

Title 24: Housing and Urban Development

PART 135—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

§ 135.38 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 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 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 or 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 selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 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 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 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).

HUD Section 3 Preferences & Reporting Requirements:

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968, which recognizes that HUD funds are typically one of the largest sources of federal funding expended in communities through the form of grants, loans, entitlement allocations and other forms of financial assistance. Section 3 is intended to ensure that when employment or contracting opportunities are generated through the use of HUD funds, to the greatest extent feasible, preference be given to low and very low income persons or to business concerns that provide such opportunities to low and very low income residents.

This Program is geared toward the benefit of the Bidder. One advantage it that is allows for is up to a 9% variance between the Section 3 Qualified Bidder against a lower, non-section 3 qualified Bidder. Qualifying your company as a HUD Section 3 participant is easy, it benefits our community and also can become a deciding factor in winning the Contract Award.

There are three primary methods available to Bidders whereby HUD Section 3 compliance and participation can be satisfied. The “HUD Section 3 Requirements” section, provided herein, contains the Title 24, Section 135.38 Regulation, together with forms, additional instruction and exhibits to be completed by the Bidder for qualification and compliance purposes.

NOTE: Bidders do not have to have hiring needs in order to win the Contract Award. However, ALL Bidders MUST complete the “Statement of Workforce Needs” Form.

Failure to do so will result in Bid disqualification.

The first method of qualifying as a HUD Section 3 Bidder is through already employing or hiring persons that are a Section 3 resident.

- A “Section 3 resident” is a person who within the last 3-years has received: 1) any public housing or state sponsored assistance programs; or 2) is classified as a low or low-low income person earning less than 80% of the Area Median Income (AMI) in which the Section 3 covered dollars are expended.

In this method Bidders need to survey their employees and have them complete the form entitled “*Resident Employment Opportunity Data*”, for each person who meets the qualification criteria of the table below.

2017 Income Limits – Maricopa County, Arizona

2015 Income	1 person	2 people	3 people	4 people	5 people	6 people	7 people	8 people
80% of Median	\$37,100	\$42,400	\$47,700	\$52,950	\$57,200	\$61,450	\$65,700	\$69,900

The second method is Certification as a Section 3 Business.

- A Section 3 business concern is a business that can provide evidence that they meet one of the following:
 - 51 percent or more owned by Section 3 residents; **or**
 - At least 30 percent of its full time employees include persons that are currently Section 3 residents as defined by the above, or within three years of the date of first employment with the business concern, qualified as Section 3 residents; **or**
 - Provide evidence, as required, of a commitment to subcontract in excess of 25 percent of the Contract dollars awarded to business concerns that meet the qualifications in one of the above two methods; **or**
 - The Business plans to hire additional personnel for the project.

Bidders selecting this qualification method need to complete form entitled “Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability” and the “Resident Employment Opportunity Data” forms for each qualifying employee.

If a commitment to subcontract in excess of 25% of the Contract dollars awarded is the approach, the Bidder and the Bidder’s subcontractors will need to complete and sign the above stated forms.

The third method is through participation in Community Outreach for the purpose of contributing to the database.

Bidders using this approach must demonstrate to the greatest extent feasible, that their firm has sought, solicited, advertised and pursued Section 3 qualified companies or individuals within the community where the project is located, for the purposes of gainful employment and/or contract opportunities. There are numerous ways that Bidders can demonstrate and document their outreach efforts. Bidders selecting this method should refer to the sheet entitled “Examples of Efforts to Award Contracts to Section 3 Business Concerns” of the “HUD Section 3 Requirements” section.

For additional information, or technical assistance regarding compliance with the statutory and regulatory requirements of Section 3, please refer to the following federal resources:

- www.hud.gov/section3
- Section 3 Statute – 12 U.S.C. 1701u
- www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg
- E-mail questions or comments to: section3@hud.gov
- Contact: U.S. Department of Housing and Urban Development
Economic Opportunity Division
451 Seventh Street, SW Room 5235
Washington, DC 20410