

## CDBG-DR Projects (Section 3 Contracting Overview)

### Section 3 Contracting – Overview

*The below overview should be reviewed by KYTC to ensure the agency understands its Section 3 obligations as a CDBG-DR subrecipient, particularly as it relates to the bid process and contracting.*

#### **Section 3 Plan, Policies and Procedures**

At a minimum, a Section 3 Plan clarifies the purpose of Section 3, outlines how Section 3 applies to a specific HUD program or programs, describes the safe harbor benchmarks, certification procedures and order of priority requirements for employment, training and contracting opportunities, outlines realistic qualitative efforts for grantees, subrecipients, contractors and subcontractors, and clarifies roles and responsibilities. Once a Section 3 Plan is established, it is important for a grantee to think through how the plan will be implemented and document the applicable policies and procedures.

#### **Section 3 Bid Documents**

Including Section 3 forms into a bid or RFP is also an important strategy for ensuring that the contractor is aware of the Section 3 requirements and expectations. Refer to the Certification of Acknowledgement Form for more information.

**Section 3 Contract Language** Sample Section 3 contract language includes items 1-7 below:

1. The Bidder/Proposer is under no contractual or other impediment that would prevent them from complying with the 24 CFR Part 75 regulations.
2. To the greatest extent feasible, employment and other economic opportunities generated by a HUD-assisted project will be directed to low and very low-income persons, particularly those who are recipients of HUD assistance for housing.
  - Section 3 workers and Targeted Section 3 workers as defined by HUD, will be notified of the availability of training and/or employment opportunities.
  - Labor organizations or representatives of workers with which the contractor has a collective bargaining agreement or other understanding, if any, will be sent a notice advising of the contractors' commitments under Section 3.
  - Post 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 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.
3. Regardless of hiring or other economic opportunity commitments, the bidder/proposer understands that it also needs to make good faith efforts to achieve the labor hour benchmarks established by HUD pursuant to 24 CFR Part 75.23 and report such labor hours pursuant to 24 CFR Part 75.25. For purposes of Section 3, good faith efforts include, but are not limited to:
  - Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
  - Provided training or apprenticeship opportunities.
  - Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
  - Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

**Section 3 Contracting Goals**

- At a minimum, ensure required Section 3 Clause is included in contract materials.
- Bid materials include any requirements, general explanation of Section 3.
- Any specific goals outlined in contractual documents align with the approved Section 3 Plan that the agency has created.
- Documented engagement and outreach prior to and or during the bid letting process to ensure access to information to qualified Section 3 Targeted residents and or Section 3 Business Concerns.

- Held one or more job fairs.
  - Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
  - Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
  - Assisted Section 3 workers to obtain financial literacy training and/or coaching.
  - Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
  - Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
  - Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
  - Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
  - Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
  - 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. The contractor will track and certify ALL employee names, labor hours, and Section 3 worker/Targeted Section 3 worker status per project and provide this information to the subrecipient/grantee. A good faith estimate of labor hours for each full or part time employee can be used if a detailed time attendance system is not in place. Some Exclusions apply for non-construction services contracts.
  5. 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 obligation under 24 CFR Part 75.
  6. The Section 3 clause will be included in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to collect and provide all subcontractor information and take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause. 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.
  7. 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 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 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).

Language and or information about Section 3 should be placed within an applicable bid document so that the grantee is articulating a clear expectation to the potential contractor as it relates to Section 3 and expected outcomes. A **best practice** is to discuss Section 3 along with any cross-cutting regulations during the pre-bid meeting, specifically so that this information is understood by the potential bidder.

Contracts are required to be posted in English. Grantees should follow their approved Language Access Plan<sup>1</sup> as it relates to any required translations and especially if they have a high population of non-English speaking residents, to ensure that all people have meaningful access to the information provided and to remove language barriers where present. A **best practice** is to have a translator tool on the grantee website that can easily translate documents where required. One key consideration related to contracts is to ensure that the contracts meet requirements as outlined in 2 CFR 200 and that when feasible and where applicable, contracts should be broken into smaller contracts to make it more competitive for MBE/WBE and Section 3 Business concerns to be able to compete and make affirmative steps where feasible. <sup>2</sup> Although Section 3 is race and gender neutral, often, small businesses, women business enterprises and or disadvantage businesses may also meet the definition of Section 3 as well.

Contracts should also clarify reporting requirements to enable the grantee to capture Section 3 information. As a variety of grantees capture this information differently, the grantee should select a methodology that best suits their organizational capacity and provides the best approach that streamlines reporting.

**Be Prepared:** As the grantee articulates clear expectations as it relates to Section 3 requirements to the contractor/vendor- the grantee must also be prepared to have resources available to assist both at the beginning and through the contract to continue to support the contractor/vendor in meeting goals. The grantee should have a sustainable system in place to refer the contractor/vendor to when job and or training opportunities may arise, a vendor and or resident registration process (an *available list*) and or materials available to support engagement and the success of the Section 3 program.

### **Qualitative Efforts/Outreach**

It is important to develop realistic program and project level qualitative efforts for their community. It is recommended that the subrecipient/grantee begin with establishing a plan that outlines the minimum program level and project level qualitative efforts that it will undertake to meet the Section goals. All qualitative efforts should be documented and the grantee should maintain record of efforts made. Examples of efforts that can be made at the project and program level.

### **Audiences and Messages**

---

<sup>1</sup> In accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166

<sup>2</sup> Any vendor still must be a qualified vendor/contractor. In addition, this **is not intended** to negate any required competitive processes as required by federal procurement standards. Grantee should still follow required and approved procurement requirements and promote fair and open competition.

**Subrecipient/grantee as a Convener:** Its important for the subrecipient/grantee to foster collaboration among the contractors and vendors to create and or enhance existing opportunities for Section 3 residents and businesses concerns. This level of engagement requires a multi-faceted approach in having systems, products, and resources available to make those connections on-going.

The subrecipient/grantee will need to engage with a variety of audiences to do effective outreach and communication. As the grantee begins to further plan for Section 3, it is beneficial to start with internal resources, such as:

1. **Identifying a Section 3 Coordinator:** This person can serve as both the internal and external point person for anything related to Section 3.
2. **Build capacity and knowledge of internal partners:** Engaging staff and internal stakeholders so that they understand Section 3 and the program goals.
3. **Expand Website Resources:** Creating space within your programmatic website for Section 3 will also serve as a resource for both internal and external audiences. As well as links to other departments that can also help Section 3 business concerns.

Section 3 requirements require recipients, to the **“greatest extent feasible,”** to engage and conduct outreach for Section 3. Section 3 will have audiences that require diverse types of engagement and what is referred to in the regulation as the **“outreach methods”**. As the list and or examples provided below are not exhaustive, there are common and best practices that can be utilized. We encourage grantees to utilize the method that works best based upon the approved Section 3 plan and policies and based upon the resources made available. Outreach methods should also consider diverse, equitable, and inclusive methods that are specific to the grantees community.

Target Audience	Audience Description	Engagement Method
Section 3 Targeted Workers	<ul style="list-style-type: none"> <li>● As defined by regulation</li> </ul>	<ul style="list-style-type: none"> <li>- Direct mailing within the project area notifying residents or potential residents about the – opportunity. This could include emails to neighborhood list serv or physical mailing of notices.</li> <li>- Social Media/Press Releases/Newsletters</li> </ul>
Section 3 Worker/Resident (General)	<ul style="list-style-type: none"> <li>● As defined by the regulation</li> </ul>	<ul style="list-style-type: none"> <li>- Flyers posted, mailings, information place within unemployment offices.</li> <li>- Having a job fair to get potential workers registered /information about Section 3 program.</li> </ul>

Target Audience	Audience Description	Engagement Method
		<ul style="list-style-type: none"> <li>- Website</li> </ul>
Partnering Agencies	<ul style="list-style-type: none"> <li>• Subrecipient/grantee’s Housing and Human Services Department</li> <li>• Local Homeless Shelters</li> <li>• Continuum of Care Agencies</li> <li>• Dept. of Health of Human Services</li> <li>• Non-profit agencies</li> <li>• Business Development Agencies, Economic Development, Chamber of Commerce, etc.</li> </ul>	<ul style="list-style-type: none"> <li>- Urge listserv sign-up or</li> <li>- Obtain various list serves from other partnering agencies.</li> <li>- Create Quarterly Partnership Meeting- exchanging ideas and or information about Section 3 to further develop programs.</li> <li>- Cross-promote Section 3 marketing materials.</li> </ul>
Vendors /Contractors and Section 3 Business Concerns	<ul style="list-style-type: none"> <li>• As defined by regulation</li> <li>• General Contractors/Vendors who may not meet the current definition of a Section 3 Business Concerns, but could work with S3BC as subcontractors</li> </ul>	<ul style="list-style-type: none"> <li>- Email list serv for notice of specific CDBG opportunities</li> <li>- Vendor Job Fairs for large projects</li> <li>- Posting on KYTC Website or Procurement Website</li> </ul>

In addition to ensuring that the appropriate audiences are engaged the grantee has a critical role in ensuring that they are reporting and tracking information on outreach efforts.