



POLICY

EFFECTIVE DATE: July 29, 2016

NO: PO-PUR-373.03

SUBJECT: **Economic Opportunities for Low- and Very Low-Income Persons**

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1 Purpose

To provide general policy information and direction regarding Section 3 of the Housing and Urban Development (HUD) Act of 1968 (12 U.S.C. 1701u) (section 3) implemented and regulated at Title 24, Part 135 of the Code of Federal Regulations.

2 Definitions

See Attachment A.

3 Applicability

Recipients and sub-recipients of certain HUD financial assistance (including contractors and subcontractors that perform on certain HUD-funded contracts/projects) are required to comply with Section 3 requirements. Ultimate beneficiaries (i.e. single-family homeowners) of HUD financial assistance are not required to comply.

A. Section 3 Covered Assistance

Section 3 applies to training, employment, contracting, other economic opportunities resulting from the expenditure of the following HUD assistance (Section 3 covered):

- 1) Public and Indian Housing Assistance
 - a) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);
 - b) Operating assistance provided pursuant to section 9 of the 1937 Act; and
 - c) Modernization assistance provided pursuant to section 14 of the 1937 Act.
- 2) Housing and Community Development Assistance
 - a) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);
 - b) Housing construction; and
 - c) Other public construction.

B. Dollar Thresholds

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- 1) Public and Indian Housing Assistance
 - a) Applies to recipients, notwithstanding the amount of financial assistance provided to the recipient.
 - b) Applies to all contractors and subcontractors regardless of the amount of the contract or subcontract.
- 2) Housing and Community Development Assistance
 - a) Applies to recipients of assistance for a Section 3 covered project for which the amount of the assistance exceeds \$200,000.
 - b) Applies to contractors and subcontractors performing on contracts or subcontracts that exceed \$100,000.

4 Program Implementation

SDHC's Section 3 implementation and compliance is an agency-wide effort that is led by the Section 3 Unit. The following operational guides are used to facilitate Section 3 implementation and compliance and are located on the SDHC website in the Business Section under Section 3:

- A. Section 3 Implementation Plan
- B. Section 3 Administrative Guide
- C. Section 3 Contractor's Guide
- D. Section 3 Resident Certification FAQ

5 Responsibilities

SDHC's responsibility includes, but is not limited to:

- Implementing procedures to notify Section 3 Residents of training and employment opportunities and Section 3 Business Concerns of contracting opportunities generated by Section 3 covered assistance;
- Notifying bidders and proposers of Section 3 requirements, and including the Section 3 Clause (24CFR135.38) in all solicitations and contracts;
- Facilitating the training and employment of Section 3 Residents and the award of contracts to Section 3 Business Concerns to reach the numerical goals for Section 3;

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- Assisting and cooperating with HUD in obtaining compliance of contractors and subcontractors, and refrain from entering into any contract with a contractor where SDHC has notice or knowledge that the contractor has been found in violation of 24CFR135;
- Documenting actions taken to comply with Section 3 requirements, the results of actions taken and impediments, if any.

6 **Compliance**

SDHC, its sub-recipients, contractors and subcontractors are required to commit to achieving the Section 3 numerical goals to the greatest extent feasible.

A. Numerical Goals

- 1) Employ Section 3 Residents as 30 percent of all new hires during a one-year period;
- 2) Award Section 3 Business Concerns at least 10 percent of the total contract dollar amount of construction or rehabilitation services; and
- 3) Award Section 3 Business Concerns at least 3 percent of the total contract dollar amount for non-construction services.

7 **Noncompliance**

- A. SDHC has the burden of demonstrating why it was not feasible to meet the Section 3 numerical goals. Such justification may include impediments encountered despite actions taken; and indicate other economic opportunities which were provided in efforts to comply.
- B. Sub-recipients, contractors and subcontractors that do not commit to achieving the Section 3 numerical goals are noncompliant.
- C. Noncompliant sub-recipients, contractors and subcontractors have an opportunity to do business with SDHC by submitting a Section 3 and Equal Opportunity Contracting Project Utilization Plan approved by the SDHC Section 3 Unit.
- D. Noncompliance status does not apply when there are no opportunities available for subcontracting and to hire new employees.

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8 Section 3 Business Concern Opportunities

A. Contracting

To facilitate contract awards to Section 3 Business Concerns, all Section 3 covered Requests for Proposal (RFP), Invitations for Bid (IFB), Invitations for Quotes (IFQ), Notices of Funding Availability (NOFA), grants, agreements, contracts (including contracts to exercise option years), etc. will include the following:

- 1) Section 3 Language
 - a) Standard language that provides an overview of Section 3, the requirements for proposers/bidders and awardees.
- 2) Section 3 and Equal Opportunity Contracting and Project Utilization Plan
 - a) Use to identify, evaluate and approve proposers/bidders utilization of Section 3 Business Concerns and Section 3 Residents;
 - b) Establish a baseline to monitor and measure contractors' and subcontractors' compliance during contract performance; and
 - c) Document proposers'/bidders' Section 3 outreach efforts.
- 3) Approved Plan
 - a) Contracts (including contracts to execute options) will not be executed that do not incorporate by reference an approved plan to utilize Section 3 Business Concerns and/or Section 3 Residents, or reference the waiver granted by SDHC; and
 - b) The Section 3 Unit's review, evaluation and approval of the Section 3 and Equal Opportunity Contracting and Project Utilization Plans of those proposers/bidders will be part of the Procurement Department's final review and evaluation process.

B. Section 3 Clause Requirement

All Section 3 covered contracts shall include the entire clause set forth at 24CFR135.38.

C. Certification Program

- 1) SDHC administers a Section 3 certification program for businesses that qualify as Section 3 Business Concerns. Applicants complete and submit an application that collects industry data, licenses/certifications held and financial capacity. A business must be located in the County of San Diego in order to apply. The Section 3 Unit reviews and approves applications.

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- 2) SDHC maintains a list of certified Section 3 Business Concerns to refer for contracting opportunities; identifies and addresses training needs of Section 3 Business Concerns; and collects, tracks and reports on the business development of Section 3 Business Concerns.

D. Efforts to Award Contracts to Section 3 Business Concerns

To increase opportunities for Section 3 Business Concerns, SDHC undertakes the following efforts on Section 3 covered projects:

- 1) Ensures Section 3 Language and the Section 3 and Equal Opportunity Contracting Project Utilization Plan are included in all solicitations (RFPs, IFBs, IFQs, NOFAs and others – both informal and formal).
- 2) Requires all proposals/bids to include a completed Section 3 and Equal Opportunity Contracting Project Utilization Plan, with documentation verifying Section 3 outreach efforts.
- 3) Deems proposals/bids that do not contain the completed Section 3 and Equal Opportunity Contracting Project Utilization Plan as “nonresponsive.”
- 4) Does not execute agreements or contracts (including a contract to execute option years) that do not incorporate, by reference, an approved Section 3 and Equal Opportunity Contracting Project Utilization Plan, or waiver granted by SDHC.
- 5) Ensures all contracts include the Section 3 Clause (24CFR135.38).
- 6) Considers, at its discretion, reducing insurance and/or bonding requirements on informal solicitations valued less than \$100,000.
- 7) Requests quotes from certified Section 3 Business Concerns on informal solicitations less than \$10,000 and in accordance with SDHC’s Procurement Policy.
- 8) Requests at least one quote from certified Section 3 Business Concerns on informal solicitations valued at more than \$10,000, but less than \$100,000, and in accordance with SDHC’s Procurement Policy.

To increase opportunities for Section 3 Business Concerns overall, SDHC:

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- 1) Organizes networking or pre-proposal/pre-bid events that afford Section 3 Business Concerns the opportunity to meet with contractors and subcontractors.
- 2) Promotes the Section 3 certification program at outreach events.
- 3) Maintains a registry of certified Section 3 Business Concerns. Disseminates registry within SDHC; and to sub-recipients, contractors and subcontractors.
- 4) Attends conferences for small, women- and/or minority-owned businesses to identify Section 3 Business Concerns.
- 5) Notifies Section 3 Business Concerns of Section 3 covered contracting and subcontracting opportunities with SDHC, its sub-recipients, contractors and subcontractors; and with public agencies and corporations.
- 6) Develops and/or presents business development workshops for Section 3 Business Concerns, i.e., business plan writing, certifications, financing, insurance, bonding and marketing.
- 7) Collaborates with the Public Agency Consortium (PAC) and the U.S. Small Business Administration to educate the local small business community about Section 3.
- 8) Administers and updates a Section 3 public Web page with program related information and downloadable forms.

9 Section 3 Resident Opportunities

A. Certification Program

- 1) SDHC administers a Section 3 certification program for individuals that qualify as Section 3 Residents. Applicants complete and submit application that collects data regarding their work experience, skills and training needs. An individual must reside in the County of San Diego in order to apply. The Section 3 Unit reviews and approves applications.
- 2) SDHC maintains a list of certified Section 3 Residents to refer for training and employment opportunities; identify and address the training needs; and collect, track and report on the development of Section 3 Residents.

B. Efforts to Offer Training and Employment

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To increase training and employment opportunities for Section 3 Residents, SDHC:

- 1) Utilizes the Achievement Academy to provide job training assistance (i.e., résumé writing, interviewing techniques, etc.) to eligible Section 3 Residents.
- 2) Provides micro-enterprise training to eligible Section 3 Residents.
- 3) Recruits Section 3 Residents for employment with SDHC.
- 4) Incorporates Section 3 hiring procedures into the personnel policy.
- 5) Provides Section 3 information on the SDHC Careers website.
- 6) Encourages SDHC's hiring managers to review résumés from Section 3 Residents.
- 7) Posts job vacancy announcement on CalJobs, the California Employment Development Department's online job board.
- 8) Conducts "How to Obtain Employment" workshops.
- 9) Notifies certified Section 3 Residents of training and employment opportunities.
- 10) Refers certified Section 3 Residents to sub-recipients, contractors and subcontractors for training and employment opportunities.
- 11) Partners with the on-site social service providers at housing developments to regularly educate their low-income residents about the Section 3 Program, and subsequently recruit and certify Section 3 Residents.
- 12) Partners with occupational training centers to regularly educate their low-income participants on the Section 3 Program, and subsequently recruit and certify as Section 3 Residents.
- 13) Promotes Section 3 certification program at outreach events.
- 14) Maintains a registry of certified Section 3 Residents.
- 15) Administers and updates a Section 3 public Web page with program related information and downloadable forms.

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- 16) Provides sub-recipients, contractors and subcontractors with the Section 3 job-site flyer used to notify passers-by of Section 3 employment opportunities.
- 17) Provides meeting facilities for sub-recipients, contractors and subcontractors to network with, conduct employment-related informational meetings, or interview certified Section 3 Residents.
- 18) Ensures that SDHC does not execute a contract—including contracts to execute option years—that does not incorporate by reference an approved Section 3 and Equal Opportunity Contracting Project Utilization Plan, or reference the waiver granted by SDHC.

10 **Monitoring**

SDHC monitors Section 3 compliance within its own operations; its sub-recipients, contractors and subcontractors. The frequency of monitoring of sub-recipients, contractors and subcontractors will be based upon the type and dollar value of the contract.

11 **Complaints**

- A. Any Section 3 Business Concern or Section 3 Resident (or authorized representative) seeking contracting, training or employment opportunities generated by Section 3 covered assistance may file a complaint in accordance with 24CFR135.76.
- B. SDHC will review all complaints and respond accordingly. If HUD determines there is an allegation of noncompliance with Section 3, the complainant shall be referred to SDHC for resolution. SDHC will resolve complaints in accordance with 24CFR135.76(e).

12 **Reporting**

SDHC submits annual reports to HUD in accordance with 24CFR135.90.

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Approved:



Jeff Davis
Executive Vice President & Chief of Staff

8-1-16
Date

History:
6/8/1984

References: Section 3 Implementation Plan
Section 3 Administrative Guide
Section 3 Contractor's Guide
Section 3 Resident Certification FAQ

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Attachment "A"

DEFINITIONS

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Contractor means any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Section 3 business concern means a business concern, as defined:

1. That is 51 percent or more owned by section 3 residents; or
2. Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
3. That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

Section 3 Clause means the contract provisions set forth in 24CFR135.38.

Section 3 covered assistance means:

1. Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;
2. Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;
3. Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act;
4. Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:
 - a. Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);
 - b. Housing construction;
 - c. Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered

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assistance, or for work arising in connection with a Section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by Section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards) and other public construction, which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 resident means:

1. A public housing resident; or
2. An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:
 - a. A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
 - b. A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.