

Harrisburg Housing Authority

Section 3 Clause

TABLE OF CONTENTS:

SECTION 3 CLAUSE..... - 1 -

Purpose/General Requirements..... - 1 -

Section 3 Regulations - 2 -

Resident Relations - 2 -

Geographical “Service Area” or “Neighborhood of the project” - 3 -

Benchmarks for Public Housing Financial Assistance - 3 -

Employment and Training Obligation..... - 4 -

Contracting Obligation - 4 -

Section 3 Applicants Proving Eligibility..... - 5 -

Reporting if Section 3 Benchmarks Are Not Met - 5 -

Training Fund..... - 6 -

Preference for Section 3 Certified Contractors - 7 -

A Section 3 Business Concern..... - 8 -

Fines for Non-Compliance - 8 -

Contractors That are Unable to Engage in Opportunities for Section 3/Business - 8 -

SECTION 3 RESIDENT SELF CERTIFICATION FORM..... - 9 -

SECTION 3 CONTRACTOR'S CERTIFICATION - 10 -

ASSURANCE OF COMPLIANCE (Section 3, HUD ACT of 1968) - 10 -

E-MAIL/CONTACTS - 11 -

SECTION 3 CLAUSE

The Harrisburg Housing Authority will provide to each Solicitation Bid, A copy of the Section 3 Clause in relation to the Section 3 requirements under the Housing and Urban Development act of 1968, as amended, 12 U.S.C. 1701u . **New Rule Effective November 30, 2020, 24 CFR Part 75 of Section 3.**

Purpose/General Requirements

All work to be performed in connection with the underlying 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, **The New Rule Effective November 30, 2020, 24 CFR Part 75 of 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 should if possible and with best efforts,, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to the underlying contract agree to comply with HUD's regulations in 24 CFR, Part 75, which implements Section 3. As evidenced by their execution of the Section 3 certification, the parties to the underlying contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 Regulations.

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 worker's 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 must describe the Section 3 Preference, and include:

- the minimum number of positions and job titles subject to hire,
- the availability of apprenticeship and training positions along with qualifications for each,
- the name and location of the person(s) taking applications for each of the positions, and
- the anticipated date the work shall begin.

The contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR part 75, 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 75. 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 75.

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 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR, part 75.

Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of the underlying contract for default, and debarment or suspension from future HUD assisted contracts.

Section 3 Regulations

1. When contractors and/or sub-contractors are subject to the hiring section of the Section 3 regulations by adding new hires, the contractors and/or sub-contractors are required, with best efforts, to initially, reach out to the residents of the Harrisburg Housing Authority concerning the opportunity for employment, contracts and/or training, then to residents of other public housing projects or Section -8 assisted housing managed by HHA, then to participants in Youth Build programs. Thereafter the contractors and/or sub-contractors must direct these opportunities to low- and very low-income persons residing within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of the Section3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people (Geographical Service Area or Neighborhood of the Project as defined below).
2. All contractors and/or sub-contractors are subject to the hiring section of the Section 3 regulations, must document every effort that was made to offer and fill the employment, contract and/or training opportunity with a Section 3 worker or business.
3. The minimum requirements for documenting solicitation of a Section 3 person or business include: distributing flyers, placing ads, local media, community organizations, and posting signs in the resident relations office, community rental offices and in and around the community where the covered contract has been awarded. (Geographical "Service Area" or "Neighborhood of the project" below for a description of the required solicitation area and individuals)
4. The contractors and/or sub-contractors must prove that he or she has made every effort to notify The Harrisburg Housing Authority's residents, those Section 3 residents within Geographical Service Area or Neighborhood of the Project. If the contractors and/or sub-contractors prove these efforts and the contractors and/or sub-contractors were unable to solicit Section 3 persons or businesses, then at that time the contractors and/or sub-contractors may open up these opportunities to other non-Section 3 persons or contractors.
5. Documentation of all contractors and/or sub-contractors efforts to provide employment, contracts, and/or training to Section 3 persons or businesses must be presented to the Section 3 compliance office before moving forward.
6. All contractors and/or sub-contractors that have not met the Section 3 regulations set forth in this section have the burden of demonstrating why it was not feasible to meet these regulations.
7. Section 3 regulations are mandated by HUD and are required by all contractors and/or subcontractors. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of the contract for default, and debarment or suspension from future HUD assisted contracts.

Resident Relations

Contractors and/or sub-contractors may contact the Resident Relations office of the Harrisburg Housing Authority for possible Section 3 applicants, business concerns and joint venture candidates for hire.

Geographical “Service Area” or “Neighborhood of the project”

An area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of the Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent Census.

Benchmarks for Public Housing Financial Assistance

1. Section 3 Labor Hours-Must be 25 percent (25%) of the total labor hours.
2. Targeted Section 3 Labor Hours- Must be 5 percent (5%) of the total labor hours.
 - A Labor Hour is the hours worked by all workers employed with public housing financial assistance in HHA’s fiscal year.
 - A Section 3 Worker is:
 - any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:
 - The worker’s income for the previous or annualized calendar year is below the income limit established by HUD
 - The worker is employed by a Section 3 business concern
 - The worker is a YouthBuild participant.
 - A Targeted Section 3 worker is:
 - A worker employed by a Section 3 business concern OR
 - Resident of public housing or Section 8 assisted housing OR
 - A resident of another project managed by the PHA OR
 - A current YouthBuild participant

3. Reporting of Labor Hours:

- For Section 3 projects, recipients must report in a manner prescribed by HUD
 - The total number of labor hours worked; (including total number of labor hours worked on a Section 3 project, including labor hours worked by any sub recipients, contractors and subcontractors that the recipient is required or elects to report)
 - The total number of labor hours worked by Section 3 Workers; and
 - The total number of labor hours worked by Targeted Section 3 workers.
- Section 3 workers’ and Targeted Section 3 workers’ labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established.
- If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported .
- Recipients may report their own labor hours or that of a sub recipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

Employment and Training Obligation

Consistent with existing Federal, state, and local laws and regulations, PHAs or other recipients receiving public housing financial assistance, and their contractors and subcontractors, must make their best efforts to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers.

Efforts must be made in the following order of priority:

1. To residents of public housing projects for which the public housing financial assistance is expended;
2. To residents of other public housing project managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;
3. To participants in YouthBuild programs; and
4. To low-and very low-income persons residing within the metropolitan area(or nonmetropolitan county) in which the assistance is expanded.

To the greatest extent feasible, all contractors and/or sub-contractors who are a party to the underlying Section 3 covered contract will commit to 25% of total labor hours worked on project funded by Section 3 awards must be worked by Section 3 Workers, and 5% of total labor hours worked on project funded by Section 3 awards must be worked by Section 3 Targeted Worked. All Section 3 workers can be counted for up to 5 years of being employed.

Contracting Obligation

Consistent with existing Federal, state, and local laws and regulations, contractors and subcontractors, must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following order of priority:

1. To Section 3 business concerns that provide economic opportunities for residents of the public housing project for which the assistance is provided;
2. To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by PHA that is providing the assistance;
3. To YouthBuild programs; and
4. To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

Section 3 Applicants Proving Eligibility

A person seeking the training and employment preference provided by Section 3 covered assistance, has the responsibility of providing evidence (if requested) that the person is eligible for the preference. The willful falsification of an individual's Section 3 status may subject the individual to civil or criminal prosecution. (*See*, 18 USC § 1001 and 31 USC § 231)

Nothing will be construed to require the employment of a Section 3 worker(s) who does not meet the qualifications of the position to be filled.

For a worker to qualify as a Section 3 worker, one of the following must be maintained:

- (i) A worker's self-certification that their income is below the income limit from the prior calendar year;
- (ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
- (iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
- (iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
- (v) An employer's certification that the worker is employed by a Section 3 business concern.

For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

- (i) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;
- (ii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
- (iii) An employer's certification that the worker is employed by a Section 3 business concern; or
- (iv) A worker's certification that the worker is a YouthBuild participant.

Reporting if Section 3 Benchmarks Are Not Met

If Section 3 Benchmarks described above are not met HHA must report in a form prescribed by HUD on the qualitative nature of its Section 3 Compliance activities and those of its contractors and subcontractors. Such qualitative efforts may include but are not limited to the following:

1. Engaging in outreach efforts to generate job applicants who are Targeted Section 3 Workers.
2. Providing training or apprenticeship opportunities.

3. Providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
4. Providing or connecting Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
5. Holding one or more job fairs.
6. Providing or referring Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).
7. Providing assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
8. Assisting Section 3 workers to obtain financial literacy training and/or coaching.
9. Engaging in outreach efforts to identify and secure bids from Section 3 business concerns.
10. Providing technical assistance to help Section 3 business concerns understand and bid on contracts.
11. Dividing contracts into smaller jobs to facilitate participation by Section 3 business concerns.
12. Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
13. Promoting use of business registries designed to create opportunities for disadvantaged and small businesses.
14. Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

Training Fund

As an alternative, Section 3 compliance can be achieved by contributing into the Harrisburg Housing Authority's Section 3 Training fund in the amount specified in the section below. This does not apply to sub-contractors. This applies to the base contract amount for the prime contractor and is not assessed to subsequent change orders or addendums.

When the contract amount is **less than \$100,000**

5 % of base contract, or \$4,500

At least \$100,000, but less than \$200,000

4.5 % of base contract, or \$8,000

At least \$200,000, but less than \$300,000

4 % of base contract, or \$10,500

At least \$300,000, but less than \$400,000

3.5 % of base contract, or \$12,000

At least \$400,000, but less than \$500,000

3 % of base contract, or \$12,500

At least \$500,000, but less than \$1 million

2.5 % of base contract, or \$20,000

At least \$1 million, but less than \$2 million

2 % of base contract, or \$30,000

At least \$2 million, but less than \$4 million

1.5 % of base contract, or \$40,000

At least \$4 million, but less than \$7 million

1 % of base contract, or \$52,500

\$7 million or more

.75 % of base contract

Preference for a Section 3 Business that is participating in the HHA "LEAP" Program ("Learn, Empower, Act and Progress" Program)

A business concern meeting all the criteria of a "Section 3 Business Concern" as described below, shall be given a preference before other "Section 3 Business" concerns if the business is participating in HHA's "LEAP" program. To obtain an award over other responsible and responsive bidders, the LEAP participant must be a responsible and responsive bidder that submits a competitive bid that:

1. Does not exceed, if one was established, the HHA budget or cost estimate for the specific project for which bids are being requested, and
2. The bid by the LEAP participant is not more than 20% higher than the total bid price of the lowest responsive and responsible non-Section3 business concern bidder.

HHA reserves the right to award more than one contract for services, and task work to awardees in a manner that HHA deems necessary or appropriate.

Preference for Section 3 Certified Contractors

An award shall be given to the qualified and responsible Section 3 Business Concern with the lowest responsive bid, if that bid is:

1. With in the maximum total contract price established in the contracting budget for the specific project for which bids are being taken, and
2. Not more than "X" higher than the total bid price of the lowest responsive bid from any responsible, responsive bidder.

"X" is determined as follows,

X= the lesser of:

When the lowest responsive bid is **less than \$100,000**

10 % of that bid or \$ 9,000

At least \$100,000, but less than \$200,000

9% of that bid, or \$16,000

At least \$200,000, but less than \$300,000

8% of that bid, or \$21,000

At least \$300,000, but less than \$400,000

7% of that bid, or \$24,000

At least \$400,000, but less than \$500,000

6% of that bid, or \$25,000

At least \$500,000, but less than \$1 million

5% of that bid, or \$40,000

At least \$1 million, but less than \$2 million

4% of that bid, or \$60,000

At least \$2 million, but less than \$4 million

3% of that bid, or \$80,000

At least \$4 million, but less than \$7 million

2% of that bid, or \$105,000

\$7 million or more

1-1/2% of the lowest responsive bid, with no dollar limit

If no responsive bid by a Section 3 business concern meets the requirements of the previous section of this document, the contract shall be awarded to a responsive bidder with the lowest responsive bid.

A Section 3 Business Concern

A business concern meeting at least one of the following criteria, documented within the last six-month period:

1. It is at least 51 percent owned and controlled by low- or very low-income persons; or
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing

Fines for Non-Compliance

Contractors found to have violated the terms of this clause are liable for fines in an amount equal to the amounts paid into the training fund as specified above. The Harrisburg Housing Authority will not consider the contractor responsive for future contracts for a period of 120 days after the fine is paid.

Contractors That are Unable to Engage in Opportunities for Section 3/Business

For contractors that do not engage in training, employment, and contracting opportunities for Section 3 residents, the contractor must contribute to the Harrisburg Housing Authority training fund. For all contracts awarded to sub-contractors, the prime contractor must ensure that, to the greatest extent feasible, all sub-contractors will provide training, employment, contracting, and joint venture opportunities to Section 3 residents and business concerns of the Harrisburg Housing Authority.

SECTION 3 CONTRACTOR'S CERTIFICATION

The Bidder certifies that (choose 1):

- They are a Section 3 Contractor () **or**,
- They are not a Section 3 Contractor ()

as defined by the Housing and Urban Development Act of 1968 as amended, and defined in the definitions found at 24 CFR 75, as follows:

A Section 3 business concern, means a business concern, as defined in this section- (check appropriate field)

- () That is 51 percent or more owned and controlled by low-or- very low-income person(s); or
- () Over 75 percent of the labor hours performed for the business over the prior three months period are performed by a Section 3 workers;; or
- () A business at least 51 present owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Corporate Seal

Signature

Name and Title

Before me, the undersigned Notary Public, this day personally appeared _____ who being dully sworn to law, deposes and says that he is _____ of _____, and that the foregoing is true and correct.

Notary Public

SUBSCRIBED AND SWORN TO BEFORE ME This _____ day of

_____ AD: 20_____

ASSURANCE OF COMPLIANCE (Section 3, HUD ACT of 1968)

TRAINING, EMPLOYMENT, AND CONTRACTING OPPORTUNITIES FOR BUSINESS AND LOWER INCOME PERSONS

A. The project assisted under this (contract) (agreement) is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S. C. 170U. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

B. Notwithstanding any other provision of this (contract) (agreement), the (applicant) (recipient) shall carry out the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR Part 75 and all applicable rules and orders of the Secretary issued there under prior to the execution of this (contract) (agreement). The requirements of said regulations include but are not limited to development and implementation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the project; the making of a good faith effort, as defined by the regulation, to provide training, employment and business opportunities required by Section 3; and incorporation of the "Section 3 Clause" specified by Section 75 of the regulations in all contracts for work in connection with the project. The (applicant) (recipient) certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

C. Compliance with the provisions of the Section 3 Clause of this covered contract, the regulations set forth in 24 CFR Part 75, and all applicable rules and orders of the Secretary issued there under prior to approval by the Government of the application for this (contract) (agreement), shall be a condition of the Federal financial assistance provided to the project, binding upon the (applicant) (recipient), its successors and assigns. Failure to fulfill these requirements shall subject the (applicant) (recipient), its contractors and subcontractors, its successors, and assigns to the sanctions specified by the (contract) (agreement), and to such sanctions as are specified by 24 CFR Section 75

D. Attachment to this certification: **Bidder's Section 3 action plan.** Submission of a detailed plan shall be attached to and becomes a part of this certification.

APPLICANT: _____

SIGNATURE: _____

Address: _____

Date: _____

E-MAIL/CONTACTS

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