

Understanding the Section 3 Clause

Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

(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 Section 3 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.

Section 3 Solicitation Overview and Instructions for Contractors

SCDHC's Section 3 policy requires that when the Section 3 regulation is triggered by a need for new hires (whether individual employees, contractors or sub-contractors), every effort within the contractor's disposal must be made to the greatest extent feasible to offer all available employment and contracting opportunities to its residents based on the tiers below. Only when the regulation is triggered by a contractor and they are unable to offer employment or contracting. The contractor may offer employment related training to SCDHC residents. The training must be in an amount equal to or exceeding 3% of the total contract award.

I. Tiers for offering all opportunities to Section 3 Residents and Resident Owned Businesses

1. **Tier I** are City residents/resident owned businesses at the property where the work is being performed
2. **Tier I** are Other Residents/resident businesses of the city
3. **Tier II** are other low and very low income persons and Youthbuild participants in this SCDHC's service area

II. What is a Section 3 Business Concern and how do they receive Preference in contract award?

A business that meets these certification definitions must receive Preference in contracting:

1. Is 51% or more owned by Section 3 residents;
2. Employs Section 3 residents for at least 30% of its full-time, permanent staff; or (**During the entire life of the contract**)
3. Provides evidence of a commitment to subcontract to Section 3 business concerns, 25% or more of the dollar amount of the awarded contract.

III. Important Items to remember about receiving Preferences in contract award

- Anytime you can elect to hire at 30% of your total New Hires, or
- Sub-contract at least 25% of your total award to a Section 3 Business Concern
- **YOU MUST MAINTAIN THOSE PREFERENCE LEVELS DURING THE ENTIRE CONTRACT OR RISK HAVING THE CONTRACT TERMINATED FOR FAILURE TO COMPLY**

IV. Other Methods of Compliance

Contractors can provide an array of trainings to Section 3 residents that are employment related, skills enhancing or employment readiness in nature. Here are the methods of achieving compliance through this method:

1. Contractor must develop a solid professional curriculum and it must be approved by a qualified state Department of Labor or SCDHC.
2. Contractor may identify a person or persons that are qualified to provide the training within their staff.
3. Contractors can partner with other groups that provide the desired training and pay them directly for the service.
4. The contractor can sub-contract the Section 3 compliance training to an outside firm specializing in training and educational programs to Section 3 residents.

V. All Contracts and All Contractors must meet Section 3 compliance by:

- A. Giving notice of any and all opportunities for employment and contracting to the local PHA and other low and very low income area residents and businesses by running ads, distributing flyers, community announcements, letter to targeted persons, newsletters, etc. as far in advance of the opportunity as possible.
- B. Clearly stating the requirements for applying for and achieving the opportunity and that the project is paid by “Section 3 Covered funds under the HUD Act of 1968”.
- C. Utilizing the Section 3 Clause when soliciting any work.
- D. Hold informational or “How to Apply” meetings when possible prior to requesting bids or taking applications so the residents or businesses are encouraged to apply for the opportunity.

- E. Help link residents or businesses to local resources that may be available to help prepare them for applying for and achieving the opportunity.
- F. Work with SCDHC in developing a communication and follow up process to track and report all Section 3 application and hiring activities to ensure the reporting of compliance efforts, and that contracting and sub-contracting are accurate.
- G. Provide Preference in hiring and contracting to Section 3 applicants and contractors when all factors are equal for the opportunity including price and salary requests.
- H. Contractors must provide this package to all sub-contractors when soliciting bids; meet all the same processes in A-F; and provide Preference to all sub-contractors meeting the definitions as stated in Item II on page 14 in that order of priority when all factors remain equal between Section 3 and non-Section other respondents.

Section 3 Contract Compliance Cure and Termination Processes

This language is a component of contract compliance with the work you are responding to in this solicitation. It is being placed in the Section 3 compliance section for ease of reference and due notice. The full requirements are provided in the Section 3 Clause found elsewhere in this package or in the HUD forms 5370-C or 5370 C1 as may be applicable.

All contractors claiming a Preference in contracting by meeting any of the three qualifications including; a Resident Owned Business, Hiring 30% of New Hires and/or Sub-contracting at least 25% of 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. Any contractor triggering the regulation by doing any hiring or contracting once they are awarded the contract through execution must comply with the Section 3 requirements by executing the efforts on their Certification and Action Plan in accordance with SCDHC's Section 3 Action Plan.

SCDHC 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 contractor will be sent an e-mail by the compliance management contractor notifying them of their non-compliance issue. The contractor will have until the next payroll or 14 calendar days, whichever is lesser to bring the contract into compliance.
- B. If at any time a contractor fails to bring the contract into compliance, SCDHC must withhold all future payments until the contract is in compliance.
- C. The contractor shall have up to 15 business days from the most recent notice of non-compliance to meet compliance as a final cure period or justify in writing to SCDHC why it cannot meet compliance. SCDHC must render a response to the contractor within 10 business days of receipt of its letter of reason for non-compliance. If SCDHC deems the cause to be unacceptable, at its option, can extend the cause period one time for up to 5 days to allow the contractor to identify and secure other compliance options, or
- D. If the contractor fails to take any corrective action to bring the contract into compliance within 7 business days from the most recent notice of non-compliance, or SCDHC does not accept any of their corrective plans or justifications for non-compliance, SCDHC must terminate the contract immediately. **All funds due to the contractor shall be held** and a financial workout of the agreement shall proceed within 24 hours of termination. The workout is to include a contract deduct equal to the total Section 3 contract violation of opportunities provided to non-Section 3 residents or business because they were not offered according to the contract and regulation award. All remaining funds can be paid out based on work satisfactorily completed per the agreement.

Any contractor claiming to meet Section 3 compliance by committing to hire residents, fund training itself **shall meet compliance within seven (7) calendar days of contract start** or SCDHC shall halt all work related to the agreement and the actions listed in steps A-D in this section shall apply.

The contractor understands and agrees that a compliance management firm will be used to conduct routine and certified payroll reviews to ensure compliance. Contractor agrees to provide the payroll data in an Excel or Word format each time the payroll is processed throughout the contract.