

DCA 2014 Section 3 Manual

Section 3 Basic Information and Terminology

Section 3 Purpose

The purpose of section 3 of the Housing and Urban Development Act of 1968 (section 3) and regulations at 24 CFR part 135 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the *greatest extent feasible*, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low-income persons, especially those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low and very low-income persons.

Section 3 Applicability

Section 3 requirements apply to training, employment (jobs created), contracting and other economic opportunities generated as a result of the expenditure of housing and community development assistance provided through the Georgia Department of Community Affairs (DCA), whether those opportunities are generated by the owner, contractor, or subcontractor.

Section 3 applies to the entire project budget for all projects and activities funded in whole or in part with HOME funds as follows:

- Section 3 covered projects for which the assistance exceeds \$200,000; and individual contracts and subcontracts for which the assistance exceeds \$100,000.

Section 3 Service Area

The Section 3 service area is the geographical area in which the persons benefitting from the section 3 covered projects reside. The service area shall not extend beyond the metropolitan area (MSA) or non-metropolitan county in which the section 3 covered assistance is expended.

Section 3 Resident

The DCA Multifamily program has defined Section 3 residents as new hires that are:

- HUD assisted public housing residents (housing is owned by a Public Housing Authority- PHA), or
- Low and very low-income persons who live in the service area where Section 3 covered assistance for the HOME program funded development is expended.
 - Low-income person – families whose incomes do not exceed 80% of the area median income (adjusted for household size) as established by HUD.
 - Very low-income person- families whose incomes do not exceed 50% of the area median income (adjusted for household size) as established by HUD.

What is a Section 3 Business Concern?

A business can be classified as a Section 3 business concern if:

- It is at least 51 percent or more owned by Section 3 residents,
- 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
- The business provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to a Section 3 business concern as defined above.

Training and Employment Opportunities Preference Tier for section 3 residents

Owners, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents. Priority consideration shall be given in the following order and where feasible to:

- Residents of HUD Assisted Housing and residents receiving government assistance for housing, within the service area where the section 3 covered project is located.
- Residents of the housing development receiving the section 3 covered assistance within the service area where the section 3 covered project is located
- Residents of the city receiving the section 3 covered assistance within the service area where the section 3 covered project is located
- Residents of the county receiving the section 3 covered assistance within the service area where the section 3 covered project is located

Contracting Opportunities Preference Tier for section 3 business concerns

Owners, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, contracting opportunities generated from the expenditure of section 3 covered assistance to section 3 business concerns. Priority consideration shall be given in the following order and where feasible to section 3 business concerns that:

- Are 51 percent or more owned by section 3 residents who reside in order of priority within the geographic service area as described under the section 3 resident training and employment opportunities preference tier and who live within the service area where the section 3 covered project is located.
- Employ section 3 resident owned businesses at no less than 30% of the contractor's aggregate full time staff where the section 3 business concern's

principal resides in order of priority within the geographic service area as described under the resident employment and training preference tier. Business concern must show evidence at time of bid.

- At the time of bid show evidence of their intent to award no less than 25% of their total award to section 3 business concerns whose principal resides in order of priority within the geographic service area as described under the section 3 resident training and employment opportunities preference tier.

Section 3 Numerical Goals and Compliance Determination

Owners, section 3 covered contractors and subcontractors may demonstrate compliance with the “greatest extent feasible” requirement of section 3 by meeting the following numerical goals in providing hiring, training and/or contracting opportunities to Section 3 residents and businesses:

Hiring/Training

- At least 30% of newly hired employees, and to provide training to those new hires. Employment goals are based on “new hires” which is defined as full-time employees for permanent, temporary, or seasonal employment opportunities.

Contracting

- At least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction.
- At least 3% of the total dollar amount of all other Section 3 covered non-construction or rehabilitation contracts (i.e., professional services) to businesses controlled by section 3 residents, or to businesses that largely employ such individuals.

Other Economic Opportunities

In evaluating compliance with the numerical goals for meeting the “greatest extent feasible” requirement, the HOME recipient, section 3 covered contractor and subcontractors must provide documentation demonstrating their “good faith” effort if compliance with the numerical goals cannot be met. The documentation must include a description of any actions taken, any impediments encountered, and any “other” economic opportunities provided that will enable DCA to make a compliance determination.

Good faith effort means that an owner, contractor or subcontractor must take concrete steps to expand resident training and employment opportunities, such as making residents aware of available training and employment positions, encouraging residents to participate in the job application process, and actually employing Section 3 area residents.

With respect to business participation, a good faith effort means identifying businesses located within the boundaries of the Section 3 covered service area, making them aware of contracting opportunities, encouraging the participation of affected businesses in the procurement process, and actually awarding contracts to these Section 3 business concerns if qualified.

Compliance Determination

The “good faith” effort documentation must be submitted to DCA for review and approval. DCA will take each HOME recipient, section 3 covered contractors and subcontractors explanation into consideration when making the determination of compliance.

Failure to comply with the requirements of Section 3 may result in final draw request denial, sanctions, including: debarment, suspension or limited denial of participation in HUD programs pursuant to 24 CFR Part 24.

Section 3 Implementation

The DCA section 3 policy requires that, when the **section 3 regulation is triggered**, every effort within the owner and general contractor’s disposal must be made, to the greatest extent feasible, to offer all available employment and contracting opportunities to section 3 residents and section 3 businesses based on the compliance methods below. Section 3 is triggered when the normal completion of construction and rehabilitation projects creates the need for **new** employment, contracting, or training opportunities.

The section 3 regulations should not be construed to mean that recipients are required to hire section 3 residents or award contracts to section 3 businesses other than what is needed to complete covered projects/activities.

If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of section 3 have not been triggered. However, each owner must still submit section 3 reports indicating this information.

Section 3 must be implemented in a manner consistent with existing Federal, State, and local laws. Section 3 does not supersede these laws, nor do these laws cancel or override the Section 3 obligation.

- Employment – section 3 is race neutral, directed at low income and very-low income persons.
- Procurement - Despite the method of procurement, the solicitation of bids/proposals and the final contract documents must include notice of section 3 obligations (including reporting).
- Contracting- All section 3 covered contracts and subcontracts in excess of \$100,000 must include the section 3 clause .

Forms and Reporting

As a condition of funding, all HOME funded project owners and contractors must submit the prescribed forms in the Mandatory Section 3 Solicitation Package (See Appendix A) describing their proposal to implement section 3. Omission of these documents makes that owner and or contractor non-responsive and, therefore, ineligible for funding or determined to be in noncompliance.

Submission must also include implementing procedures to provide timely notification to section 3 residents and business concerns of training, employment, and contracting opportunities generated by section 3 covered assistance. The plan must describe certification procedures used for identifying Section 3 residents and business concerns. The Section 3 plan must be submitted as part of the 2014 Design and Construction Review submittal.

Additionally, if the contractor is claiming certification as a 51% Resident Owned Business (ROB) or is certifying as a 30% employer, the appropriate Section 3 Business Certification as well as the Resident Self-Certification and Skills Data Form must be returned for all employees who meet the low- or very low-income requirement and are employed by the business concern .

As a condition of receiving HOME program assistance, owners certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b). Accordingly, DCA has the legal responsibility to monitor owners for compliance and can impose penalties upon those that fail to meet these obligations.

- DCA's section 3 policy requires all HOME funded project owners and general contractors submit to DCA a **Mandatory Section 3 Solicitation Package** (Appendix A) including the following forms:
 - Section 3 Self Certification and Action Plan after the general contract has been awarded.
 - Previous Section 3 Compliance Certification
 - Assurance of Compliance Certification
 - Resident Section 3 Self-Certification and Skills Data Form Affidavit for residents seeking employment and training preference.
 - Section 3 Business Concern Self-Certification forms (A, B or C) for businesses seeking section 3 contracting preference.
- Owners and general contractors must submit to DCA the Section 3 Quarterly Monitoring Report by the end of each quarter of each calendar year that the project is under construction or rehabilitation.
- Prior to the end of construction, the **owner** is required to submit to DCA the Section 3 Summary Report or form HUD-60002 (Appendix B). The information needed for this

report must be gathered from all contractors and subcontractors that were awarded contracts in excess of \$100,000. The Section 3 Form HUD-60002 Summary Reports are required to be submitted with the Final Draw documentation. The Section 3 report must be accompanied by a list of all Section 3 business concerns that received covered contracts/subcontracts and list of certified Section 3 residents. Provide a list of notification sent to Section 3 resident and/or business concerns regarding the availability of employment, training and contracting opportunities. DCA requires a minimum of 2 ads to be placed in applicable area publications.

Section 3 Summary Reports (form HUD-60002) are intended to measure each owner's efforts to comply with the statutory and regulatory requirements of Section 3 on its project's operations **AND** those of contractors, subcontractors, and sub-recipients (owners). Accordingly, each submission of form HUD-60002 should indicate the following:

- The total dollar amount of HOME funding that was received by the owner during the specified reporting period.
- The total number of new employees that were hired by the owner or its contractors and subcontractors.
- The amount of new employees that were hired by the owner or its contractors and subcontractors that meet the definition of a Section 3 resident.
- The total number of man hours worked on covered projects.
- The aggregate number of hours worked by Section 3 residents on covered projects.
- The total number of Section 3 residents that participated in training opportunities that were made available by the owner, its contractors, subcontractors, or other local community resource agencies.
- The total dollar amount of construction contracts (or subcontracts) that were awarded with HOME funding received by the owner.
- The dollar amount of the Owner's construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- Detailed narrative descriptions of the specific actions that were taken by the owner, covered contractors, subcontractors, or others to demonstrate compliance with the "greatest extent feasible" requirement of section 3 by meeting the numerical goals set forth in this manual.

Owners and Contractor Responsibilities

The following actions are required for all contract and sub-contract solicitations:

- A) When employment opportunities arise or are anticipated, post all job sites funded by DCA with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting. The sign should be no smaller than 24" x 24" in Black ink and specifically read:

"This project is covered under Section 3 of the HUD Act of 1968 which requires that any new hiring opportunities first be directed to low- and very low income persons in this community. Please contact (list the contact person name and number) for information on any employment, contracting and sub-contracting opportunities."

Job openings may be posted in community sources that are generally available to low income residents and the general public, including but not limited to: the local community newspaper; the most widely distributed newspaper; the management office of the local housing authority, or homeless agency, or/local low-income housing community; the local workforce board; the local office of the Georgia Division of Family and Children Services; and the local office of the Georgia Department of Public Health serving the county in which the project is located.

- B) Conveying that the contract work is a Section 3 Covered Contract in any advertisement for bids and proposals by placing the following language in each advertisement/public notice and website: **"This project is covered under the requirements of Section 3 of the HUD Act of 1968."**
- C) Notifying contractors of Section 3 requirements in any pre-bid meeting held.
- D) Incorporating the HUD mandated Section 3 clauses in all contracts where the work to be performed 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).
- E) Providing Resident Certification and Affidavit forms for employment at the sub-recipient's (owner's) business offices and allowing applications to be submitted at appropriate local locations.
- F) Encouraging the training of Section 3 residents by the contractors.
- G) Reporting quarterly on its efforts regarding Section 3 implementation on the DCA prescribed mechanism or form.
- H) Refusing to award contracts to businesses or persons that have previously violated Section 3 requirements.
- I) Using the attached Solicitation Package for each procurement associated with a covered project indicating that the work to be performed 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).

- J) Documenting actions taken to comply with Section 3 requirements including all results and impediments using the DCA prescribed mechanism or form.

HOME Funded Project owners may also choose to implement the following action:

Facilitate an opportunity fair annually for contractors to meet interested Section 3 residents for possible employment. A list can be developed as a resource tool for owners, contractors and subcontractors when seeking to hire Section 3 workers in the future.

Appendix A

DCA Mandatory Section 3 Solicitation Package

Appendix B

Form HUD-60002

Appendix C

DCA Standard Section 3 Operating Procedures

Policy Effective Date: _____, 20__ Procedural Change Date: _____, 20__

Procedure Title: Section 3

This operating procedure is tied to the Operating Policy on Section 3 designed to achieve and maintain compliance with the HUD Act of 1968 revised in 1992 and in 1994.

The procedures contained within are relative to the Section 3 daily operations in:

- Hiring
- Procurement
- Contracting
- Compliance Management
- Solicitation Package and Certification Documents

Section 1 – Sub-Recipients (Owners) and Contractors: Hiring

This procedure encompasses all full time employment types including, long term, short term, temporary and special assignments. In the process of seeking new employees for the sub-recipient (owner), contractor, or subcontractor, the following procedures should be followed in an effort to create as many employment opportunities for Tier 1 HUD direct beneficiaries:

Step 1: Post the position in community sources that are generally available to low income residents and the general public. It is required that a minimum of three (3) of the following listed sources will be exercised at least once prior to extending an offer of employment to anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e., Department of Labor)
- F) Local office of the Georgia Division of Family and Children Services
- G) Local office of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

Step 2: Be certain to list in the notice that the position is a **“Section 3 Covered Position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply.”**

Step 3: In reviewing all applicants, be certain to first select candidates that best fit the position requirements. If a Tier I resident is identified as a qualified candidate, all things being equal with others in consideration, a preference for employment should be given to the Section 3 Resident based on the Policy order established in Part VI – Preferences and Eligibility.

Step 4: In cases where a sub-recipient (owner) or contractor establishes a relationship and requirement with any temporary employment agency contractor, the temporary employment agency contractor or temporary employment agency must require placements to its sub-recipient (owner) or contractors to complete the Self Certification form clarifying their qualifications as a qualified Section 3 Resident. Any person certifying as a qualified Section 3 Resident must be given Preference for any Section 3 covered assignment with the sub-recipient (owner) or contractor providing they meet all other position requirements.

Section 2 –Sub-Recipients (Owners) and Contractors: Procurement

Whenever a contract opportunity is solicited, these steps must be followed in order to comply with DCA’s Section 3 Policy.

ROB Verification: Whenever ROB status is sought, the sub-recipient (owner) or contractor staff shall request address and ownership verification of the 51% Owner/Operator rule as stated in the HUD Act of 1968. Use of the **“Section 3 Self-Certification Form”** attached to this policy is an acceptable statement of address and business data, when presented along with all other required incorporation documents, including any Letter of Issuance of a Federal Employer Identification Number (FEIN) and state Articles of Incorporation.

Step 1: *This step is only applicable when a public housing authority is involved in the transaction.* During the development process of any solicitation or work project, there should be a determination as to whether or not the work can be and/or should be isolated to Resident Owned Businesses (ROB’s) under the **24 CFR Part 963.12 Alternative Procurement Method**. If so, then Steps 2-8 should be followed with respect for **ROB’s ONLY**. Keep in mind, a qualified ROB can be one that is a Joint Venture Partnership where a non-ROB can participate at no more than 49% ownership, operations and profit. A statement where both parties have committed to these terms is required as validation of ROB status.

Step 2: As a direct method of encouraging greater participation and election of Section 3 Preference by contractors, DCA requires that all sub-recipient (owner) and contractors conduct at least one pre-bid meeting or workshop to facilitate the meeting of contractors (large and small) in hopes that more opportunities will be afforded all parties in covered DCA funded contracts. These steps must be in compliance with State of Georgia procurement laws. Where a

conflict occurs, the sub-recipient (owner) or contractor should not conduct such acts that would constitute a violation.

Step 3: Post the contract opportunity in community sources that are generally available to Section 3 Businesses, low income residents and the general public. It is required that a minimum of three (3) of the listed sources will be exercised at least once prior to entering into a contract with anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e. Georgia Department of Labor)
- F) Local Office of the Georgia Division of Family and Children Services
- G) Local Offices of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

DCA recommends that all such posting periods shall last at least one calendar week.

Step 4: The sub-recipient (owner) or contractor must place a notice of the contracting opportunity (ties) in any public housing resident newsletters, notices or bulletins as may be available.

Step 5: All ads must include a notice that the contract opportunity is a **“Section 3 Covered Contract and that Section 3 Business Concerns are encouraged to apply.”**

Step 6: All procurements must include the attached **“Solicitation Package”** for sub-recipients (owners) and contractors to complete and return with their applications/responses. Any application/response that is received without the completed forms both signed and notarized should be considered non-responsive and the response rejected.

Step 7: In reviewing the solicitation responses, any contractors that are identified as qualified Section 3 Concerns should be reviewed and if legitimate, granted a Preference in contracting, all other things being equal.

Step 8: When procurements require point scores as part of the award process, the sub-recipient (owner) or contractor shall ensure that a method of providing Preference exists based on the solicitation criteria to secure the most qualified firm or individual for the contract. Under no circumstances shall a contract be awarded to a firm (Section 3 or Non-Section 3) if they fail to meet minimum standards or do not score high enough to surpass “competitive range” scoring. **Section 3 Preference only is to be considered after all other relative quantitative and qualitative factors have been scored and weighted.**

Step 9: All solicitations shall require that applicants/respondents convey prior compliance with Section 3 on any HUD funded contract. **If a contractor has not complied on any HUD funded contract effective on or after January 1, 2014, they should be considered non-responsive.**

Step 10: All solicitations must include a certification of prior compliance with HUD Section 3 for all HUD funded contracts effective on or after January 1, 2014 as a requirement for participation in the current solicitation. See the attached form titled: "Previous Compliance Certification."

Section 3 - Sub-Recipients (Owners) and Contractors: Contracting

Step 1: In addition to the required Section 3 contract language provided in 24 CFR §135.38, the following language is to be added to all new contracts effective immediately:

"All contractors claiming a Preference in contracting by meeting any of the three qualifications including: a Resident Owned Business, Hiring/Employing 30% of New Hires, and/or sub-contracting at least 25% of their total award to a Section 3 Concern, shall maintain that status throughout the life of the contract. Failure to meet this requirement will result in penalties up to and including contract termination."

Step 2: Any sub-recipient (owner) or contractor claiming a Preference **must be in compliance prior to the issuance of a notice to proceed** by DCA, sub-recipient (owner), or contractor based on the policies established for the applicable DCA funding program.

Step 3: The sub-recipient (owner) or contractor must maintain compliance. If at any time a sub-recipient (owner) or contractor fails to bring the contract into compliance, DCA, the sub-recipient (owner), or contractor must withhold all future payments until the contract is in compliance or until other penalties have been levied as stated below.

DCA, the sub-recipient (owner), or the contractor shall execute these remedies to achieve compliance in this order:

- A. Based on the first observation or report of non-compliance with Section 3, the sub-recipient (owner) or contractor will be sent an e-mail by the compliance manager notifying them of their non-compliance issue. The sub-recipient (owner) or contractor will have until the next payroll or 10 business days, whichever is less, to bring the contract into compliance and/or justify in writing why they cannot meet compliance requirements.
- B. DCA, the sub-recipient (owner) or contractor must render a response to the violating party within 10 business days of receipt of the violating party's letter of reason for non-compliance. If DCA, the sub-recipient (owner), or the contractor deems the reason to be unacceptable, at its option, DCA, the sub-recipient (owner), or the contractor can

extend the response period one time for up to 5 business days to allow the violating party to identify and secure other compliance options.

- C. If the violating party fails to take any corrective action to bring the contract into compliance within the allotted time, or DCA, the sub-recipient (owner), or the contractor rejects any of the corrective plans and justifications for non-compliance, DCA, the sub-recipient (owner), or the contractor will either terminate the contract immediately or impose liquidated damages equal to the number of days out of compliance divided by the total contract period multiplied by the contract amount. For example, if a violating party is out of compliance for 30 days of a total contract period of 120 days and as part of total contract of \$600,000, then the liquidated damages will equal 25% (30/120) of the total contract amount (\$600,000), or \$150,000. At DCA's determination, any liquidated damages received must be paid to the sub-recipient (owner) or DCA, at DCA's determination, and be used to promote economic opportunities for Section 3 Residents and Business Concerns.

DCA, the sub-recipient (owner), or the contractor will hold **all funds due to the violating party until such time that a financial workout is completed.**

Additionally the violating party may be banned by DCA, the sub-recipient (owner), and the contractor on future HUD funded projects.