

BOSTON HOUSING AUTHORITY

SECTION 3 POLICY

Economic Opportunities for BHA Residents and Other
Low- and Very-Low Income Persons

DRAFT

Adopted _____ *2012*

Table of Contents

I. BHA’s Section 3 Program 3

II. Key Definitions..... 3

III. Section 3 Compliance Requirements..... 4

IV. Selection Priority and Procedures for Section 3 Residents and Section 3 Business Concerns; Description of Section 3 Database System and Training Fund..... 5

A. Section 3 Resident Hiring & Training 5

B. Section 3 Resident Training 6

C. Section 3 Business Concern Contracting..... 6

D. Section 3 Database System..... 7

E. Section 3 Training Fund 8

VII. BHA Departmental Responsibilities..... 11

VIII. Section 3 Coordinator & Civil Rights Policy Manager..... 18

IX. Sanctions 19

X. Complaint Procedures 20

XI. Glossary 22

XII. Section 3 Clause..... 24

DRAFT

Boston Housing Authority
Section 3 Policy

I. BHA's Section 3 Program

The Boston Housing Authority (“BHA” or “Authority”) Section 3 Program is a key component of the Authority’s mission to establish and support communities and programs that are designed to transform BHA residents and their low and very low income neighbors and fellow Bostonians from aid dependency to economic self-sufficiency. To this end, BHA’s Section 3 Program documents the Authority’s commitment to leverage, to the greatest extent feasible, the federal housing funds it receives and awards in the form of service contracts into meaningful and sustainable training, employment, business and economic opportunities for BHA residents, the low and very low income persons living in and around the City of Boston, and business entities that employ or are owned by BHA residents and/or the low and very low income residents of the greater Boston area.

BHA’s Section 3 Program standards, procedures and practices described in this Policy, as well as in the various documents, forms and processes referenced in this Policy, represent BHA’s implementation of and compliance with Section 3 of the Housing and Urban Development Act of 1968 and related federal regulations (“Section 3”). In this regard, the provisions of Section 3 as well as BHA’s Section 3 Program forms and documents, as such may be amended over time, are incorporated in and made a part of this Policy.

The various programmatic and statutory requirements notwithstanding, the cornerstone of BHA’s Section 3 Program shall be always the expected good faith efforts and commitments of the contractors and entities that participate in and are awarded economic opportunities pursuant to BHA’s federally funded procurement and contracting programs. In partnership with these contractors and entities, the BHA shall endeavor to ensure that the Program’s transformative purposes shall be pursued and achieved.

II. Key Definitions

Recipient is used throughout this document to refer to any entity that receives Section 3 covered funding from the BHA or is an entity that is subject to award of a BHA administered federally funded contract. Depending on context, the term may refer to bidders, sub-bidders, contractors, sub-contractors, business entities, developers, suppliers, vendors, service providers, and public or private organizations and/or respondents to and involved with BHA federal funded procurements and contracts. The BHA, as a recipient of federal housing funds subject to Section 3, also falls within the definition of recipient.

Section 3 covered activity means any activity, procurement or contract funded by Section 3 covered HUD assistance including, but no limited to: all manner of procurements; and professional and construction service contracts and subcontracts. Section 3 covered activities do not include procurements or contracts for the purchase of supplies and materials that do not require the furnishing of labor, time, and/or effort relating to the installation of the supply and/or material.

Boston Housing Authority
Section 3 Policy

Section 3 business concern means a business entity organized in accordance with applicable state law and licensed in Massachusetts to conduct the business for which it was formed; and which: is 51% or more owned by Section 3 residents; or maintains a ratio of permanent, full-time employees who are Section 3 residents, or who were Section 3 residents at the time of hire, equal to at least 30%; or provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded by it to business concerns that meet the qualifications set out above.

Section 3 resident means an individual who is at least 18 years of age and lawfully resides at any of the public housing developments owned by the BHA or is a low- or very-low income resident of non-BHA property in the Boston metropolitan area.

III. Section 3 Compliance Requirements

Recipients may demonstrate compliance with BHA's Section 3 Program by meeting the goals set forth below for providing training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns. The goals for hiring, training, and contracting represent minimum targets for a Section 3 covered contract. The goals are not set-asides or quotas; rather, they constitute a "safe harbor" for recipients for Section 3 Program compliance. In the absence of evidence to the contrary, a recipient who meets the minimum goals for hiring *and* contracting opportunities will be considered to have complied with Section 3 Program requirements. The recipient is responsible for complying with the requirements of BHA's Section 3 Program in its own operations and for assuring compliance in the operations of its subcontractors, if any, as compliance is evaluated in the aggregate. Section 3 Program requirements apply to all BHA contractors and subcontractors and to all BHA federally funded contracts regardless of the contract dollar amount.

In evaluating compliance under BHA's Section 3 Program, a recipient that has not met the goals described below has the burden of demonstrating why it was not feasible to meet the goals. Such justification must include documented evidence of the actions taken to meet the Section 3 Program numeric goals.

To demonstrate compliance with BHA's Section 3 Program requirements, recipients are required, to the greatest extent feasible, to achieve the minimum numerical goal standards and percentages stated in this Policy and in the specific requirements contained in BHA's standard procurement and contract documents issued with respect to specific BHA administered public procurements and contract opportunities.

Note: Labor Union and Section 3

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 the 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

Boston Housing Authority
Section 3 Policy

location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

IV. Selection Priority and Procedures for Section 3 Residents and Section 3 Business Concerns; Description of Section 3 Database System and Training Fund

This section contains additional information on BHA Section 3 Program requirements and describes BHA's Section 3 Database System and Training Fund.

A. Section 3 Resident Hiring & Training

The BHA hiring and training requirement for recipients is that at least **thirty percent (30%)** of the aggregate number of new hires and trainees in any fiscal year constitute Section 3 residents. This requirement applies to all new hiring and training opportunities generated from the Section 3 covered activity. A "new hire" is a full-time employee for a permanent, temporary, or seasonal employment opportunity. An employee who has been laid off and is returning to the payroll shall be considered a "new hire" and thus triggers BHA Section 3 Program requirements.

It is the responsibility of recipients to attain Section 3 Program compliance. Any recipient that does not meet the Section 3 Program numeric goals must demonstrate why meeting the goals was not feasible. A recipient may, for example, provide evidence of local newspaper advertisements of employment opportunities and copies of flyers posted at BHA developments to show that it attempted to recruit Section 3 residents.

If no new hires are needed for a BHA project, the recipient is not required to create positions solely for the sake of Section 3 Program compliance. However, the BHA recognizes that the majority of its projects requires new hires and will closely monitor projects that do not demonstrate new hiring, training and/or business opportunities.

When new hires are needed, recipients are required to, at a minimum: notify Section 3 residents about training and employment opportunities arising out of any Section 3 covered activity; encourage the application of Section 3 residents for training and employment opportunities arising out of any Section 3 covered activity; facilitate the employment of Section 3 residents; and document actions taken to comply with these requirements and the results of such actions and impediments encountered, if any.

In order to qualify for priority status, Section 3 residents must meet the minimum qualifications of the position to be filled. When hiring Section 3 residents, recipients will provide training and employment opportunities in the **order of priority** below:

1. Residents of the BHA development (category 1 residents);
2. Residents of other BHA developments in the neighborhood of the project development (category 2 residents);
3. Residents of other BHA developments located outside the neighborhood of the project development (category 3 residents);

Boston Housing Authority
Section 3 Policy

4. Participants in HUD YouthBuild programs in the Boston metropolitan area (category 4 residents);
5. Participants in BHA's leased housing programs ("BHA leased housing participant") in the Boston metropolitan area (category 5 residents);
6. Other low-income or very-low income residents of Boston metropolitan area (category 6 residents).

Recipients are required to hire in the priority outline established above and must document instances where available higher category residents were not hired. Recipients will not be permitted to fulfill the hiring and training goal by passing over available category 1-5 residents to hire category 6 residents.

Low-income and very-low income residents are defined by their household annual gross income and household size. For current fiscal year income limits, see HUD Program Income Limits at <http://www.huduser.org/portal/datasets/il.html>.

B. Section 3 Resident Training

The BHA strongly encourages its recipients to participate in approved apprenticeship and trainee programs pursuant to and in accordance with applicable law. Specifically, recipients may use the apprenticeship program established by the Massachusetts Division of Apprenticeship, Office of Labor and Workforce Development. The division promotes and coordinates apprenticeship in the Commonwealth and is also charged with developing new programs both in the traditional building trades and non-building trade areas.

Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the Section 3 Program requirements.

C. Section 3 Business Concern Contracting

The BHA Section 3 Program contracting goals apply to all contracting and subcontracting needs generated by the Section 3 covered activities. For construction contracts, recipients must award at least **ten percent (10%)** of the total dollar amount of contracts for building trades work for maintenance, repair, rehabilitation, modernization, construction or development to qualifying Section 3 businesses concerns. For other contracts, recipients must award at least **three percent (3%)** of the total dollar amount of all other BHA contracts to qualifying Section 3 business concerns.

As with the hiring and training goals, recipients shall be responsible to attain BHA Section 3 Program compliance. Any recipient that does not meet the Program's numeric goals must demonstrate why meeting the goals was not feasible. A recipient may, for example, provide evidence of newspaper advertisements for Section 3 business concerns, written notices, and records of pre-bid meetings to show that it attempted to comply with Section 3 Program requirements to the greatest extent feasible.

If a Section 3 covered activity does not generate contracting opportunities, the recipient is not required to create contracts simply to fulfill the Section 3 Program requirements

Boston Housing Authority
Section 3 Policy

(e.g., so-called single-trade construction projects may not require sub-contracts or additional contracting).

When Section 3 covered activity is generated, recipients will at a minimum:

1. Notify Section 3 business concerns about contracting opportunities arising out of any Section 3 covered contract;
2. Encourage Section 3 business concerns to submit proposals or bids on any Section 3 covered contracts;
3. Facilitate the award of contracts to Section 3 business concerns; and
4. Document actions taken to comply with these requirements and the results of such actions and impediments encountered, if any.

The recipient will, to the greatest extent feasible, give preference to Section 3 business concerns when entering into any contract in connection with a Section 3 covered activity. When contracting with Section 3 business concerns, recipients will follow the **order of priority** outlined below:

1. Section 3 business concerns 51% or more owned by residents of the subject BHA development or whose full-time, permanent workforce includes 30% of these persons as employees (category 1);
2. Section 3 business concerns 51% or more owned by residents of other BHA developments or whose full-time, permanent workforce includes 30% of these persons as employees (category 2);
3. HUD Youthbuild programs being carried out in the Boston metropolitan area (category 3);
4. Business concerns that are 51% or more owned by Section 3 residents, or whose permanent, full-time workforce includes no less than 30% Section 3 residents, or that subcontract in excess of 25% of the total amount of subcontracts to business concerns (category 4).

As with the Section 3 resident hiring preferences, recipients are required to contract in the priority outline established above and must document instances where available higher category business concerns were available but not used. Recipients will not be allowed to fulfill the contracting goal by passing over, without appropriate documentation, responsible category 1-3 business concerns to contract with category 4 business concerns. A Section 3 business concern seeking a contract or subcontract must demonstrate to the party awarding the contract or subcontract that it is responsible and has the ability to perform successfully under the proposed terms and conditions.

D. Section 3 Database System

BHA's Office of Civil Rights ("OCR") shall maintain a database of eligible Section 3 residents and self-certified Section 3 business concerns (jointly, "the Section 3 Database System"). The Section 3 Resident Database System is designed to contain both BHA residents and low-income Boston metropolitan area residents. Individuals will be entered into the database after completing a Section 3 Resident Application, available on the BHA website and from OCR and BHA's Community Services Department

Boston Housing Authority
Section 3 Policy

("CSD"). OCR uses the Section 3 Resident Database to facilitate employment and training opportunities. Additionally, recipients may certify Section 3 residents by using the Section 3 Resident Affidavit form, available on the BHA website, and verifying proof of residency and income, if applicable. For recipients certifying Section 3 residents, BHA residency must be verified by OCR; non-BHA residency may be verified by valid photo identification.

Companies will be entered into the Section 3 Business Concern Database after completing the Section 3 Business Self-Certification form and providing supporting documentation. The Section 3 Business Concern Database is made available to recipients working to achieve Section 3 Program compliance. All contractors and businesses seeking Section 3 business concern status must complete the Section 3 self-certification process. Such self-certification will be completed on the BHA Section 3 Business Self-Certification form and be supported by appropriate documentation as referenced in the form. OCR will send a letter to the company verifying successful self-certification and entry into the database. Once entered into the database, businesses shall be required to submit documentation biennially to maintain self-certification as a Section 3 business concern. Recipients meeting the Section 3 contracting numeric goals (i.e., 10% or 3%) are responsible for verifying the eligibility of Section 3 business concerns prior to contract execution.

For purposes of this Policy, the Section 3 Database System shall include the collection of both the digital form of information contained in the database software application as well as any and all hard-copy applications and forms submitted to OCR relating to the Section 3 Database System. The Section 3 Database System shall constitute the sole source from which BHA shall share names and personal data with recipients and/or any other non-BHA entities. To facilitate release of Database System information, OCR shall require all individuals and entities listed in BHA's Section 3 Database to execute a public records release form, in a form acceptable to BHA's Legal Department, as a condition of the individual's or entity's inclusion in the database system.

E. Section 3 Training Fund

In accordance with its obligation to enforce the material terms of its public contracts, BHA, by operation of its Legal Department, reserves the right to impose monetary and other sanctions against recipients who fail or refuse to comply with contractual Section 3 requirements (Part IX, below, contains a description of possible sanctions). In this regard, the Section 3 Training Fund shall serve primarily as the designated depository for monetary sanctions recovered by the BHA in conjunction with its enforcement of Section 3 contractual requirements.

In addition, the Fund will be permitted to accept donations from non-recipients only (i.e., individuals or entities that, at the time of the making of the donation, are not under consideration for award of a BHA state or federal funded contract or subcontract or a signatory to an active BHA state or federal funded contract or subcontract). In addition, a proportionate share of public records production fees and charges associated with any and all OCR related public records requests (relating to federal funded matters only) shall be made available to OCR for deposit therein. The Fund will be administered by OCR and BHA's Procurement Department with BHA's Fiscal Affairs Department assistance in the form of financial management oversight.

Boston Housing Authority
Section 3 Policy

A three person committee (“the Section 3 Training Fund Committee”) composed of one staff member each from OCR, CSD, and the Procurement Departments shall meet as necessary to review funding priorities and make recommendations of Fund uses and grant awards in accordance with and pursuant to BHA’s Executive Committee contract and document review process. Individuals or entities seeking Section 3 Training Fund assistance will be required to submit a written Section 3 Training Fund Application, which will be reviewed by the Committee within thirty (30) calendar days of receipt. Application forms will be available on the BHA website and from OCR and CSD.

Allowable uses of Section 3 Training Funds will include: financial assistance to BHA residents and BHA Section 8 recipients for training and work-related opportunities and expenses, such as transportation, clothing, equipment, and childcare, and education and training program costs; contributions with respect to grant arrangements with governmental and/or non-profit agencies that administer or provide federal funded training and employment programs; and reimbursement and fund allocations to support internal BHA Section 3 Program related implementation, monitoring, and enforcement efforts, costs and expenses.

Section 3 Training Funds disbursed in the form of financial assistance to BHA residents and/or Section 8 recipients or distributed or used for other than support of internal BHA Section 3 Program uses or purposes will be distributed only in accordance with standards and procedures to be established by OCR and approved by BHA’s Executive Committee. The approved standards and procedures shall be appended to and incorporated within this Policy. Such standards and procedures shall, at a minimum, specify funding award and distribution practices that comply with applicable state and federal procurement laws and regulations or best practices relating to public funds award processes that provide for transparency and documented competitiveness. No portion of a Section 3 Training Fund deposit relating to a specific sanction recovery shall be disbursed and/or released and/or encumbered prior to the expiration of forty-five calendar days of the imposition of the specific sanction or prior to the final disposition of any claim or dispute relating to the imposition of the specific sanction.

V. BHA Section 3 Tenant Coordinator Program

In furtherance of its commitment to maximize Section 3 Program benefits for its resident population, the BHA Section 3 Program includes a component that anticipates and provides for training and employment opportunities that are exclusively targeted to authorized and qualified residents of BHA federally funded developments. BHA’s Section 3 Tenant Coordinator Program anticipates that recipients awarded a BHA federally funded public building or public works construction contract or related contract will hire no less than one resident to serve as the recipient’s tenant coordinator/liaison for the duration of the construction project.

This component of the Program shall be administered in accordance with the following procedures:

1. On a project-by-project basis, BHA’s Capital Construction Department (“CCD”) determines the number of Tenant Coordinators needed: Prior to issuance of a bid or proposal, CCD Project Manager/Project Architect (“Project Manager”) in

Boston Housing Authority
Section 3 Policy

conjunction with the BHA Operations Property Manager determine whether a project will require tenant coordinators (“TC”) and, if so, the minimum number of TC positions.

2. **CCD Issues Project Notices:** If one or more TC will be needed for a project, the CCD Project Manager provides the OCR Section 3 Coordinator with an email notice of the estimated number of TCs for the project. This notice shall also include the following information: (a) Job Title and Job Number; (b) the minimum number of TC positions for the job; and (c) the BHA Property Manager and Local Tenant Organization (“LTO”) representative(s) name and contact information, if applicable.
3. **OCR Distributes Project Notice:** Upon receiving the Project Notice, the Section 3 Coordinator will email the Project Notice to the Community Services Department (“CSD”), and to the LTO representative(s), if applicable, with copy to BHA Property Manager. A “Section 3 Resident Application” in a form to be designed by OCR will be attached to this email. CSD and the LTO will be instructed to assist in publicizing the availability of the TC position(s) and encouraged to refer individual applicants and forward completed applications to the Section 3 Coordinator. OCR’s email notice will indicate that LTO Board members and their family/household shall not be eligible to receive compensation as a tenant coordinator.
4. **OCR Conducts TC Recruitment:** After receiving the form confirming TC hiring opportunities from a recipient, the Section 3 Coordinator, with input from CCD and the LTO, shall compile a list of TCs available to work on the project. The Section 3 Coordinator reviews TC applications and may conduct preliminary screening interviews of TC applicants. The purpose of a screening interview is to determine whether an applicant meets the minimum qualifications for the TC position. Upon request, CCD Staff and Operations Property Managers may participate in the screening interviews.
5. **OCR Forwards TC Applications to recipients:** After compiling TC applications and conducting screening interviews, if applicable, the Section 3 Coordinator emails or faxes a list of qualified TC applicants and their applications to the recipient, with a copy to the Property Manager, CCD, and the LTO. The Section 3 Coordinator instructs the recipient on the appropriate hiring preference for the applicants listed.
6. **The recipient Notifies OCR of TC Selection(s):** The recipient makes its selection(s) for TC position(s) and notifies the individual applicants of its decision. The recipient then provides the Section 3 Coordinator with written notification of its selections for TC position(s). The Section 3 Coordinator may request information related to the recipient’s TC selection process and the criteria used to make hiring decisions. However, in no event shall the Section 3 Coordinator interfere with or otherwise influence or hinder the resident’s decision and/or reserve right to hire the TC of its choice, provided such choice does not conflict with the terms of this Policy and/or of the applicable BHA procurement or contract documents.
7. **OCR Notifies Property Manager and Others of TC Selection(s):** The Section 3 Coordinator emails the Operations Property Manager and CCD Project Manager a notice of the recipient’s TC selection(s). If requested, the Section 3 Coordinator

Boston Housing Authority
Section 3 Policy

will provide screening and selection information to the Property Manager, CCD, CSD, and the LTO.

VII. BHA Departmental Responsibilities

Although OCR is primarily responsible for implementation of BHA's Section 3 Program, the Program's successful operation is dependent on the services, assistance and cooperation of various BHA departments. CSD, Procurement, Legal, Capital Construction, Real Estate Development, Leased Housing, and Human Resources Departments and other departments perform the following key functions in implementing BHA's Section 3 Program:

Office of Civil Rights ("OCR")

The Office of Civil Rights, monitors all BHA Section 3 Program activities, coordinates the Section 3 Program efforts of BHA departments, and works with recipients, residents, and business concerns to achieve Section 3 compliance. All BHA department Request for Proposals ("RFPs"), utilizing federal funds, must be reviewed by OCR during the proposal evaluation process for Section 3 compliance.

OCR activities shall include:

1. Monitor applicable Invitation for Bids or Requests for Proposal for inclusion of Section 3 Program notification and compliance language
2. Evaluate and score Section 3 Program compliance on proposal-based contracts
3. Review recipients' Section 3 Program forms, including the Section 3 Compliance Plan
4. Monitor recipients performance in meeting the goals agreed upon in submitted Section 3 Compliance Plans
5. Consult with and make recommendations to BHA's Legal Department with respect to Section 3 Program compliance-related issues, imposition of sanctions, and the processing of Program-related public records requests
6. Make and issue written determinations regarding BHA Section 3 Program compliance with respect to proposed contract awards.
7. Maintain a list of eligible BHA Section 3 residents to provide to recipients
8. Monitor the status of Section 3 new hires submitted by recipients
9. Maintain a list of self-certified Section 3 businesses to provide to recipients
10. Work with representatives of the construction industry to increase resident access to industry training programs

Boston Housing Authority
Section 3 Policy

11. Provide Section 3 Program information and training to interested parties, including residents, businesses, contractors, and community agencies
12. Promote outreach and recruitment efforts to inform eligible and qualified BHA residents and participants of new positions available with contractors and others working for BHA
13. Manages BHA's Tenant Coordinator Employment Process
14. Serve as the liaison for the Section 3 Training Fund Committee
15. Investigate complaints from Section 3 residents and business concerns
16. Prepare and file annual Section 3 Summary Reports (HUD Form 60002)
17. Serve as primary custodian of records with respect to all BHA Section 3 Program information, documents, records and related written materials.

Community Services Department ("CSD")

The Community Services Department has an integral role in realizing the employment and training goals of BHA's Section 3 Program. CSD, in conjunction with OCR, conducts outreach and awareness activities regarding Section 3 Program job and training opportunities. CSD also coordinates authority-wide resident outreach (including mailings, meetings, and workshops) pertaining to BHA's Section 3 Program. The CSD staff works closely with the Section 3 Coordinator to identify, screen, and refer BHA residents for Section 3 Program hiring and training opportunities. CSD also assists with connecting BHA residents to employment opportunities through its network of community service providers who also work with BHA residents toward attainment of further education, skills training, and job readiness. CSD staff also uses the Section 3 Database System to enter or share the job readiness and skills assessment with the Section 3 Coordinator to make effective matches of residents to training and employment openings. A CSD representative sits on the Section 3 Training Fund Committee. Further, the Human Resources Department will forward copies of job opportunities with the BHA to the Community Services Department for posting and distribution to residents.

Procurement Department ("Procurement")

The Procurement Department ensures that all relevant procurement documents and documents submitted for consideration as bids and proposals meet BHA's Section 3 Program requirements. Procurement works closely with OCR during the period of contract awarding to confirm that BHA Section 3 Program requirements are met. Procurement secures general contractors and subcontractors current employee lists with dates of hire at notice of award. The Procurement Department, with consultation with the Legal Department, reserves the right to reject bid submissions and proposals that do not comply with applicable Section 3 Program requirements. Procurement administers the Procurement Policy, which incorporates BHA's commitment to comply with Section 3; a Procurement Department representative sits on the Section 3 Training Fund Committee.

Boston Housing Authority
Section 3 Policy

Capital Construction Department (“CCD”)

The Capital Construction Department is responsible for all aspects of BHA’s developments and facilities capital improvements program. BHA’s capital improvements program design, construction and professional services contracts are administered by designated CCD Project Managers/Project Architects (“BHA Project Managers”) pursuant to a delegation of authority emanating from BHA’s Administrator. As such, BHA Project Managers, in conjunction with BHA’s Contract Attorney, are the BHA employees with primary responsibility and authority to administer BHA’s capital improvement contracts. In this capacity, CCD and designated BHA Project Managers are informed and advised by OCR with respect to all aspects of OCR’s Section 3 Program services provided with respect to CCD administered procurements and contracts. To assist OCR in this regard, designated BHA Project Managers are required to: inform OCR of proposed and current federal funded design, construction and professional services projects and procurements and related contract start dates and projected completion dates; and refer all Section 3 Program related issues and complaints to OCR for action and resolution. CCD and designated Project Managers provide OCR with documentation and information OCR may require in furtherance of OCR’s administration of the BHA’s Section 3 Program and seeks OCR’s involvement in planning and establishing BHA Section 3 Program requirements for CCD administered projects, procurements and contract opportunities. All CCD RFPs, utilizing federal funds, must be reviewed by OCR during the proposal evaluation process for Section 3 compliance.

Real Estate Development (“RED”)

BHA’s redevelopment and leveraged financing programs, including HOPE VI and mixed-financed development projects (“mixed-finance”), are administered by BHA’s Real Estate Development Department. In addition, RED is responsible for strategic planning and policy functions within the BHA. BHA’s mixed-finance procurements and contracts are administered by designated RED personnel pursuant to a delegation of authority emanating from BHA’s Administrator. As such, designated RED personnel, in conjunction with BHA’s Contract Attorney, are the BHA employees with primary responsibility and authority to administer BHA’s mixed-finance contracts. In this capacity, RED is informed and advised by OCR with respect to all aspects of OCR’s Section 3 Program services provided with respect to RED-administered procurements and contracts. To assist OCR in this regard, designated RED personnel are required to: inform OCR of proposed and current BHA mixed-finance design, construction and professional services projects and procurements and related contract start dates and projected completion dates; and refer all Section 3 Program related issues and complaints to OCR for action and resolution. RED and designated RED personnel provide OCR with documentation and information OCR may require in furtherance of OCR’s administration of the BHA’s Section 3 Program and seeks OCR’s involvement in planning and establishing BHA Section 3 Program requirements for RED administered projects, procurements and contract opportunities. All RED RFPs, utilizing federal funds, must be reviewed by OCR during the proposal evaluation process for Section 3 compliance.

Boston Housing Authority
Section 3 Policy

Operations Department (“Operations”)

The Operations Department, primarily by and through its Property Managers, is responsible for the management and oversight of all BHA-owned developments and properties which includes the administration of site-based procurements. In this role, the Operations Department collaborates with OCR and the Procurement Department to ensure that all applicable site-based procurements are procured and administered in compliance with BHA’s Section 3 Program requirements.

Designated Operations personnel administer BHA’s maintenance related services and private management contracts pursuant to a delegation of authority emanating from BHA’s Administrator. As such, designated Operations personnel, in conjunction with BHA’s Contract Attorney, are the BHA employees with primary responsibility and authority to administer BHA’s maintenance related and private management contracts. In this capacity, Operations and designated Operations personnel are informed and advised by OCR with respect to all aspects of OCR’s Section 3 Program services provided with respect to Operations administered procurements and contracts. To assist OCR in this regard, designated Operations personnel are required to inform OCR of proposed and current federal funded projects and procurements and related contract start dates and projected completion dates and refer Section 3 Program related issues and complaints to OCR for action and resolution. Designated Operation personnel provide OCR with documentation and information OCR may require in furtherance of OCR’s administration of the BHA’s Section 3 Program and seeks OCR’s involvement in planning and establishing BHA Section 3 Program requirements for Operations administered projects, procurements and contract opportunities.

In accordance with BHA’s Tenant Coordinator Program, Operations site staff work with the local tenant organization and OCR to identify and recruit residents for employment as tenant coordinators or other employment opportunities.

Treatment of Section 3 Program-related Income

Operations also advises BHA residents with respect to BHA’s earned income disregard rules and practices. Specifically, for purposes of computing tenant rents, BHA complies with HUD’s earned income disregard and self-sufficiency incentive income rules with respect to income received by qualified BHA residents pursuant to training, employment opportunities and financial assistance (e.g., Section 3 Training Fund assistance) resulting from participation in BHA’s Section 3 Program (“Section 3 Program-related income”). In accordance with these rules, certain levels of Section 3 Program-related income received by BHA residents and family members may be excluded for purposes of rent calculation. BHA residents are encouraged to discuss with their Property Managers the specifics regarding BHA’s earned income disregard rules as they apply to BHA’s Section 3 Program related income.

The following information should inform any discussions concerning treatment of Section 3 Program-related income. **BHA residents of federal developments** will have the following items excluded from their income from employment for purposes of rent calculation:

Boston Housing Authority
Section 3 Policy

- a) All or part of self-sufficiency incentive income increases as defined in the Quality Housing and Work Responsibility Act of 1998;
- b) Amounts received under training programs funded by HUD;
- c) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
- d) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program;
- e) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the BHA on a part time basis, that enhances the quality of life in the development;
- f) The increase in income resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident Management Staff. To use this exclusion the employment training programs must have clearly defined goals and objectives, and the increase is only excluded for the period while the family member participates in the program;
- g) Temporary, nonrecurring or sporadic income;
- h) Increased income to any family member resulting from the participation in a program providing employment training and supportive services under the Family Support Act of 1988, or any comparable program authorized by law during the exclusion period. (The exclusion period is effectively the time participating in the training program and the first eighteen (18) months of work after completion provided work is not funded by public assistance);
- i) Increased income from employment after unemployment or receipt of public assistance must be excluded from income calculations for the first twelve months following the date the resident was hired. During the second twelve-month period after the hire date, 50% of the increased income must be excluded. The twelve-month periods are cumulative and not consecutive. The only limitation is that any exclusion must be taken within four years of the hiring date that first triggered the income exclusion. To qualify for the exclusion, families must fit into one of the following categories:
 - A family whose income increased because of the employment of a family member who has been unemployed for a year or more before this employment.
 - A family whose income increased because of increased income from a family member who is participating in any job training or self-sufficiency program.
 - A family whose income increased because a family member becomes employed during or within six months of receiving TANF or any other temporary assistance for needy families, including Welfare to Work programs.

BHA residents of state developments will have the following exclusions:

- a) Temporary, nonrecurring or sporadic income;

Boston Housing Authority
Section 3 Policy

- b) Payment made and properly held pursuant to the Social Security Administration program known as the Plan to Attain Self Sufficient (PASS), provided that recipient fulfills all PASS program requirements;
- c) The increased amount of wages earned by one or more household member for one twelve (12) month period which otherwise would result in a rent increase provided that the household's:
- net income has been derived, at least in part, from Aid to Families with Dependent Children (AFDC), Emergency Aid to Elderly, Disabled and Children program (EAEDC), Supplemental Security Income (SSI), or Social Security Disability Income (SSDI) for each of the previous 12 months; and
 - increased earned income has been accompanied by a decrease in the amount of AFDC, EAEDC, SSI or SSDI received; and
 - the recipient of such public assistance would have remained eligible for the same or a higher amount of assistance without the earned income. (Note: This earned income exclusion shall be in effect for one continuous period of 12 months, regardless of changes or gaps in employment during that period. This moratorium may be invoked by the tenant when a household member has procured either full or part-time employment. It is the tenant's sole determination whether or when to exercise this one-time earned income exclusion for the household.);
- d) Wages and salaries of a full time student or an unemancipated minor (under age 18);
- e) Earned income from family members who are 62 years of age or older not to exceed the value of 20 hours per week at minimum wage;
- f) Self-sufficiency incentive income increases;
- g) Payments to a household member for participation in bona fide employment training program sponsored by or administered by a government agency to cover costs related to training (but not wages earned in such programs);
- h) Payments received by participants or volunteers in programs pursuant to the Domestic Volunteer Service Act of 1973.

BHA residents who receive Section 3 Training Fund assistance may benefit from the above exclusions and deductions. Recipients of Section 3 Program-related income should carefully document work-related expenses in order to receive the proper rent calculation.

Human Resources Department ("HR")

The Human Resources Department must encourage the application of Section 3 residents for training and employment opportunities; facilitate the employment of Section 3 residents; and document actions taken to comply with Section 3 requirements. Specifically, the Human Resources Department is involved in two aspects of Section 3 implementation. First, HR monitors the agency-wide Section 3 hiring preference in BHA job applications and keeps track of the percentage of new hires who are Section 3 residents. HR will provide OCR with a HUD Form 60002 at the end of each calendar year that lists all BHA Section 3 hires for the calendar year. HR will also document its

Boston Housing Authority
Section 3 Policy

efforts to fill positions with Section 3 residents. Second, HR refers BHA residents and others with questions about Section 3 employment and training opportunities to OCR.

Further, the Human Resources Department must notify Section 3 residents about training and employment opportunities at the BHA. Specifically, the Human Resources Department shall post copies of job opportunities at BHA developments and forward copies of job opportunities to the Community Services Department for posting and distribution. Also, the Human Resources Department may advertise employment opportunities with local newspapers to show that it attempted to recruit Section 3 residents.

Leased Housing Department (“Leased Housing”)

The Leased Housing Department administers the BHA’s federal Housing Choice Voucher Program (Section 8), as well as a number of other programs. Leased Housing works with CSD and OCR on Section 3 outreach. Leased Housing has the primary responsibility for ensuring that eligible leased housing participants are informed of and have access to Section 3-related hiring, training, and other economic opportunities. Additionally, Leased Housing has the lead role in identifying participants with experience in construction and other Section 3-related industries for the Section 3 resident database maintained by OCR.

Fiscal Affairs Department (“Fiscal”)

The Fiscal Affairs Department has primary responsibility for the fiscal management and record-keeping relating to the Section 3 Training Fund and shall provide the Section 3 Training Fund Committee with directions and advice relating to operation of the Fund as warranted.

Legal Department (“Legal”)

The Legal Department, primarily by and through its Contract Attorneys, is the BHA Administrator’s legal representative with respect to all aspects and phases of BHA’s various procurement and contracting programs. In this capacity, the Legal Department’s Attorneys are the only BHA employees delegated with the authority to bring, prosecute and defend sanctions, claims and legal actions relating to the enforcement of BHA’s Section 3 Program. To assist Legal in its role, OCR shall provide Legal with compliance-related recommendations and all documentation and information Legal may require in furtherance of its legal representation responsibilities relating to BHA’s Section 3 Program. No Section 3 related sanctions may be pursued without Legal’s review and recommendation. The Administrator is the final authority regarding sanctions.

In addition, whereas Legal is the primary delegated responder to BHA’s public records requests, all departments shall refer and/or forward all such requests it may receive for documents, records and/or information relating to BHA’s Section 3 Program to BHA’s General Counsel and, further, OCR, in its capacity as the primary custodian of all

Boston Housing Authority
Section 3 Policy

Section 3 Program records, shall assist Legal with the identification, record compilation, and production of any such public records request response.

All Other Departments

To the extent a BHA department is delegated with authority to procure and administer federally funded professional services contracts, all other departments are required to comply with and enforce the Section 3 Program requirements as described in this Policy, in the applicable procurement and contract documents and as directed by OCR. Designated personnel from such departments are required to provide OCR with documentation and information OCR may require in furtherance of its administration of the BHA's Section 3 Program and shall seek OCR's involvement in planning and establishing BHA Section 3 Program requirements for their projects, procurements and contract opportunities. Minimally, all BHA department RFPs, utilizing federal funds, must be reviewed by OCR during the proposal evaluation process for Section 3 compliance.

VIII. Section 3 Coordinator & Civil Rights Policy Manager

The BHA Section 3 Coordinator and Civil Rights Policy Manager shall be the BHA employees designated with the primary authority relating to monitoring and administrating of all aspects of BHA's Section 3 Program. The Section 3 Coordinator and Civil Rights Policy Manager use forms developed by OCR and the Legal Department for use in BHA's procurement and contract documents ("BHA Section 3 Program Forms") and Compliance Plans drafted and submitted by recipients to evaluate recipients' commitment to meeting the Section 3 requirements. The Section 3 Coordinator and Civil Rights Policy Manager monitor compliance throughout the duration of a Section 3 covered activity, and determine whether the BHA's Section 3 Program requirements have been met as a condition of contract award, periodic contract payment, and disbursement of final payment.

In order to determine a recipient's compliance with BHA's Section 3 Program requirements, the Section 3 Coordinator and Civil Rights Policy Manager will determine whether a recipient has met the Program's minimum numeric goals for hiring/training and contracting by recipients. In evaluating Section 3 Program compliance, a recipient that has not met the appropriate requirements has the burden of demonstrating why it was not feasible to do so. This includes documentation of all attempts made to notify, encourage, and facilitate job and contracting opportunities to Section 3 residents and business concerns.

Prior to the approval of any Section 3 covered contract, OCR must issue a Section 3 Compliance Memorandum indicating that the bidder or proposer has followed all required pre-contract award Section 3 Program requirements and is otherwise in compliance with BHA's Section 3 Program.

The Section 3 Coordinator and Civil Rights Policy Manager shall administer the BHA's Section 3 Program in accordance with the terms of this Policy and pursuant to the specific terms and requirements of the BHA Section 3 Program Forms incorporated into

Boston Housing Authority
Section 3 Policy

BHA's standard procurement and contract documents. General administration of the Section 3 Program shall conform to the following matters:

BHA Section 3 Program Forms:

BHA Section 3 Program Forms require recipients to certify that they will comply with all applicable Section 3 Program requirements, will not attempt to circumvent Section 3 employment opportunities by hiring prior to contract execution, and will be responsible for enforcing the Section 3 Program compliance of its subcontractors. The forms also require recipients to forecast a project's Section 3 Program hiring, training, and contracting opportunities. On a monthly basis, recipients provide their Section 3 numbers with their certified payroll documents. Finally, at the completion of the contract, recipients submit a HUD 60002 form summarizing the Section 3 Program activities for the entire project. Bids or proposals that fail to submit the required forms and/or fail to adequately incorporate Section 3 Program requirements shall be rejected by the Procurement Department as non-responsive. Failure to submit monthly Section 3 Program reports may result in the assessment of sanctions including the withholding of payment until the report is provided.

Section 3 Compliance Plan:

All recipients shall be required to submit a Section 3 Compliance Plan in accordance with standards established by OCR, Procurement and Legal as a condition of an award of a BHA administered federally funded contract estimated to exceed \$100,000. A recipient's approved Section 3 Compliance Plan shall constitute the specific and quantifiable methods by which the recipient shall undertake to satisfy BHA's Section 3 Program requirements. Drafting of the Section 3 Compliance Plan shall be the sole responsibility of the recipient and all such Compliance Plans should be the unique product of the nature of the project, the needs of the contractor and subcontractors, and the actual Section 3 related opportunities generated.

IX. Sanctions

In accordance with its obligation and commitment to enforce the terms of its contracts, the BHA reserves the right to issue and enforce sanctions for serious and/or repeated violations of its Section 3 Program requirements contained in its procurement and contract documents. Accordingly, Section 3 Program sanctions shall include: monetary sanctions; contract term or payment suspensions; for-cause contract terminations; and/or BHA-administered debarment from future BHA administered federally-funded contract opportunities.

In all cases, no sanctions will be taken or imposed against a recipient by any department without the prior approval of the BHA Administrator. The OCR, Legal and Procurement Departments will provide the Administrator with recommendations in writing regarding the imposition of sanctions. Thereafter, a recipient determined to be in noncompliance with BHA's Section 3 Program shall be notified in writing of the findings and of any sanctions BHA intends to impose. This written notice will give the recipient an opportunity to meet with the Section 3 Coordinator and Civil Rights Policy Manager, and BHA Contracting Officer and, if required by Legal, a BHA Legal Department attorney, to present information demonstrating compliance or mitigating factors relating to its failure

Boston Housing Authority
Section 3 Policy

to comply. Within ten (15) calendar days of the meeting, the Section 3 Coordinator and Civil Rights Policy Manager, in consultation with BHA's Legal Department, will make a written finding of compliance or non-compliance. Copies of all OCR correspondence will be provided to the Contracting Officer.

After a finding of non-compliance, the BHA may impose on the recipient, due to its noncompliance or of that of its subcontractor, any one or more of the following sanctions:

1. Recovery of a percentage of the contract price one-tenth of one percent (0.1%) or \$2,500, whichever is greater, in the nature of liquidated damages, for each week that the contractor fails or refuses to comply.
2. Suspension of any payment due until the recipient is able to demonstrate compliance.
3. Termination or cancellation of the contract unless the recipient is able to demonstrate compliance within a specified time as determined by BHA.
4. Forfeiture of up to five percent (5%) of the contract price in connection with final acceptance and final payment.
5. Denial to the recipient of the right to participate in any future BHA contracts for up to three (3) years.

X. Complaint Procedures

In an effort to learn of complaints of non-compliance relating to its Section 3 Program, BHA encourages Section 3 residents, Section 3 business concerns, recipient and private citizens to submit any such complaints to its Section 3 Coordinator and Civil Rights Policy Manager as follows:

Allegations of non-compliance or other complaints regarding BHA's Section 3 Program should be filed in writing and must contain the name of the complainant and a brief description of the alleged violation. Complaints should be addressed to:

Boston Housing Authority
Office of Civil Rights
Chief of Staff
52 Chauncy Street
Boston, MA 02111

with copy to:

Boston Housing Authority
Legal Department
ATTN: General Counsel
52 Chauncy Street
Boston, MA 02111

Complaints must be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation. The Section 3 Coordinator and Civil Rights Policy Manager will conduct an informal investigation affording all interested parties the opportunity to submit testimony and evidence pertinent to the complaint. The Section 3 Coordinator and Civil Rights Policy Manager, after consultation with the BHA's Legal Department, will issue a letter detailing the findings of the investigation no later than thirty (30) calendar days after the filing of the complaint.

Boston Housing Authority
Section 3 Policy

A complaint may also be filed with HUD. The HUD complaint form (HUD Form 958) is available on the HUD Section 3 website and from OCR. Complaints are investigated by HUD, and, where appropriate, voluntary resolutions are sought. Complaints not resolved voluntarily may result in an administrative hearing. Complaints must be addressed to:

U.S. Department of Housing and Urban Development
New England Office
Boston Regional Office
10 Causeway Street
Room 301
Boston, MA 02222-1092

Complainants are responsible to file their complaints with HUD in accordance with applicable regulations which can be found at 24 CFR 135.76; complaints filed with OCR will not be forwarded to HUD as a matter of course nor will OCR file complaints for or on behalf of complainants.

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Boston Housing Authority
Section 3 Policy

XI. Glossary

BHA means the Boston Housing Authority.

BHA leased housing participant means an individual or family that has been admitted to and is currently assisted by a housing program administered by the BHA Leased Housing Department.

Contractor means any entity which contracts to perform work in connection with a Section 3 Covered Project.

Employment opportunities means, with respect to Section 3 covered housing assistance, all employment opportunities arising in connection with Section 3 covered projects including management and administrative jobs. 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, for example, construction manager, relocation specialist, payroll clerk, etc.

HUD means the United States Department of Housing and Urban Development.

HUD YouthBuild programs mean programs that receive applicable federal assistance 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.

Metropolitan area means the Boston metropolitan statistical area (MSA), as established by the Office of Management and Budget. The Boston MSA consists of seven counties: Norfolk, Plymouth, Suffolk, Middlesex, Essex, Rockingham (NH), and Strafford (NH).

Neighborhood means 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.

New hire means a full-time employee hired for permanent, temporary or seasonal employment. An employee returning to the payroll after a period of unemployment is considered a new hire for Section 3 purposes.

Project development means the public housing development or developments for which the recipient is performing work under a Section 3 Covered Contract.

Recipient is used throughout this document to refer to any entity that receives Section 3 covered funding from the BHA or is an entity that is subject to award of a BHA administered federally funded contract. Depending on context, the term may refer to bidders, sub-bidders, contractors, sub-contractors, business entities, developers, suppliers, vendors, service providers, and public or private organizations and/or respondents to and involved with BHA federal funded procurements and contracts. The BHA, as a recipient of federal housing funds subject to Section 3, also falls within the definition of "recipient."

Boston Housing Authority
Section 3 Policy

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 entity organized in accordance with applicable state law and licensed in Massachusetts to conduct the business for which it was formed; and which: is 51% or more owned by Section 3 residents; or maintains a ratio of permanent, full-time employees who are Section 3 residents, or who were Section 3 residents at the time of hire, equal to at least 30%; or provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded by it to business concerns that meet the qualifications set out above.

Section 3 Compliance Plan means the plan submitted by a recipient detailing how it intends to comply with the requirements of this Plan.

Section 3 covered activity means any activity, procurement or contract funded by Section 3 covered HUD assistance including, but not limited to: all manner of procurements; and professional and construction service contracts and subcontracts. Section 3 covered activities do not include procurements or contracts for the purchase of supplies and materials that do not require the furnishing of labor, time, and/or effort relating to the installation of the supply and/or material.

Section 3 covered contract means a contract or a subcontract (including a professional service contract) awarded by the Authority or by a Contractor for work on a Section 3 Covered Project and/or any Section 3 Covered Activity. Section 3 Covered Contracts do not include contracts for the purchase of supplies and materials, except where a contract for the purchase of materials includes installation.

Section 3 covered project means the construction, reconstruction, installation, repair, demolition, maintenance, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards) and/or the furnishing of services to or on the behalf of the BHA which includes the furnishing of labor, time, and/or effort by a recipient.

Section 3 joint venture means an association of business concerns formed by a written joint venture agreement to engage in and carry out a specific business venture, where one of the business concerns qualifies as a Section 3 business concern and:

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

Section 3 resident means an individual who is at least 18 years of age and lawfully resides at any of the public housing developments owned by the BHA or is a low- or very-low income resident of non-BHA property in the Boston metropolitan area.

Subcontractor means any entity (other than an individual 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 the work.

Boston Housing Authority
Section 3 Policy

XII. Section 3 Clause

All Section 3 covered contracts and subcontracts shall include the following clause (referred to as the Section 3 Clause):

**SECTION 3 CLAUSE OF THE HOUSING AND
URBAN DEVELOPMENT ACT OF 1968**

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) 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

Boston Housing Authority
Section 3 Policy

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).

END OF SECTION 3 CLAUSE

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