

# OVERLAND PARK

## Section 3 Reporting Requirements

### 1. Introduction

Section 3 of the Housing and Urban Development Act of 1968 seeks to ensure that economic opportunities – especially employment – generated by HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which federal assistance is invested.

Projects to which Section 3 applies include housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance exceeds

\$200,000, (or \$100,000 in the cases of the Lead Hazard Control and Healthy Homes programs.) Section 3 applies to the entire project, regardless of whether the project is fully or partially assisted by HUD financial assistance.

Section 3 was updated in 2020, with the implementing regulations located at 2 CFR Part 75 and Federal Register Volume 85 No. 189, page 61524. Principally, the revisions require contractors and subcontractors, must **make their best efforts** to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers.

Contractors are required to monitor and report total labor hours worked on the project, including total labor hours worked by Section 3 Workers and Targeted Section 3 Workers.

Section 3 compliance will be considered to have been met, in the absence to evidence to the contrary, if:

1. the necessary certifications regarding prioritization are provided and
2. the following benchmarks set by HUD are met or exceeded, 25% of labor hours worked on the project must be “Section 3 workers” and 5% of total labor hours worked on the project must be “Targeted Section 3 Workers.”

These benchmark requirements will be updated and published by HUD every five years. Subsequent updates were issued in 2021 to provide guidance for tracking and reporting compliance with the new requirements. Refer to 24 CFR 75 for any further updates on Section 3 requirements.

## **2. Definitions**

*Contractor:* any entity entering into a contract with: (1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or (2) A subrecipient for work in connection with a Section 3 project.

*Labor hours:* the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

*Low-income person:* a person whose gross household income does not exceed 80% of the area median income (AMI)

*Material supply contracts:* contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

*Professional services:* non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

*Public housing financial assistance:* assistance as defined in 24 CFR 75.3(a)(1)

*Section 3:* Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701u)

*Section 3 business concern:* A business concern that meets at least one of the following criteria, documented within the last six-month period: (i) It is at least 51 percent owned and controlled by low- or very low-income persons; (ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or (iii) 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. The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. Section 3 business concerns are not exempt from meeting the specifications of the contract.

*Section 3 worker:* Any worker who currently fits or when hired within the past five years fit at least one of the following categories: (i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD; (ii) The worker is employed by a Section 3 business concern; or (iii) The worker is a YouthBuild participant. The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

*Service area or the 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 a 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 U.S. Census.

*Subcontractor* means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

*Targeted Section 3 worker:* A worker employed by a Section 3 business concern or a worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years: (i) A resident of public housing or Section 8-assisted housing; (ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; (iii) A YouthBuild participant; or (iv) a worker living within the service area or neighborhood of the project. Targeted Section 3 workers shall not exclude an individual that has a prior arrest or conviction.

*Very low-income person:* a person whose gross household income does not exceed 50% of the area median income (AMI)

*YouthBuild programs:* programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226)

### **3. Reporting**

At a minimum, Contractors must report annually by July 30th (i) the total number of labor hours worked during the 12-month period ended June 30 annually during the project, including labor hours worked by any contractors and subcontractors; (ii) The total number of labor hours worked by Section 3 workers; and (iii) The total number of labor hours worked by Targeted Section 3 workers. City staff may require that Section 3 labor hours are reported monthly, in accordance with other contract reporting requirements.

Section 3 benchmarks require that 25% or more of the total labor hours worked for all workers on a Section 3 Project must be attributed to Section 3 Workers, and that 5% or more of the total labor hours worked for all workers on a Section 3 Project must be attributed to Targeted Section 3 Workers.

#### **If the project's Section 3 benchmarks are not met, the Contractor must report its Section 3 compliance activities and those of its contractors and subcontractors.**

These qualitative efforts may include, but not be limited to: outreach efforts to generate job applicants who are Targeted Section 3 workers; training or apprenticeship opportunities; provision of technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching); provision of assistance to Section 3 workers in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services; holding one or more job fairs; provision of services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care) to Section 3 workers; provision of assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training; assisting Section 3 workers to obtain financial literacy training and/or coaching; engaging in outreach efforts to identify and secure bids from Section 3 business concerns; providing technical assistance to

help Section 3 business concerns understand and bid on contracts; dividing contracts into smaller jobs to facilitate participation by Section 3 business concerns; providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns; promoting use of business registries designed to create opportunities for disadvantaged and small businesses; or providing outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

#### **4. Recordkeeping**

Contractors must make available to the City and to HUD all records, reports, and other documents or items of the Contractor that are maintained to demonstrate compliance with the requirements of Section 3.

Contractors must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

(1) 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.

(2) 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 (D) A worker's certification that the worker is a YouthBuild participant. (iv) An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census; or (v) An employer's certification that the worker is employed by a Section 3 business concern.

The documentation described in this section must be maintained for the time period required for record retention in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200

(five years), whichever is greater.

A Contractor may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

#### **5. Contracting**

Contractors must include the following language in any agreement, contract, or subcontract that applies to a Section 3 project:

- 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 75, 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 75 regulations.
- C. In accordance with the requirements of 24 CFR 75.19, the Contractor agrees to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations that the Contractor shall ensure that employment and training opportunities arising in connection with the Section 3 Project are provided to Section 3 Workers within the metro area where the Section 3 Project is located. Where feasible, priority for opportunities and training described in this section should be given to: Section 3 Workers residing within the metro area and/or the neighborhood of the project, and Participants in YouthBuild Programs. The Contractor further agrees to the greatest extent feasible and consistent with existing Federal, state and local laws and regulations, that priority contracting opportunities should be given to Section 3 Business Concerns that provide economic opportunities to Section 3 Workers residing within the service area of the neighborhood of the project, and YouthBuild Programs.
- D. 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 post copies of a 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 the

benchmarks for labor hours worked by Section 3 Workers and Targeted Section 3 Workers, and availability of any labor positions, apprenticeships, and training positions and the 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.

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

B. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference 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).

#### **6. Authorization and Release**

Section 3 information, data, and documents are collected to and must comply with federal and state reporting and record keeping requirements. The information is also used to protect the public financial interest and to verify the accuracy of information submitted. When permitted by law, it may be released to government agencies, local public housing authorities, regional non-profit housing agencies, service providers and civil or criminal investigators and prosecutors. It may also be used for research and program evaluation purposes.

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### **SECTION 3 STATEMENT**

The undersigned has read and understands the Section 3 Requirements listed in this document and agrees to comply with, and to report required information to the City in accordance with these reporting requirements.

Contractor/Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_