

SECTION 3 POLICY

I. BACKGROUND

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) ("Section 3") and 24 CFR Part 135 requires that, to the greatest extent feasible, employment and other economic opportunities generated by certain financial assistance from the U.S. Department of Housing and Urban Development ("HUD") be directed to low- and very low-income residents, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low income persons, as defined in 24 CFR 135.5.

II. STATEMENT OF PURPOSE

This Section 3 Policy ("Policy") shall provide direction to the Philadelphia Housing Authority ("PHA") for maximizing employment and other economic opportunities for low- and very low-income individuals and business concerns through certain HUD-funded contracts, pursuant to 24 CFR Part 135. PHA will establish appropriate procedures and processes to implement this Section 3 Policy. This Policy does not require employing a Section 3 Resident or contracting with a Section 3 business concern that does not meet the qualifications of the position to be filled or cannot fulfill the contract requirements.

III. APPLICABILITY

This Policy shall cover all contracts, including memoranda of understanding, for the provision of services to PHA funded through Section 3 Covered Assistance, which includes cooperative purchasing agreements and contracts for professional services (such as audit and accounting, brokerage, architecture, and legal), maintenance, repairs, labor, landscaping, modernization projects, employee training, PHA resident education and services, and construction, except that it shall apply to contracts entered into in accordance with PHA's Small Purchase Procedures, which are under the \$18,500.00 threshold designated therein, but only as set forth in Section VI.6. below. This Policy does not apply to contractors who only furnish materials or supplies

IV. DEFINITIONS

PHA incorporates into this Policy all of the definitions contained in 24 CFR 135.5, with those most applicable to this Policy listed below.

Contractor: Any entity that enters into a contract or agreement to perform work generated by the expenditure of Section 3 Covered Assistance, or for work in connection with a Section 3 Covered Project.

HUD Youthbuild Programs: Programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), 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.

New Hires: Full time employees for permanent, temporary or seasonal employment opportunities.

Section 3 Business Concern: A business concern is defined as a business entity formed in accordance with State law, and which is licensed to the extent required under any State, county or municipal law to engage in the type of business activity for which it was formed:

- 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.

Section 3 Clause: The contract provisions set forth in 24 CFR 135.38. The Section 3 Clause follows this Policy as Attachment 1.

Section 3 Covered Assistance

- 1) Public and Indian housing development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (“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); or
 - b) Housing construction; or
 - c) Other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 Covered Contract: 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 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.

Section 3 Covered Project: The construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards); other public construction that includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 Fund: A fund held and administered by or under the direction of PHA to be expended for the purpose of supporting training programs for Section 3 Residents to develop skills necessary or useful to enable Section 3 Residents (i) to fulfill all or a portion of the requirements of any of PHA's Section 3 Covered Contracts, (ii) to support or create Section 3 Business Concerns or (iii) to sell, directly or through Section 3 Business Concerns, supplies and materials commonly procured by public housing authorities. Such training programs shall include pre-apprenticeship programs, including, without limitation, apprentice or pre-apprenticeship programs developing skills involved in building trades, maintenance, landscaping and security and scholarships to pay the cost of participation of Section 3 Residents in any available apprenticeship programs for the building trades such as plumbing, carpentry, electrical, etc. The financial assistance may be used for the payment of tuition, union initiation fees, dues, tools, equipment and work clothing, or any other related expense.

Section 3 Resident: (1) A public housing resident or (2) a low or very low-income person, as defined below, who resides in Philadelphia, PA. (3) A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence, when requested, that the person is eligible for the preference.

1. Low-income: households whose income does not exceed 80 percent of the median income for the area in which they reside.
2. Very low-income: households whose incomes do not exceed 50 percent of the median income for the area in which they reside.

Subcontractor: 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.

V. PHA RESPONSIBILITIES

PHA will comply with Section 3 in its operations. This responsibility includes:

1. Notifying Section 3 Residents and Section 3 Business Concerns about jobs and contracts generated by Section 3 Covered Assistance so that residents may seek jobs and businesses may submit bids/proposals for available contracts.
2. Notifying potential contractors of the objectives of Section 3 and ways in which each contractor can assist PHA in meeting its goal.

3. Facilitating the training and employment of Section 3 Residents and the award of contracts to Section 3 Business Concerns; and
4. Documenting the action that the PHA takes to comply with the Section 3 requirements, the results of the actions, and impediments, if any.

PHA also has a responsibility to ensure compliance of contractors and subcontractors. PHA will:

1. Notify contractors of their responsibilities under Section 3 including, but not limited to, incorporating the Section 3 Clause in contract documents.
2. Refrain from entering into contracts with contractors that are in violation of the regulations at 24 CFR Part 135.
3. Respond to complaints made to PHA by Section 3 Residents or Section 3 Business Concerns that PHA, a contractor or subcontractor, is not in compliance with 24 CFR Part 135.
4. Cooperate with HUD in obtaining the compliance of contractors and subcontractors when allegations are made that PHA's contractors and subcontractors are not in compliance with the regulations at 24 CFR Part 135.

VI. GOALS

1. Goals for Employment and/or Training: All contractors under Section 3 Covered Contracts shall contractually agree to employ and/or train Section 3 Residents, to the greatest extent feasible, for 30% of all New Hires related to the Contract.
2. Employment Preferences. Contractors must select qualified Section 3 Residents as New Hires for work generated by the Section 3 Covered Contract, to the greatest extent feasible, in the following order of priority:
 - a. Residents of the development or developments where the work is to be performed;
 - b. Other residents of PHA;
 - c. Participants in HUD Youthbuild Programs occurring in Philadelphia;
 - d. Other Section 3 residents.
3. Goals for Contracting by PHA: To the greatest extent feasible, PHA shall seek to award to qualified Section 3 Business Concerns contracts of at least (i) 10% of the total dollar amount of all Section 3 Covered Contracts for building trades work for maintenance, repair, modernization or development of public housing and (ii) 3% of the total dollar amount of all other Section 3 Covered Contracts.
4. Goals for Subcontracting by Contractors under PHA Contracts: All contractors under Section 3 Covered Contracts shall, to the greatest extent feasible, seek to award to qualified Section 3 Business Concerns, subcontracts of at least (i) 10% of the total dollar amount of all Section 3 Covered Contracts for building trades work for maintenance, repair, modernization or development of public housing and (ii) 3% of the total dollar amount of all other Section 3 Covered Contracts.
5. Contracting and Subcontracting Preferences: To the greatest extent feasible, PHA and its contractors and subcontractors must select qualified Section 3 Business Concerns to

perform work generated by any Section 3 Covered Contract, in the following order of priority:

- a. Business concerns that are 51% or more owned by residents of the development for which the Section 3 Covered Assistance is expended, or business concerns whose full-time permanent workforce includes at least 30 percent of those persons as employees;
 - b. Business concerns that are 51% or more owned by residents of other PHA-owned or managed developments or whose full-time, permanent workforce includes at least 30 percent of those persons as employees;
 - c. HUD Youthbuild Programs being carried out in Philadelphia ;
 - d. Business concerns that are 51% or more owned by Section 3 Residents, or whose permanent, full-time workforce includes no less than 30 percent Section 3 Residents, or that subcontract in excess of 25% of the total amount of subcontracts to Section 3 Business Concerns described in a. and b. above.
6. Small Purchases. For contracts not to exceed \$18,500, procured in accordance with the Small Purchase Procedures found in PHA's Procurement Policy, and where the Section 3 Covered Contract is to be awarded based on price, the Contract will be awarded to the qualified Section 3 Business Concern with the lowest responsive quotation, if it is reasonable and no more than 10% higher than the lowest responsive quotation from any qualified source. If no responsive quotation by a Section 3 Business Concern is within 10% of the lowest responsive quotation from any qualified source, the award will be made to the source with the lowest responsive quotation.

Where the Section 3 Covered Contract is to be awarded based on factors other than price, a request for quotations will be prepared in accordance with PHA's Procurement Policy, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation will identify all factors to be considered, including price or cost. The rating system will provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 Business Concerns. The contract will be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

Where the section 3 Covered Contract is to be awarded under a sealed bid process, PHA will utilize the method for providing preference defined in section 111(2)(i) of Appendix to 24 CFR Part 135. Bids will be solicited from all businesses, including section 3 Business Concerns and non-section 3 Business Concerns. An award shall be made to the qualified section 3 Business Concern with the highest priority ranking and with the lowest responsive bid if that bid:

- is within the maximum total contract price established in PHA's budget for the specific project for which bids are being taken; and
- is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

	X= Lesser of:
When the lowest responsive bid is less than \$100,000.00	10% of that bid or \$9,000.
When the lowest responsive bid is:	
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	1.5% of the lowest responsive bid

If no responsive bid by a Section 3 Business Concern meets the specified requirements, the contract will be awarded to the responsible bidder with the lowest responsive bid. To be considered responsible, all bidders, including Section 3 Business Concerns and non-Section 3 Business Concerns, must demonstrate compliance with the “greatest extent feasible” requirement of Section 3.

VII. COMPLIANCE

1. HUD holds PHA accountable for compliance with Section 3 requirements. Therefore, contractor reporting requirements will be incorporated into all Section 3 Covered Contracts and contractors shall be contractually required to respond to requests for information from PHA for compliance verification throughout the life of the contract. PHA’s Section 3 Program may also conduct random compliance inspections at the site of a Section 3 Covered project.
2. Achievement of Numerical Goals: In the absence of evidence to the contrary, if a contractor meets the minimum numerical goals listed in Section VI, above, the contractor is considered to have complied with its Section 3 requirements under this Policy.

3. Burden of Proof:Section 3 requires compliance with its minimum numerical requirements unless PHA and its contractors demonstrate that such compliance was not feasible following reasonable efforts. Contractors must demonstrate, through compliance reports and forms established by PHA, that they have met the numerical goals stated in Section VI of this Policy. When a contractor is unable to meet the objectives stated in Section VI of this Policy, the contractor has the burden of demonstrating why it was not feasible to meet the numerical goals. Such justification may include impediments encountered despite actions taken. In the event a contractor does not meet the numerical goals for both New Hires and subcontracting or the contractor has no need for New Hires or any subcontracting or both, PHA requires that a contractor indicate that it has provided other economic opportunities as further evidence its of attempt to comply with Section 3 requirements. (see Sections VII.3. andVIII below)

3. Supplemental PHA Requirements. PHA requires each contractor pursuant to any Section 3 Covered Contractto provide other economic opportunities in the event a contractor demonstrates that meeting any applicable Section 3 numerical goals was not feasible after using reasonable efforts to achieve such numerical goals. PHA also requires the provision of other economic opportunities in each of the following circumstances:

- a. The contractor can demonstrate that it has no need or plan to subcontract or hire to fulfill the Section 3 Covered Contract;
- b. The contractor needs New Hires and either meets the applicable numerical goals or demonstrates that it has met that goal to the maximum extent feasible, but the contractor does not need to subcontract to fulfill the Section 3 Covered Contract;
- c. The contractor needs to subcontract and either meets the applicable numerical goal or demonstrates that it has met that goal to the maximum extent feasible, but the contractor does not need new hires to fulfill the Section 3 Covered Contract.

4. Cooperation. PHA will cooperate fully with Section 3 compliance reviews by HUD. PHA will promptly correct or work with contractors to correct any deficiencies identified by HUD during such reviews.

VIII.OTHER ECONOMIC OPPORTUNITIES:

a. The following qualify as other economic opportunities to fulfill the requirements of Sections VII. 2 and 3:

- i. Contribute to a Section 3 Fund created by PHA (see c. below);
- ii. Hiring Section 3 Residents in part-time positions;
- iii. Providing economic opportunities to establish, stabilize or expand Section 3 Business Concerns, including, but not limited to the following:
 - (1) formation of Section 3 joint ventures;
 - (2) purchase of materials and supplies from PHA resident-owned businesses;
 - (3) use of labor only contracts for building trades;

Such economic opportunities may be provided either directly by the contractor or by the contractor providing incentives to non-Section 3 businesses to provide such economic opportunities to low-income persons.

- iv. Use of upward mobility, bridge and trainee positions to fill vacancies;
- v. Hiring Section 3 Residents in management and maintenance positions regarding other housing developments;

Hiring Section 3 Residents or subcontracting to Section 3 Business Concerns in circumstances unrelated to any PHA Section 3 Covered Contract;

- vii. Providing mentorship and/or training opportunities that benefit Section 3 Residents or Section 3 Business Concerns or both;

b. A contractor may use any one or more of the foregoing economic opportunities, but the contractor must demonstrate that the cost or value of such other economic opportunities with respect to each Section 3 Covered Contract is not less than the difference between ten percent (10%) of the Section 3 Covered Contract amount (three percent [3%] for non-construction).

c. PHA may not require a contractor to make a Section 3 Fund contribution in lieu of any of the other economic opportunities described in a. ii – vii above.

IX. DATA COLLECTION AND REPORTING

PHA will submit an annual report to HUD documenting the compliance with Section 3 in such form and with such information as HUD may request. The report will be submitted in compliance with HUD required deadlines. HUD will be provided access to all records, reports and other documents or items PHA maintains to demonstrate compliance with Section 3 requirements.

X. COMPLAINTS

Complaint Right

Any Section 3 Resident and any representative who is not a Section 3 Resident, but who represents one or more Section 3 Residents, and any Section 3 Business Concern or any individual representative of one or more Section 3 Business Concerns, may bring concerns of noncompliance with Section 3 to HUD in conformity with complaint procedures detailed in 24 CFR 135.76. Complaints are to be filed with the Assistant Secretary for Fair Housing and Equal Opportunity.

Resolution of Complaints

If the Assistant Secretary sends a complaint to PHA for resolution, PHA will review the complaint promptly. If PHA believes that the complaint lacks merit, PHA will notify the Assistant Secretary, in writing, of this recommendation with supporting reasons, within thirty (30) days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

If PHA determines that there is merit to the complaint, PHA will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the sixty (60) day period, PHA must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both PHA and the complainant and must summarize the terms of the resolution reached between the two parties.

Any request for an extension of the sixty (60) day period by PHA must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

If PHA is unable to resolve the complaint within the sixty (60) day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling in accordance with 24 CFR 135.76.

Intimidatory or Retailatory Acts Prohibited

PHA will not intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted or participated in any manner with an investigation, proceeding, or hearing regarding a complaint.

Judicial Relief

Nothing in this policy precludes a section 3 Resident or section 3 Business Concern from exercising the right to seek redress directly through judicial procedures.

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Attachment 1

Section 3 Clause

All Section 3 Covered Contracts shall include the following clause, referred to as the Section 3 clause:

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 worksite where both employees and applicants for training and employment positions can see the notice. The notices 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 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 elected but before the contract is executed, and (2) with persons other than those to whom the regulations in 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 Assistance Act (25 U.S.C. 450e) also applies to the work performed under this contract. Section 7(b) requires that 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).

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