

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY



Section 3 Policy

(Adopted May 26, 2010)

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

Economic Opportunities Policy for Section 3 Covered Contracts

Background:

Section 3 of the Housing and Urban Development Act of 1968, as amended, ("Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development financial assistance for housing and community development programs be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and business concerns which provide economic opportunities to low- and very low income persons¹.

Pursuant to Section 3 of the Housing and Urban Development Act of 1968, as amended and 24 CFR Part 135, the staff of the Michigan State Housing Development Authority ("MSHDA") recommends adoption of this Economic Opportunities Policy for Section 3 Covered Contracts. The policy will provide direction to MSHDA staff for implementing Section 3, when required.

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.

¹24 CFR 135.1

Definitions:

MSHDA incorporates into this policy the definitions contained in § 135.5 of 24 CFR Part 135. (Also, see the June 30, 1994 Federal Register)

Defined Terms of Policy:

- **Section 3** – Section 3 is a provision of the Housing and Urban Development 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 because a covered project or activity necessitates the employment of additional persons or the awarding of contracts for work, preference must be given to low- and very low-income persons or business concerns residing in the community where the project is located.
- **Section 3 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 transferees 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.
- **Section 3 Resident** – A section 3 resident is 1) a public housing resident; or 2) a low- or very low-income person residing in the metropolitan area or Non-metropolitan County in which the Section 3 covered assistance is expended.
- **Section 3 Business Concern(s)** – Section 3 Business Concerns are businesses that can provide evidence that they meet one of the following: a) 51% or more owned by Section 3 residents; or b) at least 30% of its full time employees include persons that are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or c) provides evidence, as required, of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications in the above two paragraphs.

- **Section 3 Covered Assistance** –
 - (a) Public and Indian housing development, operating or capital funds; or other housing assistance and community development assistance expended for housing rehabilitation, housing construction or other public construction projects, such as: CDBG, HOME, 202/811, Lead-Based Paint Abatement, etc.
 - (b) The following definition for Section 3 Covered Assistance comes from 24 CFR 135.5:
 - (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;
 - (2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;
 - (3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act;
 - (4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:
 - (i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);
 - (ii) Housing construction; or
 - (iii) (Other public construction project (which includes other buildings or improvements, regardless of ownership).
- **Section 3 Covered Contract** – means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 Covered Assistance, or for work arising in connection with a Section 3 Covered Project. “Section 3 Covered Contracts” do not include contracts awarded under HUD procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). “Section 3 Covered Contracts” also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 Covered Contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 Covered Contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by Section 3.
- **Section 3 Covered Project** – A section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), or other public construction such as street repair, sewage line repair or installation, updates to building facades, etc.

- **Section 3 Covered Community Planning and Development Funding** – Community Development Block Grants (CDBG), Home Investment Partnership Assistance (HOME), Emergency Shelter Grants (ESG), Neighborhood Stabilization Programs (NSP), and certain grants awarded under HUD Notices of Funding Availability (NOFAs). The requirements for Section 3 only apply to the portion(s) of covered funding that were used for project/activities involving housing construction, rehabilitation, demolition, or other public construction.

Responsibilities: (Recipient)

1. A Recipient that receives community development or housing assistance covered by Section 3 has the responsibility to comply with Section 3 in its own operations. This responsibility includes:
 - a. Notifying Section 3 residents and businesses about jobs and contracts generated by Section 3 covered assistance so that residents may seek jobs and businesses may submit bids/proposals for available contracts;
 - b. Notifying potential contractors of the objectives of Section 3 and ways in which each contractor can assist the sub-recipient to meet its goal;
 - c. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns; and
 - d. Documenting the action that the sub-recipient takes to comply with the Section 3 requirements, the results of the actions, and impediments, if any.
2. Recipients have a responsibility to “ensure compliance” of their contractors and subcontractors. This means that a sub-recipient must:
 - a. Notify contractors of their responsibilities under Section 3 including, but not limited to, incorporating the Section 3 Clause in contract documents.
 - b. Refrain from entering into contracts with contractors that are in violation of the regulations in 24 CFR Part 135.
 - c. Respond to complaints made to the recipient by Section 3 residents or business concerns that the sub-recipient, a contractor or subcontractor, is not in compliance with 24 CFR Part 135.
 - d. Cooperate with HUD in obtaining the compliance of contractors and subcontractors when allegations are made that the sub-recipient’s contractors and subcontractors are not in compliance with the regulation of 24 CFR Part 135.

Goals:

All contractors undertaking Section 3 covered projects and activities are expected to meet the Section 3 requirements. To demonstrate compliance with the "greatest extent feasible" requirement of Section 3, contractors must meet the goals set forth below for providing training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns. To meet the goals, contractors must select Section 3 residents based on the following priorities pursuant to § 135.34, 24 CFR Part 135:

First Priority - Residents of the development where the work is to be performed.

Second Priority - Other residents of the neighborhood where the work is to be performed.

Third Priority - Other residents of the neighborhood who are participants in HUD-Youthbuild or others federal, state, and local job programs being carried out in the city or county area.

Fourth Priority - Other persons from the project metropolitan area who meet the definition of Section 3 resident contained in § 135.5 of 24 CFR Part 135.

Employment:

All contractors will seek low- or very low-income persons residing in the property metropolitan area for 30% of all new hires. When applicable, the contractor must show evidence of seeking project residents for 15% of the new hires.

Eligibility for employment or contracting nothing in this policy shall 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 can not perform the contract.

Preference for Section 3 Business Concerns:

Preference shall be awarded to Section 3 Business Concerns according to the following system:

- A. Where the Section 3 Covered Contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 Business Concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 Business Concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation. If it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 Business Concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

- B. Where the Section 3 Covered Contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 Business Concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

Competitive Bids: Procurement by Sealed Bids (Invitations for Bids)

Preference in the award of Section 3 Covered Contracts that are awarded under a sealed bid process may be provided as follows:

Bids shall be solicited from all businesses (Section 3 Business Concerns, and non Section 3 Business Concerns). An award shall be made to the qualified Section 3 Business Concern with the highest priority ranking and with the lowest responsive bid if that bid—

1. Bids shall be solicited from all businesses (i.e. Section 3 Business Concerns and non-Section 3 Business Concerns). An award shall be made to the qualified Section 3 Business Concern with the highest priority ranking (as defined in 24 CFR Part 135) and with the lowest responsive bid if that bid:

A.) is within the maximum total contract price established in MSHDA's budget for the specific project for which bids are being taken; and

B.) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

X = lesser of:

When the lowest responsive bid is less than \$100,000 10% of that bid or \$9,000

When the lowest responsive bid is:

At least \$100,000, but less than \$200,000 9% of that bid or \$16,000

At least \$200,000, but less than \$300,000 8% of that bid or \$21,000

At least \$300,000, but less than \$400,000 7% of that bid or \$24,000

At least \$400,000, but less than \$500,000 6% of that bid or \$25,000

At least \$500,000, but less than \$1 million 5% of that bid or \$40,000

At least \$1 million, but less than \$2 million. . . . 4% of that bid or \$60,000

At least \$2 million, but less than \$4 million. . . . 3% of that bid or \$80,000

At least \$4 million, but less than \$7 million. . . . 2% of that bid or \$105,000

\$7 million or more 1.5% of the lowest responsive bid, with no dollar limit.

2. If no responsive bid by a Section 3 Business Concern meets the requirements of paragraph 1 of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

3. In both paragraph 1 and 2 above, a bidder, to be considered as responsible, must demonstrate compliance with the "greatest extent feasible" requirement of Section 3.

Compliance:

HUD holds MSHDA accountable for compliance with Section 3 requirements. In its written agreement with its housing partners, MSHDA will site Section 3 obligations. When a housing partner is unable to meet Section 3 goals, MSHDA will place the burden of proving compliance with Section 3 on the recipient.

The minimum numerical goal for employment is 30 percent of the aggregate number of new hires shall be Section 3 residents annually—i.e., 1 out of 3 new employees needed to complete a Section 3 covered project/activity shall be a Section 3 resident.

The minimum goals for contracting are:

- Ten percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing or building trades work arising in connection with housing rehabilitation, housing construction and other public construction, shall be awarded to Section 3 businesses; and
- Three percent of the total dollar amount of all non-construction Section 3 covered contracts, shall be awarded to Section 3 businesses.

Safe harbor and compliance determinations: In the absence of evidence to the contrary (i.e., evidence that efforts to the “greatest extent feasible” were not expended), if a recipient or contractor meets the minimum numerical goals shown above, the recipient or contractor is considered to have complied with Section 3 preference requirements.

The recipient will be expected to demonstrate why it was not feasible to meet the goals. Ultimately, HUD will evaluate MSHDA based on its ability to describe the efforts that it took to meet the training, hiring, and contracting requirements and the impediments incurred despite actions taken. At a minimum, if recipients of Section 3 Assistance are unable to meet their Section 3 training, hiring, and contracting goals, they should **sponsor or participate** in upward mobility programs, hire eligible residents in trainee positions with regard to training and employment, or form Section 3 joint ventures with various local employment agencies.

Data Collection and Reporting:

MSHDA will submit data semi-annually to HUD that document all prevailing wage, MBE, and WBE activities and Section 3 activities annually undertaken by themselves and their housing partners. Prevailing wages, MBE and WBE participation data will be captured on Part III of the semi-annually Performance Report (Form HUD-40107). Section 3 data is captured on the Section 3 Summary Report (Form HUD-60002). MSHDA will submit both forms to HUD along with the Consolidated Annual Performance and Evaluation Report (CAPER). To facilitate completion of these semi-annual and annual reports, MSHDA managers have or will become familiar with the data collection and reporting requirements and will review policies, procedures and progress reports on a regular basis, to monitor MSHDA’s progress in meeting these goals.

These forms are available online http://www.hudclips.org/sub_nonhud/html/forms.htm.

The HUD-60002 forms are submitted online or by mail to:

Office of Fair Housing and Equal Opportunity,
Economic Opportunity Division,
451 7th Street, S.W.,
Washington, D.C. 20410.