

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY



Section 3 Guidelines

(Effective October 1, 2010)

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Introduction

These guidelines have been prepared to provide information and guidance to Section 3 recipients on how the Michigan State Housing Development Authority (MSHDA) will administer the Section 3 regulations. This guide should not be treated as a comprehensive recitation of the Section 3 Act and Section 3 Regulations. It is a summary of the pertinent provisions of the Section 3 Act and Section 3 Regulations, and focuses on the Section 3 Requirements imposed on the Developer, General Contractor and Subcontractor receiving the requisite amount of Section 3 Funds. Michigan State Housing Development Authority reminds each Developer, General Contractor and Subcontractor that it bears the responsibility to familiarize itself with the Section 3 Act and Section 3 Regulations prior to accepting Section 3 Covered Assistance from MSHDA.

Definitions

Developer means any entity engaged in the business of development of affordable housing which is an applicant for Section 3 Covered Assistance or has been awarded Section 3 Covered Assistance in excess of \$200,000 by MSHDA.

General Contractor means any entity which has been awarded a construction contract of \$100,000 or more by a Developer to provide general contractor services, which are generated by the expenditure of Section 3 Covered Assistance or in connection with a Section 3 Covered Projects.

Department or HUD means the Department of Housing and Urban Development, including its field offices to which authority has been delegated to perform functions under this part.

Employment Opportunities means all employment opportunities arising in connection with a Section 3 Covered Project, as described in 135.3(a)(2), including management and administrative jobs connected with the Section 3 Covered Project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialists, payroll clerk, etc.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program, through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

HUD: See Department or HUD above

Low-income person is defined in the definition of "Section 3 Resident" herein.

MSHDA means Michigan State Housing Development Authority

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Neighborhood Area or Section 3 Area means for HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village or similar geographical designation.

New hires mean full-time employees for permanent, temporary or seasonal employment opportunities.

Non-metropolitan Area means any area outside of a metropolitan area.

Public and Indian Housing Assistance includes funds used for:

1. Development assistance provided pursuant to Section 5 of the U.S. Housing Act of 1937 (the "1937 Act");
2. Operating Assistance provided pursuant to Section 9 of the 1937 Act; and
3. Modernization Assistance provided pursuant to Section 14 of the 1937 Act.

Recipient means any entity which receives Section 3 Covered Assistance directly from HUD or from another Recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian Tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

Secretary means the Secretary of Housing Urban Development (HUD).

Section 3 Act means Section 3 of the Housing Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 Covered Assistance means: a) Public and Indian Housing Assistance and b) Housing Assistance and c) Community Development Assistance:

Section 3 Business Concern means a company:

- (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 contract 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 of "Section 3 Business Concern".

Section 3 Clause means the contract provisions set forth in 24 CFR 135.38 and is found in Exhibit "B" attached hereto.

Section 3 Covered Contract means a contract or subcontract (including a professional service contract) awarded by a Recipient, Developer, General Contractor or Subcontractor for work generated by the expenditure of Section 3 Covered Assistance of \$100,000 or more, or for work in like amount, arising in connection with a Section 3 Project. Section 3 Covered Contract does not include any contracts for the purchase of supplies or materials, unless the contract includes the installation of the supplies or materials.

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

Section 3 Regulations means the regulations found at 24 CFR Part 135 which govern the application of the Section 3 Act.

Section 3 Requirements means the employment, training and contracting opportunities imposed by the Section 3 Act upon Recipients and Covered Contractors.

Section 3 Resident means: (1) A public housing resident; or (2) An individual who resides in the metropolitan area or a non-metropolitan county in which the Section 3 Covered Assistance is expended, and who is:

- (i) A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)), which is families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
- (ii) A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)), which is families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Subcontractor means any entity awarded a Section 3 Covered Contract of \$100,000 or more by a General Contractor.

Section 3 Purpose

The Section 3 Act was enacted by HUD (12 U.S.C. 1701u), as amended, to ensure that certain employment and economic opportunities generated by certain HUD-funded Section 3 Covered Assistance are, to the greatest extent feasible, directed to Section 3 Residents and Section 3 Business Concerns. Therefore, upon receipt of the requisite amount of Section 3 Covered Assistance and awards of Section 3 Covered Contracts, the Developer, General Contractor and Subcontractor must comply with the Section 3 Requirements.

MSHDA Policy Statement

MSHDA shall provide opportunities to low- and very low-income persons residing in the State of Michigan (as defined in § 135.5 of 24 CFR Part 135) and to businesses meeting the definition of "Section 3 Business Concern" (as defined by 24 CFR Part 135). Accordingly, MSHDA shall implement policies and procedures to ensure that Section 3, when required, is followed and develop programs and procedures necessary to implement this policy covering all procurement contracts where labor and/or professional services are provided, in order to achieve the goals outlined within the State of Michigan Consolidated Plan for Housing and Community Development. This policy shall not apply to contractors who only furnish materials or supplies through Section 3 covered assistance. It will apply to contractors who install materials or equipment. (See the definition of "Section 3 Covered Contracts" below.) There is nothing in policy that should be construed to require the employment or contracting of a Section 3 resident or contractor who does not meet the qualifications of the position to be filled or who cannot fulfill the contract requirements.

Successful compliance with the Section 3 Act and the Section 3 Regulations by the Developer and General Contractor will be a factor in determining future awards of Section 3 Covered Assistance.

According to the Section 3 Regulations, located at 24 CFR Part 135, Section 3 Covered Assistance Recipients are required to provide employment, training and contracting opportunities to Section 3 Residents or Section 3 Business Concerns. However, the Section 3 Requirements are not imposed upon a recipient that does not engage in the hiring or training of persons, but instead awards contracts to Developers and General Contractors that hire and train in connection with Section 3 Covered Projects. According to the Section 3 Regulations, these recipients may comply with Section 3 by ensuring that the Developers, General Contractors and Subcontractors receiving Section 3 Covered Assistance comply with the Section 3 Act.

Section 3 Coordinator

MSHDA has established a Section 3 Coordinator, who will serve as the immediate point of contact for the Developer, General Contractor and Subcontractor, and is available to assist in meeting its Section 3 Requirements. In addition, the MSHDA Section 3 Coordinator will provide the Developer, General Contractor and Subcontractor with Section 3 materials, including the Section 3 Act, Section 3 Regulations, and these MSHDA Section 3 Guidelines. Further, the MSHDA Section 3 Coordinator is available to provide technical assistance to the Developer, General Contractor and Subcontractor. Technical assistance may consist of help in understanding the Section 3 regulations, identifying employment opportunities and training programs available to Section 3 Residents, and information on outreach to Section 3 Residents and Section 3 Business Concerns. The MSHDA Section 3 Coordinator may also develop Section 3 forums and make presentations at seminars and panel discussions on Section 3.

The MSHDA Section 3 Coordinator may engage additional MSHDA staff who will assist the MSHDA Section 3 Coordinator in the acquisition, assemblage, review and analysis of reports submitted by the Developer, General Contractor and Subcontractor. MSHDA staff may also conduct random on-site reviews of the Section 3 Covered Project to assess compliance with the Section 3 Act.

The Developer, General Contractor, and Subcontractor will appoint a Section 3 coordinator and provide the name, address, telephone number and email address of this individual to the MSHDA Section 3 Coordinator. This person will be the direct point of contact with the MSHDA Section 3 Coordinator and advise the Developer, General Contractor, Subcontractor personnel and staff on Section 3 compliance. In addition, the coordinator will be responsible for the submission of all required Section 3 reports to the MSHDA Section 3 Coordinator. Further this individual will serve as the point of contact for Section 3 complaints and as the on-site monitor of the Developer, General Contractor, and Subcontractor implementation of its respective Section 3 Plan.

Section 3 Meeting

Once MSHDA has awarded the Section 3 Covered Assistance, it will schedule a meeting with the Developers to discuss the Section 3 Requirements. Attendees will include the MSHDA Section 3 Coordinator, General Contractors, various MSHDA personnel, and the Developer's Section 3 Coordinator and the General Contractor's Section 3 Coordinator, if selected. The purpose of the meeting is to address any questions the attendees may have regarding compliance with Section 3 Regulations. All attendees will be provided with a copy of the MSHDA Section 3 Guidelines, the Section 3 Act and the Section 3 Regulations. Each Developer and General Contractor will also be required to submit a statement to the MSHDA Section 3 Coordinator acknowledging its receipt of the foregoing documents as well as its understanding that Section 3 Regulations apply to the specific Section 3 Covered Project, and its commitment to submit a Section 3 Plan in accordance with the deadlines set out in the conditional reservation agreement.

Section 3 Contracting Opportunity Goals

Developers, General Contractors and Subcontractors with Section 3 Covered Contracts must establish certain contracting opportunity goals for Section 3 Business Concerns in connection with the Section 3 Covered Project. These numerical goals apply to contracts awarded by the Developer, the General Contractor or Subcontractor. These goals can be met by achieving the following benchmarks:

- a) 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; and
- b) At least 3% of the total dollar amount of all other Section 3 Covered Contracts.

Employment and Training Opportunity Goals

The Section 3 Act requires the Developer, General Contractor and Subcontractor to utilize Section 3 Residents and Section 3 Business Concerns in relation to the development of Section 3 projects, to the greatest extent feasible. Specifically, the Developer, General Contractor and Subcontractor must establish certain Section 3 goals for each Section 3 Project.

All Section 3 employment and training goals must be explicitly set forth in all Section 3 Plans, as follows:

"The numerical goal for Employment for this Section 3 Covered Project is ____% of new hires.

The numerical goal for Training for this Section 3 Covered Project is ____% of residents hired."

Employment and training goals may be met by either directly providing the employment or training or by facilitating the employment or training. That is, the Developer, Contractor or Subcontractor may satisfy the Section 3 employment and training goals by arranging for the employment or training of Section 3 Residents in connection with: a) the Developer's Section 3 Covered Projects; b) the Developer's non-Section 3 projects; c) other non-Section 3 Projects.

The MSHDA Section 3 Coordinator is available to provide technical assistance in order to meet these employment and training goals.

The Developer, General Contractor and Subcontractor must provide in its Section 3 Plan a breakdown of job categories and positions needed for the Section 3 Covered Project, including positions occupied by permanent employees.

If the Developer, General Contractor or Subcontractor does not have any employment or training opportunities available in connection with the Section 3 Covered Project, this must be reflected in its Section 3 Plan.

Formal Section 3 Plan

After the General Contractor has been selected the Developer shall submit a comprehensive Section 3 Plan, signed by the Developer and the General Contractor. The comprehensive Section 3 Plan will include the Section 3 goals of the Developer and the General Contractor. This comprehensive Section 3 Plan will be submitted to the MSHDA Section 3 Coordinator for review and approval, in accordance with the deadlines set forth in the conditional reservation letter, as may be revised by any written extensions.

Upon submission of the comprehensive Section 3 Plan, the MSHDA Section 3 Coordinator will review it and either approve it, conditionally approve it, with suggested modifications or disapprove the plan. MSHDA will not issue a firm commitment to the Developer until a Section 3 Plan has been approved. After the Section 3 Plan has been approved, it will be made a part of the construction documents, and the MSHDA Section 3 Coordinator will review and monitor it regularly to assess its implementation and the attainment of the Section 3 goals. As subcontracts in excess of \$100,000 are awarded, those Subcontractors will be required to submit its own Section 3 Plan to the MSHDA Section 3 Coordinator for review and approval.

Other items that must be submitted to MSHDA include copies of all bid documents that are submitted and all contracts that are awarded.

Components of a Section 3 Plan

The Section 3 Plan must include specific information, not limited to the following:

- a) Developer, General Contractor, or Subcontractor's statement certifying it intends to comply with the Section 3 Act and Section 3 Regulations, as well as the MSHDA Section 3 Guidelines;
- b) Developer, General Contractor, or Subcontractor's statement certifying each is aware of the employment, training, and contracting goals, and agree to work together to meet these goals;
- c) Name and contact information of the Developer, General Contractor, or Subcontractor's Section 3 coordinator;
- d) Identification of the Section 3 Project area (see definition of Neighborhood Area);
- e) Developer, General Contractor, or Subcontractor's current workforce;
- f) Developer, General Contractor, or Subcontractor's Contractor's workforce necessitated by the Section 3 Covered Project;
- g) Developer, General Contractor, or Subcontractor's Section 3 employment, training and contracting opportunity goals;
- h) Specific strategies for notifying Section 3 Residents of Section 3 employment and training goals;
- i) Specific strategies for notifying Section 3 Business Concerns of Section 3 contracting opportunities;
- j) Commitment to inform all Subcontractors of its Section 3 Plan;
- k) Developer's commitment to prepare and submit monthly Section 3 reports to the MSHDA Section 3 Coordinator;
- l) General Contractor's commitment to prepare and submit monthly reports to its Section 3 coordinator;
- m) Commitment of Developer, General Contractor and Subcontractor to include the Section 3 Clause in all construction contracts and subcontracts exceeding \$100,000.00 awarded as a result of the Section 3 Covered Assistance.
- n) Commitment by Developer, General Contractor and Subcontractor to conduct aggressive outreach and notification campaign to Section 3 Residents and Section 3 Business Concerns regarding its Section 3 goals, including the usage of site signage, flyers, etc.

- o) Commitment to provide employment agencies and local public housing authorities of possible employment, training and contracting opportunities to established job pools of Section 3 area residents;
- p) Inclusion of other strategies which facilitate the achievement of the Section 3 goals established by the Developer, General Contractor and Subcontractor

Implementation Strategies

In order to comply with the Section 3 Act and the Section 3 Regulations, the Developer, General Contractor or Subcontractor, as applicable, must implement an aggressive campaign to encourage participation of Section 3 Residents and Section 3 Business Concerns. Some strategies to implement this campaign include the following:

- a) Publish in a local newspaper a notice of the potential employment and training opportunities for Section 3 Residents and potential contracting opportunities for Section 3 Business Concerns. Written notice must be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation.
- b) Post in a prominent location at the Section 3 Covered Project site notice of the potential employment and training opportunities for Section 3 Residents, and potential contracting opportunities for Section 3 Business Concerns.
- c) Submit letters or flyers to the residents of the Section 3 Covered Project advising them of the employment, training and contracting opportunities for the Section 3 Covered Project (applies to rehabilitation when there are existing residents);
- d) Provide the residents of the Section 3 Covered Project and the surrounding area with information on how to get certified as a Section 3 Resident or a Section 3 Business Concern;
- e) Provide the local public housing authority with flyers, notices and other information related to the Section 3 employment, training and contracting Opportunities for the Section 3 Covered Project;
- f) Provide information to residents of a Section 3 Covered Project and the surrounding area regarding established job training programs located within the Section 3 Covered Project area;
- g) Provide minority and women-focused labor and trade organizations with notice of Section 3 employment, training and business opportunity goals
- h) Provide minority and women-focused labor and trade organizations with notice of when and where plans and specifications for bid review will be distributed;
- i) Establish public forums regarding Section 3 Covered Projects being developed within the Section 3 area, in which the Developer, General Contractor and Subcontractor will participate;
- j) Utilize other strategies set forth in Appendix "A" of the Section 3 Regulations;
- k) Seek out referral sources in order to ensure job readiness for public housing residents through on-the-job-training (OJT) and mentoring to obtain necessary skills that will transfer into the external labor market.

Certification of Section 3 Residents

Individuals seeking to participate in Section 3 Covered Projects must first be certified by an organization authorized to provide the required designation that they are eligible Section 3 Residents. If no certifying agency exists for an area, the Developer, General Contractor or Subcontractor shall complete and submit a Certification for Resident Seeking Section 3 Preference in Training and Employment to the MSHDA Section 3 Coordinator.

The following information must be provided to the Developer, General Contractor or Subcontractor by the individual:

Name of Individual: _____
Address: _____
City and Zip Code: _____
Phone: _____
Fax: _____
Technical Skill: _____
Training Required: _____

Evidence of income eligibility must be provided by the Section 3 Resident. To be income eligible the Section 3 Resident must qualify either as a "low-income person" or a "very low-income person". For further explanation, please refer to the definition of a Section 3 Resident found earlier in these guidelines. Verification of Section 3 eligibility may consist of any of the following: a) a public housing authority lease agreement; b) evidence of income (most recent W-2 or income tax return); c) evidence of the receipt of public assistance; or d) any other evidence acceptable to MSHDA Section 3 Coordinator.

Certification of Section 3 Business Concerns

Any business seeking to be certified as a Section 3 Business Concern must be certified by an organization authorized to provide the required designation. If no certifying agency exists for an area, the Developer, General Contractor or Subcontractor shall complete and submit the "Certification for Section 3 Business Concerns Seeking Section 3 Preference in Contracting" to the MSHDA Section 3 Coordinator.

Technical Support and Monitoring

The MSHDA Section 3 Coordinator is available to provide technical support to Developers, General Contractors and Subcontractors participating in the development of Section 3 Covered Projects. The MSHDA Section 3 Coordinator will also maintain a limited database of Certified Section 3 Business Concerns and outreach agencies located in Michigan.

Developers, General Contractors and Subcontractors are required to submit copies to the MSHDA Section 3 Coordinator of all outreach attempts, copies of all responses to notices published in the paper and posted other places, copies of all responses to bid invitations, and any other documentation helpful in monitoring compliance with the approved Section 3 Plan.

The MSHDA Section 3 Coordinator requires reports submitted by the Developer, General Contractor or Subcontractor to assess compliance with the Section 3 Act and the Section 3 Regulations. Reports are due no later than the 20th of each month. A report must be submitted every month; if there is nothing to report, that must be stated on the form. When the Section 3 Covered Project is completed, a final report will be due along with other customary due diligence documentation. The HUD Form 60002 shall be used for the final report.

The MSHDA Section 3 Coordinator or MSHDA staff may conduct on-site random reviews of the Section 3 Covered Project to determine whether the developer, General Contractor or Subcontractor are complying with its approved Section 3 Plan.

In the event the MSHDA Section 3 Coordinator determines that the Developer, General Contractor or Subcontractor is not meeting its employment, training or contracting opportunity goals as set out in the approved Section 3 Plan, she will provide the respective party with written notice of non-compliance. The notice will require the noncomplying party to meet with the MSHDA Section 3 Coordinator to determine if the noncomplying party used its best efforts to meet Section 3 requirements, and if further outreach attempts would result in goals being successfully met.

Attachments:

- Section 3 Act
- Section 3 Regulations
- Section 3 Clause
- Section 3 Plan Template (Owner/Developer and General Contractor)
- Section 3 Plan Template (Subcontractor)
- Contracting Plan Worksheet
- Outreach to Solicit Bids from Section 3 Businesses
- Permanent Employee Listing (Owner/Developer)
- Permanent Employee Listing (General Contractor)
- Permanent Employee Listing (Subcontractor)
- Workforce Needed for Section 3 Covered Project (Owner/Developer-Estimated)
- Workforce Needed for Section 3 Covered Project (General Contractor-Estimated)
- Workforce Needed for Section 3 Covered Project (Subcontractor-Estimated)
- New Hires (Owner/Developer)
- New Hires (General Contractor)
- New Hires (Subcontractor)
- Section 3 New Hires Trained (Owner/Developer)
- Section 3 New Hires Trained (General Contractor)
- Section 3 New Hires Trained (Subcontractor)
- Certification for Business Concerns Seeking Section 3 Preference in Contracting
- Certification for Resident Seeking Section 3 Preference in Training & Employment
- HUD Form 60002 Section 3 Summary Report