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FORWARDED BY MIKE GIFFORD: Pertaining to Section 3 Preferences

1 message

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**Housing Agency Procurement Assistance**

Housing Agency Procurement Assistance

Dear Procurement Professionals,

Earlier today many of you received a notice from the Housing Agency Marketplace online bidding software (which I am the principal designer of) that the Section 3 Preference modules within the software were being "shut-down" or "turned off". This is accurate and I am assisting in the coordination of that removal process.

Though I am no longer providing any substantial consulting as to Section 3 (specifically because I find the new Section 3 rules to be quite confusing and it is difficult for me to help folks with solutions thereto), it is clear to me that within the new regulations, HUD no longer has a specific allowance for Section 3 preferences.

However, pertaining to Section 3 preferences, here is an interesting FAQ from HUD.gov, followed by the specific pertinent link:

[QUESTION] The old rule (24 CFR Part 135) suggested a Section 3 "preference" whereby a bidder could come in above the next highest bidder, but still be awarded the contract because the higher bidder is a Section 3 Business Concern. Is there still a recommended preference under the final rule?

[ANSWER] The Section 3 final rule does not include a bidding preference, however, recipients may consider incorporating preferences into their bidding process but should ensure that their Section 3 processes and procedures are consistent with existing federal, state, and local laws and regulations. It is recommended that recipients involve their agency's procurement officer and local counsel when considering designing preferences for procurement.

[The old rule \(24 CFR Part 135\) suggested a Section 3 "preference"](#)

I am not giving any recommendation as to if an agency should or should not offer such preferences, as such is the decision of each housing agency. Several comments that I will make are:

(1) Whether or not your agency does ultimately decide to offer a Section 3 Preference, I strongly recommend that your agency does fully document the entire process, meaning to document your consideration of the "pros" and "cons" of doing so, then justification as to how you arrived at your final decision.

(2) If Section 3 Preferences are implemented, I strongly recommend that you have written detailed procedures pertaining to the entire preference process.

(3) Please remember, implementing any preference in the bidding process can create some concern by the firms that do not qualify for the preference, and especially by any firm who may lose an award that the bidder may have otherwise received. You need to consider that, if challenged, would your agency be able to justify the preference process and the award to other than the low bidder or an otherwise top-rated proposer (this thought may be something that your CEO/ED, Board Chair, and your attorney would want to discuss).

I hope that the information within this Notice is a help as you are considering this important issue.

Regards,

Michael S. Gifford, C.P.M., CPSD

Housing Agency Procurement Assistance

I have a consulting practice providing procurement- and contracts-related mentoring, training, and technical assistance to housing agencies. I help housing agencies conduct procurement and contracts in a HUD-compliant and "best practice" manner. [Click here](#) to see my full resume. Please do not hesitate to contact me if you have any questions or concerns pertaining to procurement and contracts (initial answering of questions is "no charge"). As I am either on-the-road or on the phone a lot, an initial contact by e-mail is best; please be sure to include your return telephone number (office/cellular) so that I can call you back.

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