunities. MSPA is committed to making sure that previously certified Section 3 Business Concerns are aware of and receive a preference for contracting opportunities. Contractors are likewise expected by MSPA to demonstrate in their Section 3 plans and through their subsequent implementation actions that Section 3 Business Concerns are included in their subcontracting goals and are indeed targeted through each Contractor's plan, procurement policies and practices. Accordingly, MSPA will ensure that the following procedures are implemented to ensure that local Section 3 Business Concerns are notified of all Section 3 contracting opportunities.

PROCEDURE

Pursuant to the MSPA Section 3 Business Concern outreach policy set forth above, MSPA shall actively seek to notify Section 3 Business Concerns of contracting opportunities at the PGRP in accordance with the following procedure:

Utilization of Local Media:

1. MSPA Compliance will be responsible for the effective utilization of local media, both electronic and print, to inform Section 3 Business concerns of the Port's Section 3 policy and to market and promote contract and training opportunities.
2. Media sources will be selected in order to achieve the widest circulation amongst Section 3 Business Concerns. Sources to be considered are as follows:
 - a. Radio advertisement on the following stations: WJZD, WZKX, WXYK and WCPR.
 - b. TV advertisement on the following stations: WLOX and WXXV.
 - c. Internet display advertising – 30-mile radius of Gulfport, MS.
 - d. Internet key word search – 30-mile radius of Gulfport, MS.
 - e. Print display advertising: *The Sun Herald, The Gazette (At South Mississippi), The Mississippi Press, Sea Coast Echo and Pass Christian Gazebo Gazette.*
 - f. Notice of contracting opportunities posted at www.shipmspa.com.
 - g. A series of community meetings to engage various constituencies in the jobs process.

Direct Communication with Previously Certified Section 3 Businesses:

1. MSPA Compliance will, on a quarterly basis, conduct workshops for business concerns in the area for the purpose of educating those businesses on the requirements of Section 3 and highlighting any upcoming Section 3 contracting opportunities.
2. MSPA Compliance will contact, by electronic mail or telephone, each previously certified Section 3 Business Concern listed on the Mississippi Section 3 Business Directory to provide notice of any new contract opportunities. Contacts and attempts to contact (including telephone logs) the previously certified Section 3 Business Concerns shall be documented and maintained in MSPA's Section 3 records.
3. MSPA Compliance shall contact and disseminate information regarding the new contracting opportunity to local Youthbuild organizations.
4. MSPA Compliance will provide informational materials regarding Section 3, as well as notice of any contracting opportunities of which MSPA Compliance is aware, to community groups.
5. New contracting opportunities will be conspicuously posted on the MSPA website and Facebook page.
6. During any pre-bid meeting for the new contracting opportunity, all Section 3 requirements shall be covered in detail with the potential covered contractors. The specific Section 3 forms required to be submitted with the bid shall be explained in detail.

PART 3

CONTRACTOR SECTION 3 RESPONSIBILITIES

Contractors working on the PGRP are required to comply with the Section 3 requirements set forth in 24 CFR Part 135 and ensure the compliance of their subcontractors. The requirements to which Contractors must adhere are set forth herein below.

Hiring and Subcontracting Goals

Contractors working under Section 3 covered contracts must ensure that contracting, employment and training opportunities generated in connection with the PGRP, to the greatest extent feasible, 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. Specifically, Contractors must make every effort to meet the following minimum goals:

- 30% of all new hires are Section 3 Residents;
- 10% of all construction contracting opportunities go to Section 3 Business Concerns; and
- 3% of all non-construction contracting opportunities go to Section 3 Business Concerns.

A Contractor that has not met these numerical goals has the burden of demonstrating why it has not done so.

Outreach Efforts

In order to achieve the Section 3 goals set forth above, Contractors are expected to take all necessary steps to inform Section 3 Residents and Section 3 Business Concerns of MSPA's Section 3 Policy and market and promote hiring, contracting, and training opportunities. Such outreach efforts should include, but are not necessarily limited to, the following:

Resident Outreach

- Direct notification to local Public Housing Authorities of all employment opportunities generated by the contract. Each Contractor must (a) maintain documentation of its efforts to notify Public Housing Authorities of available opportunities and (b) provide copies of such documentation to MSPA as proof of its efforts to ensure that the Section 3 community is aware of employment opportunities.
- Utilization of local media, both electronic and print, that are most likely to achieve the widest circulation among Section 3 Residents, including, but not limited to, *The Sun Herald*, WLOX announcements; flyers in local public housing authorities and community centers, and announcements through local Youthbuild Programs;
- Reporting employment opportunities to the Workforce Development Coordinator for posting with the MS WIN Job Center;

- Review of the MS WIN Job Center job-seeker postings provided by MSPA or the Workforce Development Coordinator prior to filling any positions for a given project;
- Direct communication with previously certified Section 3 Residents through the use of the Section 3 Resident Database circulated periodically among contractors by MSPA.

NOTE: At a minimum, each contractor should notify Public Housing Authorities of available employment opportunities and utilize the WIN Job Center’s advertising platform, as well as the Section 3 Resident Database provided to Contractors periodically by MSPA. Each Contractor must maintain documentation of all efforts to notify the local Section 3 community of available opportunities and submit copies of such documentation to MSPA as a component of its Section 3 Monthly Status Reports for the month in which such outreach efforts occurred. If a Contractor fails to adhere to these requirements, such failure will be considered an instance of noncompliance subject to the sanctions set forth in Part 5 herein.

Business Outreach

- Utilization of local media, both electronic and print, likely to achieve the widest circulation among Section 3 Business Concerns. Media sources to be considered include, but are not limited to:
 - Radio advertisement on the following stations: WJZD, WZKX, WXYK and WCPR;
 - TV advertisement on the following stations: WLOX and WXXV;
 - Internet display advertising within a 30-mile radius Gulfport, Mississippi;
 - Internet keyword search within a 30-mile radius of Gulfport, Mississippi;
 - Print display advertising: *The Sun Herald*, *The Gazette (At South Mississippi)*, *The Mississippi Press*, *Sea Coast Echo* and *The Pass Christian Gazebo Gazette*; and
 - Website Contracting Portal with linkage to both www.shipmspa.com and www.portofthefuture.com.
- A series of community meetings to engage various constituencies in the jobs process; and
- Direct communication with previously certified Section 3 Business Concerns utilizing the Mississippi Section 3 Business Directory circulated periodically among Contractors by MSPA.

NOTE: At a minimum, Contractors should utilize the Section 3 Business Directory circulated among Contractors periodically by MSPA. If a Contractor needs to hire a subcontractor for any reason, that Contractor must first contact businesses listed in the Section 3 Business Directory and submit evidence of such contact along with its Section 3 Monthly Status Reports.

Reporting Requirements

For each project upon which it is currently working, each Contractor shall submit to MSPA a monthly status report documenting all hiring and subcontracting activity by means of the form

attached hereto as **Exhibit A** on or before the 10th day of the month following each reporting period. A Contractor shall submit a monthly status report regardless of whether or not any hiring or subcontracting activity occurred during a given reporting period. If no such activity occurred, then the Contractor shall so indicate.

On each monthly status report, a Contractor shall include the following information:

1. Project name and number;
2. Month and year of report;
3. Contractor name;
4. Contractor contact information;
5. Identity and job classification of each new hire;
6. An indication as to whether each new hire is or a Section 3 Resident;
7. Applicable HUD hiring category for each new hire;
8. Number of Section 3 Residents interviewed for each position;
9. List of all referral sources utilized in connection with each position filled;
10. If a Section 3 Resident was not hired for a position, the reason such an individual was not hired;
11. Copies of any and all outreach tools (including, but not limited to, evidence documenting notification of Public Housing Authorities regarding available employment opportunities, advertisements, emails, posters, fliers, and evidence documenting use of Section 3 Resident Database);
12. A Section 3 Resident Certification for each Section 3 Resident hired during the applicable reporting period;
13. Identity of any subcontractor hired during the applicable reporting period;
14. An indication as to whether or not each reported subcontractor is a Section 3 Business Concern;
15. The total value and effective date of the subcontract signed by each reported subcontractor;
16. The number of Section 3 Business Concerns that bid on each subcontract awarded;
17. List of all referral sources utilized in connection with each subcontract awarded;
18. If a Section 3 Business Concern was not selected in connection with a given subcontract, a reason for not selecting such a business;

19. Copies of any and all outreach tools (including, but not limited to, advertisements, emails, posters, fliers, and evidence documenting use of the Section 3 Resident Database);
20. Confirmation that MSPA has approved the subcontractor and the subcontract;
21. A description of all efforts to provide Section 3 Residents and Business Concerns with first consideration for employment and contracting opportunities, and all outreach activities performed. If there was no such activity, then the contractor should provide a detailed explanation for such lack of activity.

Each Section 3 monthly report should be signed and dated by an authorized representative of the Contractor for which the report is submitted.

PART 4

POLICY & PROCEDURE FOR NOTIFYING PGRP CONTRACTORS OF ALL SECTION 3 REQUIREMENTS

POLICY

It is the intent of the Mississippi State Port Authority (MSPA) to continue its good faith, comprehensive and continuing efforts to achieve its Section 3 goals through the implementation of its Section 3 Plan. MSPA's Policy & Procedures for notifying the PGRP contractors of all of the Section 3 requirements is another essential component of its Section 3 Plan. At the outset of a new contracting relationship, MSPA is committed to making sure that all PGRP contractors are aware of and understand the Section 3 requirements pursuant to 24 CFR 135. MSPA's Section 3 Plan outlines and describes the obligations of the Contractors concerning outreach, recordkeeping, monitoring and enforcement activities. Contractors are likewise expected by MSPA to demonstrate in their Section 3 plans and through their subsequent implementation actions that any subcontractors are also notified of all Section 3 requirements, as each Contractor is responsible for the compliance of its subcontractors. Accordingly, MSPA will ensure that the following procedures are implemented to ensure that local Section 3 Business Concerns are notified of all Section 3 opportunities.

PROCEDURE

Procurement solicitations. Regardless of the method of procurement utilized (invitation for bid or request for proposal), mandatory compliance with Section 3 shall be included in all PGRP solicitations. All solicitations shall contain, at a minimum, the following provisions:

- a. "Section 3. This contract is covered by the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) ("Section 3"). Section 3 requires that when employment or contracting opportunities are generated by HUD-funded projects, preference is given to low-income persons and businesses residing in the community where the project is located. Any responsive, responsible bidder that qualifies as a Section 3 Business Concern will be given a preference during evaluation. The bidder selected for this Project will be responsible for ensuring compliance with all Section 3 requirements."
- b. Section 3 Clause.

24 CFR § 135.38 Section 3 clause.

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

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

extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

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

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

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

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

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

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

Pre-bid meetings. The requirements of the Section 3 regulations shall be a central focus of each pre-bid presentation given at the pre-bid meeting held by MSPA for potential Contractors regarding a new PGRP contracting opportunity. At a minimum, the following topics will be explained by MSPA Compliance during the pre-bid meeting:

- a. Requirements contained in MDA's Procurement Policy;
- b. Section 3 Plan requirements
- c. Reporting requirements
- d. Outreach efforts for Section 3 residents and Section 3 business concerns
- e. Minimum goals for hiring, training and subcontracting
- f. Section 3 monitoring policy and procedure for PGRP
- g. Section 3 forms required to be submitted with the bid submission.

A copy of a previous pre-bid presentation during which the Section 3 requirements were discussed by MSPA Compliance is attached as **Exhibit B**. All future pre-bid presentations shall have a portion of the presentation dedicated to Section 3 requirements for the PGRP containing the substantially similar content.

Initial Contractor Meeting. After the contract is finalized, MSPA Compliance will meet with the Contractor within the first 30 days of the contract period to discuss in detail all PGRP Section 3 requirements including record-keeping and reporting requirements. Upon conclusion of the training session, the Contractor and MSPA Compliance shall execute an "Acknowledgement of Technical Assistance" in substantially similar form to that copy attached as **Exhibit C**.

Bi-annual Section 3 Training Sessions. MSPA Compliance shall hold mandatory Section 3 training sessions twice per calendar year for all PGRP Contractors. (Only those Contractors with a subcontract greater than \$100,000 shall be required to attend.) The following topics may be covered in each training session: outreach to Section 3 Residents and Business Concerns, record

keeping requirements, reporting requirements, monitoring procedures, providing preference to Section 3 Residents when hiring and training opportunities are created and Section 3 Business Concerns when contracting opportunities are created.

Section 3 Technical Assistance. MSPA Compliance shall also hold mandatory technical assistance meetings for the PGRP Contractors if a significant Section 3 policy or procedure change is made. MSPA Compliance (and MDA upon request) shall provide Section 3 technical assistance upon request to Contractors.

PART 5

SECTION 3 COMPLIANCE OFFICER – MONITORING POLICY

POLICY

MSPA is dedicated to the spirit and purpose of Section 3. In order to best ensure the compliance of the entire PGRP, MSPA shall require full compliance of all Contractors, as applicable. To that end, MSPA intends to conduct regular compliance reviews, as well as ongoing monitoring efforts, to ensure consistent compliance by the Contractors for which MSPA is responsible.

PROCEDURE

Compliance Reviews

Pursuant to this policy, the Section 3 Compliance Officer will conduct periodic compliance reviews which consist of comprehensive analysis and evaluation of Contractors' compliance with Section 3 (including the Contractors' oversight of the Section 3 responsibilities of its subcontractors). The frequency of these reviews will depend on the duration of the contract at issue, but the reviews will occur at least twice during the contract period. Where noncompliance is found, MSPA will notify the Contractor (with copies to the subcontractor, if applicable) of the deficiency and issue directives for corrective actions. A finding of noncompliance may result in sanctions under the terms of MSPA's contract with the Contractor.

The Compliance Officer will review all Section 3 plans provided by Contractors to ensure the submissions are thorough and consistent with MSPA's Section 3 goals. Due to the privity of contract between Contractors and their subcontractors (if applicable), any evaluation of a Section 3 plan of a subcontractor will be provided to the Contractor who should then meet with the subcontractor to facilitate the corrective actions required.

Notification to the Program Participant. No less than twice per year, the Compliance Officer will meet with each Contractor for a monitoring visit. Prior to the monitoring visit, the Compliance Officer should provide the Contractor with information regarding the monitoring schedule and the areas to be reviewed. The Compliance Officer should instruct the Contractor to make available all necessary staff and supporting documentation (for both the Contractor and its subcontractors) during the monitoring.

Entrance Conference. At the beginning of each monitoring visit, the Compliance Officer should conduct an entrance conference to:

1. Explain how the monitoring will be conducted;
2. Identify/confirm MSPA staff and representatives who will assist during the monitoring; and
3. Verify the documentation and activities to be reviewed and how access to files will be granted.

Assessment Process. Monitoring entails interviews and file reviews to verify and document compliance and performance. In performing monitoring activities, the Compliance Officer will assess and document compliance with Section 3 requirements based upon:

1. File reviews to determine the completeness and accuracy of the information of the Contractor and its subcontractors (if applicable); and
2. Interviews with Contractors to clarify and determine the accuracy of the information and to assess the level of oversight the Contractor is exercising to ensure subcontractor compliance.

In performing the assessment, the Compliance Officer will fully complete a Section 3 Compliance Checklist, in the form substantially consistent with **Exhibit “D”**.

Because it is unlikely that the Compliance Officer will be able to monitor all of a Contractor's activities, projects and/or functions, sampling is generally expected to form the basis for drawing conclusions about the Contractor's performance.

For nonrandom samples, the Compliance Officer should give consideration to unresolved problems remaining from previous monitoring and any new types of activities being undertaken. Any sample review or spot-check of Contractor records that raises questions concerning the accuracy of the data or a lack of oversight over subcontractors indicates the need for further follow-up.

Throughout the monitoring, the Compliance Officer should maintain an on-going dialogue with the Contractor in order to keep the Contractor informed as to how the monitoring is progressing, enable discussions of any problem areas encountered, and provide the Contractor with an opportunity to make “on-the-spot” adjustments or corrections or present additional information to help the Compliance Officer in the performance of his or her duties.

The responses to the questions in **Exhibit D** form the basis for monitoring conclusions and should be supplemented by Contractor’s records copied or reviewed during the monitoring. Monitoring conclusions must be clear.

Exit Conference. At the end of the monitoring review, the Compliance Officer should conduct an exit conference with the Contractor to discuss preliminary conclusions. In part, this serves to confirm the accuracy and completeness of the information used to form the basis for the monitoring conclusions. It may also highlight areas of disagreement between the Compliance Officer and the Contractor.

Monitoring Conclusions

As a result of monitoring, the Compliance Officer may reach one or more conclusions that:

1. Performance was adequate or exemplary;
2. There were significant achievements;
3. There were concerns that need to be brought to the attention of the Contractor;
4. Technical assistance was provided or is needed; and/or
5. There were findings that require corrective actions.

All conclusions, whether positive or negative, must be supportable, defensible, and adequately documented.

Where deficiencies are identified, the following procedures apply:

1. **Findings.** Where an identified deficiency results in a finding, the finding must include the condition, criteria, cause, effect, and required corrective action.
 - a. The condition describes what was wrong or what the problem was.
 - b. The criteria cite the regulatory or statutory requirements that were not met.
 - c. The cause explains why the condition occurred.
 - d. The effect describes what happened because of the condition.
 - e. The corrective action identifies the action(s) needed to resolve the problem and, unless inapplicable or there are extenuating circumstances, should include the time frame by which the Contractor is to respond to the finding. Unless otherwise deemed advisable by the Compliance Officer, the Contractor shall have thirty (30) days to address the corrective actions raised in the monitoring report.
2. **Concerns.** Monitoring concerns brought to the Contractor's attention should include the condition, cause, and effect. The Compliance Officer should suggest or recommend actions that the Contractor can take to address a concern, based on sound management principles or other guidelines. However, corrective actions are not required for concerns.

Sanctions. Identified monitoring deficiencies that rise to the level of a "finding" require corrective action. The Compliance Officer must validate that there is sufficient documented information and/or evidence to support a finding of noncompliance. The Contractor being monitored has a responsibility to determine, or assist the Compliance Officer in determining, the reason why a requirement was violated or provide evidence of compliance. The Compliance Officer is required to make findings when there is evidence that a statute, regulation or requirement has been violated but retains discretion in identifying appropriate corrective action(s) to resolve deficiencies. Sanctions for noncompliance shall include, but are not limited to, termination of the Contractor's contract for breach, debarment, withholding of payment or suspension.

Ongoing Monitoring Efforts

MSPA shall conduct ongoing monitoring of all hiring and subcontracting activity generated by Contractors on the PGRP and the degree to which those Contractors are complying with Section 3.

If MSPA discovers that a Contractor is out of compliance with the requirements of Section 3, then it shall undertake the following sequence of remedial steps to resolve such issues:

- **Step One:** Upon the first instance of noncompliance, MSPA shall issue a letter to the Contractor identifying any instances of noncompliance discovered by MSPA during its ongoing review of that Contractor's Section 3 monthly reports (a "Notice Letter"). This letter shall constitute official notice of the Contractor's noncompliance, and it shall explain the actions that may be taken if those issues of noncompliance are not remedied.

The Notice Letter shall also set forth a date by which each issue of noncompliance must be remedied (the "Compliance Deadline"). Additionally, MSPA shall notify the Contractor that it must begin submitting Section 3 monthly reports on a weekly, rather than monthly, basis until any compliance issues have been resolved. Weekly Section 3 status reports shall then be submitted to MSPA by the Contractor on the Monday immediately following the week for which each report is submitted.

- **Step Two:** If the Contractor fails to correct, to the satisfaction of MSPA, all instances of noncompliance set forth in the Notice Letter by the Compliance Deadline, then MSPA may withhold future payments until the Contractor has remedied all compliance issues. Alternatively, MSPA may, in its discretion, extend the Compliance Deadline in writing if such an extension is warranted under the circumstances.
- **Step Three:** If the Contractor fails to correct any of the compliance issues set forth in the Notice Letter within one month of the expiration of the Compliance Deadline, then MSPA may seek further sanctions, including, but not limited to, termination of the contract between MSPA and the Contractor, suspension, debarment, or any other remedy which may be available to MSPA at law or in equity.

PART 6

SECTION 3 REQUIREMENTS FOR ALL PGRP SOLICITATIONS AND SECTION 3 PREFERENCE

A. PGRP Solicitations

The following Section 3 provisions must be included in all PGRP solicitations verbatim as indicated below:

- 1. Advertisements for Bids, Requests for Proposals and Invitation/Instructions to Bidders.** (The term “bid”/“bidder” shall be replaced with “proposal”/“respondent” when a Request for Proposals is the method of procurement.)

“This project is covered by the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) (“Section 3”). Section 3 requires that when employment or contracting opportunities are generated by HUD-funded projects, preference is given to low to very low-income persons and businesses residing in the community where the project is located. Section 3 businesses are encouraged to submit a bid as any responsive, responsible bidder that qualifies as a Section 3 Business Concern will be given a preference during evaluation. A bidder selected for this Project will be responsible for ensuring compliance with all Section 3 requirements including, but not limited to, the hiring and contracting decisions made on the Project.”

- 2. Procurement by Invitations to Bidders.**

To ensure all bidders, to the greatest extent feasible, meet the minimum numerical contracting goals, the following provision must be included verbatim in the Invitation/Instructions to Bidders:

- “(1) A bidder must certify as a Section 3 Business Concern; or
- (2) A bidder must provide a Section 3 plan detailing how the bidder will meet the required Section 3 subcontracting goal of providing subcontracting opportunities to Section 3 Business Concerns in an amount not less than 10% of the total contract amount. In the subcontracting plan, the bidder should include the necessary number of Section 3 Business subcontractors to meet or exceed the goal for this contract. The plan should also clearly state the total dollar value that will be self-performed and the total dollar value which will be subcontracted to Section 3 Business Concerns; providing for each listed Section 3 Business Concern a fully completed Section 3 Business Certification form including the company name, address, contact person, telephone number, and e-mail address; the amount to be performed/subcontracted; the scope of work to be performed; and the anticipated timeframe for performance of the work.

If a bid is submitted without satisfying one of the two requirements set forth above, then that bid will be deemed **non-responsive and rejected; provided, however, that in the event the Prime Contractor bidder, itself, is a Section 3 Business Concern and provides the requisite documentation in support thereof, such bidder will be encouraged, but not required to extend subcontracting opportunities to Section 3 Business Concerns as contemplated by this paragraph.**”

- 3. Procurement by Requests for Proposals (RFP)**

To ensure all respondents, to the greatest extent feasible, meet the minimum numerical contracting goals, the following provision must be included verbatim in all RFPs:

“Any respondent submitting a response to an RFP for a Section 3 covered contracting opportunity on the PGRP must include in its response a statement asserting the respondent’s commitment to the achievement of the Section 3 goals of the project. The respondent’s statement shall demonstrate its commitment to the achievement of the Section 3 goals in one of the following two ways:

(1) Respondent’s statement must include its certification as a Section 3 business concern (with substantiating documentation); or

(2) Respondent’s statement must include its intent to, immediately upon receiving the contract award, provide a Section 3 subcontracting plan to Owner detailing how it will meet the required Section 3 subcontracting goal of providing non-construction subcontracting opportunities to Section 3 business concerns in an amount not less than 3% of the total contract amount. Included with this statement, Respondent should identify the necessary number of Section 3 business subcontractors which would satisfy the Section 3 subcontracting goal for this project and a fully completed Section 3 Business Concern Certification for each subcontractor. (*Please note that amounts of subcontracts should not be included as part of Respondent’s statement as costs will not be part of the evaluation criteria.)

Immediately upon award (within 3 business days of notification of award), the awardee must provide Owner with its subcontracting plan including the necessary number of Section 3 business subcontractors to meet or exceed the goal for the Section 3 covered contract. The plan must also clearly state the total dollar value that will be self-performed and the total dollar value which will be subcontracted to Section 3 Business Concerns; providing for each listed Section 3 Business Concern a fully completed Section 3 Business Certification form including the company name, address, contact person, telephone number, and e-mail address; the amount to be performed/subcontracted; the scope of work to be performed; and the anticipated timeframe for performance of the work.

If a proposal is submitted without this statement and information satisfying one of the two requirements set forth above, then that proposal will be deemed non-responsive and rejected from further consideration; provided, however, that in the event the respondent, itself, is a Section 3 Business Concern and provides the requisite documentation in support thereof, such respondent will be encouraged, but not required to extend subcontracting opportunities to Section 3 business concerns as contemplated by this paragraph.”

B. Section 3 Preference to be made available for Section 3 Bidders/Respondents.

1. Section 3 Preference to be provided under the IFB process.

In all PGRP Invitations to Bid, a preference shall be available for all qualified and otherwise responsive and responsible Section 3 bidders. Therefore, the following provision must be included in the Award section of all PGRP Invitations/Instructions to Bidders:

“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 (as described in 24 CFR 135.36 and set forth in paragraph C below) and with the lowest responsive bid if that bid:

(1) is within the maximum total contract price established in the Port’s budget for the specific project for which bids are being taken, and

(2) 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 . | 1½ % of the lowest responsive bid, with no dollar limit. |

If no responsive bid by a Section 3 Business Concern meets the requirements set forth immediately above, the contract shall be awarded to a responsible bidder with the lowest responsive bid.”

2. Section 3 Preference to be provided under the RFP process.

In all PGRP Requests for Proposals, a preference shall be available for all qualified and otherwise responsive and responsible Section 3 respondents. Therefore, the following considerations must be included in the Evaluation section as appropriate for that specified contract:

For contracts awarded under the request for proposals method of procurement, the RFP shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

One of the evaluation factors shall address both (a) the preference for section 3 business concerns and (b) the acceptability of the respondent’s 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 15 percent of the total number of available points to be set aside for the evaluation of these two components.

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 and set forth below.

With respect to the second component (the acceptability of the Section 3 strategy), the RFP shall require the disclosure of the respondent’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 respondent’s responsibility will include the submission of an acceptable Section 3 strategy. The contract award shall, in accordance with Mississippi’s public purchasing laws, 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.

3. Priority Ranking (24 CFR 135.36).

In the event two (2) or more Section 3 Business Concerns submit qualified bids or proposals, then the order of priority preference as set forth in 24 CFR 135.36 shall be utilized, and the Section 3 Business Concerns shall be considered in the following order:

- (1) 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);
- (2) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);
- (3) Other Section 3 Business Concerns.