



**HOUSING AUTHORITY OF THE BIRMINGHAM DISTRICT
SECTION THREE POLICY**

**HOUSING AUTHORITY OF THE BIRMINGHAM DISTRICT
1826 3RD AVENUE, SOUTH
BIRMINGHAM, AL 35233**

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INTRODUCTION

This Policy Statement:

- **Sets forth HABD's policy, goals and preferences;**
- **Sets forth the statutory provisions of Section 3; and**
- **Contains a copy of 24 CFR Part 135, the Section 3 Rules.**

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STATEMENT OF PURPOSE

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, 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 toward low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.” The 1992 Act sets forth:

- The types of HUD financial assistance, activities, and recipients subject to the requirements of Section 3;
- The specific individuals and business concerns that are the intended beneficiaries of the economic opportunities generated from HUD-assisted activities; and
- The order of priority in which these individuals and business concerns should be recruited and solicited for the employment and other economic opportunities generated from HUD-assisted activities.

The HABD's Section 3 Policy is expressed in this statement, the goal statement, and the priority categories. HABD will incorporate Section 3 in HABD's Procurement Procedures, which may be amended to verify that the policy requirements are being met or to bring about efficiencies in the implementation of the program based on the practice and experience of administering the program.

The HABD implements this policy through the awarding of contracts to contractors and vendors to create employment and business opportunities for HABD residents and other qualified low and very-low income persons.

DEFINITIONS

NEW HIRES Full-time employees for permanent, temporary, or seasonal employment opportunities.

RESIDENT OWNED BUSINESS (ROB) A ROB is a business concern owned or controlled by public housing residents, that is: (a) at least 51% owned by one or more public housing residents; and (b) whose management and daily business operations are controlled by one or more such individuals. For purposes of Section 3 compliance, a ROB must also meet the HABD definitions of a Section 3 business concern as described below.

EMPLOYMENT OPPORTUNITIES GENERATED BY SECTION 3 COVERED ASSISTANCE All employment opportunities generated by the expenditure of Section 3 covered PIH assistance (i.e. operating assistance, development assistance, capital funds assistance and HOPE VI assistance) with respect to Section 3 covered housing and community development assistance, all employment opportunities arising in connection with Section 3 covered projects, including management and administrative jobs (including architectural, engineering, or related professional services and jobs directly related to administrative support of these activities) connected with the Section 3 covered project.

RECIPIENT 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.

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

SECTION 3 BUSINESS CONCERN -- As defined by the HABD, a Section 3 business concern is one:

- A. That is Fifty-one (51%) percent or more owned by Section 3 residents; or
- B. Whose permanent, full-time employees includes persons, at least 30 percent of whom are current Section 3 residents, or were Section 3 residents within three (3) years of the date of first employment with the business concern; or
- C. That provides evidence of a commitment to: (1) subcontract 20 percent or more of the total amount of the contract (including any modifications); and (2) in turn subcontracts in excess of 25 percent of the amount from (1) to Section 3 business concerns as defined in A or B (25% of 20%). Example: If the Contract Amount is = \$1,000,000, vendor must subcontract at least 20% or \$200,000. Of the \$200,000, 25% or \$50,000 must go to Section 3 business concern(s) as defined in A or B.

SECTION 3 CLAUSE The contract provisions and sanctions set forth in 24 CFR 135.38

SECTION 3 COVERED ACTIVITY Any activity that is funded by Section 3 covered assistance including Public Housing assistance.

SECTION 3 COVERED ASSISTANCE There are no dollar amount thresholds for PIH (Public and Indian Housing) funded Section 3 covered activities. Section 3 applies to all contractors and subcontractors

performing work in connection with the following assistance regardless of the amount of the contract or subcontract:

- Public and Indian housing development assistance provided pursuant to Section 5 of the 1937 Act;
- Public and Indian housing operating assistance provided pursuant to Section 9 of the 1937 Act;
- Public and Indian housing modernization assistance provided pursuant to Section 14 of the 1937 Act;
- Section 8 assistance for work arising in connection with: housing rehabilitation, housing construction, or other public construction projects.

SECTION 3 COVERED CONTRACT 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 for the purchase of supplies and materials except, whenever a contract for materials includes the installation of the materials, the contract constitutes a "Section 3 covered contract".

SECTION 3 COVERED PROJECT The construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

SECTION 3 JOINT VENTURE An association of business concerns, one of which qualifies as a Section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 business concern:

- Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- Performs at least 25% of the work and is contractually entitled to compensation proportional to its work.

SECTION 3 RESIDENT

- 1.) A public housing resident, or
- 2.) An individual who resides in Jefferson County and who meets the following criteria:

- Low-income persons – families (or single persons) whose incomes do not exceed 80 per cent of the median income for the area.
- Very low-income persons – families (or single persons) whose incomes do not exceed 50 per cent of the median income for the area.

CONTRACTOR Any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

SUB-CONTRACTOR Any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

YOUTHBUILD PROGRAMS Programs that receive assistance under Subtitle D of Title IV of the National Housing Act, as amended by the Housing and Community Development Act of 1992, and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low-and-very-low income families.

JTPA The Job Training Partnership Act (29 U.S.C. 1579 (a)).

GOAL STATEMENT

It is the HABD's policy to achieve Section 3 goals through the following means:

HIRING

- At least 30% of the aggregate number of full-time new hires must be Section 3 residents, with a preference for residents at the development where the work is being performed.

CONTRACTS

Contractors may demonstrate Section 3 compliance by providing a notarized statement committing to award to Section 3 business concerns:

- At least 10% of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization, or development of Public Housing, or 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 contracts.
- HABD's preference is to contract directly with a Section 3 business or contract with vendors that subcontract to a Section 3 business. In either case, HABD's preference is further defined as prioritizing business concerns that employ HABD residents from the property where the work is being performed.

Note that Supply and Delivery contracts are excepted from these Section 3 Policy requirement.

OTHER ECONOMIC OPPORTUNITIES

Providing other economic opportunities to train and employ Section 3 residents or contributing to a Section 3 compliance fund which provides other economic opportunities. Firms may provide other economic opportunities or make a direct cash contribution. **HABD has established the following minimum threshold requirements for contribution to any fund that provides other economic opportunities:**

- a) For trade, construction and rehabilitation work the "value" of the other economic opportunity must equal or exceed 3% of the total contract amount plus any modifications;
- b) For other types of contracts, including service contracts, the "value" of the other economic opportunity must equal or exceed 1.5% of the total contract amount plus any modifications.

HABD PREFERENCE CATEGORIES

HABD's preference is to promote the employment of as many residents as possible. In an effort to further that goal, HABD has created the following preference category structure. Vendors are asked to comply with Section 3 by first considering Category IA hiring at the site where work is being performed. If the vendor demonstrates to HABD's satisfaction the inability to hire at the site, HABD's next preference is for the vendor to hire residents from other HABD properties. If the vendor cannot meet its Section 3 goal in this manner and needs to move to Category IC, ID or Category II or III, that vendor must document this inability to comply with the preference and the need to move to Category IC, ID or another Category. [Such inability must be documented for moves within categories or any moves to a lower category.

CATEGORY I

- A. Hire Section 3 HABD residents from the site covered by the contract
- B. Hire Section 3 HABD residents from another HABD development
- C. Hire non-HABD Section 3 residents from the Youthbuild program
- D. Hire non-HABD Section 3 residents citywide

CATEGORY II

- A.
 - () Fifty-one percent (51%) or more owned by residents of the specific community or communities for which the Section 3 covered assistance is expended; or
 - () Full-time, permanent workforce includes thirty percent (30%) of the above residents as employees.
- B.
 - () Fifty-one percent (51%) or more owned by residents of another specific community or communities managed by HABD that is expending the Section 3 covered assistance; or
 - () Full-time, permanent workforce includes thirty percent (30%) of the above residents as employees.
- C.
 - () An entity selected to carry out a HUD Youthbuild Program in the city in which the Section 3 covered assistance is expended.
- D.
 - () Fifty-one percent (51%) or more owned by Section 3 residents; or
 - () Full-time, permanent workforce includes no less than thirty percent (30%) Section 3 residents; or
 - () Will subcontract in excess of twenty-five percent (25%) of the total amount of subcontracts to business concerns identified above.

- E. Subcontract with Section 3 business concern that involves the Youthbuild program
- F. Use a Section 3 business concern that meets Section 3 requirements by subcontracting in excess of 20% of the total dollar value of the contract and 25% of those subcontracts to Section 3 business concerns (25% of 20%)
- G. Form a Section 3 Joint Venture

CATEGORY III

Providing other economic opportunities to train and employ Section 3 residents or contributing to a fund which provides other economic opportunities. The HABD has established the following minimum threshold requirements for contribution to the fund that provides other economic opportunities:

- a.) For trade, construction and rehabilitation work the "value" of the other economic opportunity must equal or exceed 3% of the total contract amount plus any modifications;
- b.) For other types of contracts, including service contracts, the "value" of the other economic opportunity must equal or exceed 1.5% of the total contract amount plus any modifications.

[NOTE: For contracts or purchase orders \$100,000 and under, other economic opportunities can be identified without regard for the HABD preference requirements.]

SECTION 3 COMPLIANCE REQUIREMENTS

I. HIRING

A. Background

1. The Section 3 regulations provide that recipients, their contractors, and any subcontractors demonstrate compliance by employing Section 3 residents as 30% of the aggregate number of new hires.
2. A vendor is required to hire only when a new hire is needed to perform the work. In the event that no new hires are needed, vendors must pursue other avenues of compliance as set forth in HABD's preference category structure.
3. The Section 3 Regulations, at 24 CFR Part 135, require that in public housing programs, compliance efforts shall be directed to provide training and employment opportunities to Section 3 residents in the following order of priority:
 - a. Residents of the development or developments where the covered assistance is expended.
 - b. Residents of other developments managed by the Public Housing Agency that is expending the covered assistance.
 - c. Participants in HUD Youthbuild programs in the metropolitan area or nonmetropolitan county in which covered assistance is expended.
 - d. All other low and very-low income persons city wide.
4. In situations where a new hire is needed, a vendor will not be required to hire persons who are not qualified.
5. If a new hire is needed and a Section 3 resident is identified, that Section 3 resident will be required to submit evidence of Section 3 status to the recipient, contractor or subcontractor.
6. The HABD requires a preference for hiring from the development where work is being performed. However, the HABD will not require a vendor to hire from the development at the work site if:
 - a. A pre-identified list of Section 3 residents from a job site contains no persons qualified to perform the work. Qualified residents from other developments shall then be considered.
 - b. The vendor's workforce within 30 days preceeding contract award is adequate to do the job and no new hiring is needed.

B. Compliance

1. As part of each bid or proposal submitted, the contractor must document their workforce by position. Such information will be re-verified at the commencement of the contract.
2. Contractors will be required to submit documentation in the form of payroll forms submitted weekly that clearly identify the Section 3 hires. The vendor must comply with the Section 3 requirement throughout the life of the contract. HABD will periodically audit this information. Failure to comply with the weekly submittal of payroll shall result in the termination of the contract.
3. HABD residents by virtue of their income are Section 3 residents. Contractors employing HABD residents must retain documentation that demonstrates any HABD residents hired to meet Section 3 employment goals are:

Forms of Verification:

- (a) identified on the lease of household, that is currently in effect.
 - (b) identified on the contractor's certified payroll; identified by name and address on the certified payroll submitted by the vendor to verify a Section 3 hire.
4. Non-HABD households claiming Section 3 status must be prepared to submit evidence of income and residency in Jefferson County at the time of hire. As part of the Section 3 compliance process, contractors will be required to document that employees hired meet the residency and income requirements.

II. CONTRACTING

A. Background

1. The Section 3 Regulations, at 24 CFR Part 135, provide that the HABD, its contractors and subcontractors may demonstrate compliance by awarding contracts to Section 3 business concerns or to vendors who contract with such firms.
2. HABD's contracting goals require that Section 3 firms receive at least:
 - a. 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public housing; or
 - b. 10 percent 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
 - c. 3 percent of the total dollar amount of all other Section 3 covered contracts.
3. Goals apply to the entire amount of Section 3 covered assistance awarded to a recipient in any federal fiscal year (FY), October 1-September 30. Correspondingly, HABD's goals shall apply to the total dollar amount of each contract or purchase order.
4. Recipients that award contracts to contractors that will provide training or hiring, must ensure that contractors provide training, employment and contracting opportunities to Section 3 Residents and Section 3 Business concerns.
5. Efforts shall be directed to award contracts to Section 3 business concerns in the following order of priority:
 - a. Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the covered assistance is expended and whose full-time, permanent workforce includes 30 percent of these persons as employees or were Section 3 residents of the development within three (3) years of the date of first employment with the business concern; or
 - b. Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HABD that are expending the Section 3 covered assistance and that the Business concerns' full-time, permanent workforce includes 30 percent of these persons as employees (or were Section 3 residents of other HABD developments within three (3) years of the date of first employment with the business concern); or

- c. Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the covered assistance is expended
- d. Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HABD that is expending the Section 3 covered assistance
- e. HUD Youthbuild programs being carried out in the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended; or
- f. Business concerns that are 51 percent or more owned by Section 3 residents; and
 - a.) whose full-time, permanent workforce includes 30 percent of these persons as employees; or
 - b.) that subcontracts 20% or more of the total amount of the contract (including modifications) and in turn subcontracts 25% of the subcontracted amount to Section 3 business concerns (25% of 20%).

B. Compliance

- 1. Business Concerns claiming Section 3 status based on ownership and workforce or workforce only (as applicable) must meet that status at the time the bid or proposal is submitted to HABD.
- 2. Anyone claiming to be a Section 3 resident or business concern shall be required, as set forth by procedure, to provide evidence of such status.
- 3. Pursuant to 24 CFR 135.36 (c) any firm, prime or subcontractor claiming Section 3 status must demonstrate to HABD's satisfaction that the business concern is responsible and has the ability to complete the work under the terms and conditions of the proposed contract. In evaluating firms under this provision HABD will examine:
 - a) the work history and prior performance of the firm;
 - b) the requirements of the job verses the skills evidenced by the firm through its owners, officers, principals, and key staff;
 - c) technical and logistical capacity to complete the work considering contracts already awarded to the firm by HABD or others;
 - d) bonding capacity and ability to obtain required insurance (with allowances for disadvantaged or start-up firms);
 - e) evidence of past sanctions imposed by the HABD or others; and
 - f) evidence that the firm, its principals, associates, partners, subcontractors or others have acted or colluded in order to circumvent the compliance process by structuring contractual or other relationships or engaging in practices

designed to comply with Section 3 only to obtain the preference without regard to the work or requirements of the job.

4. A business concern need not hire to be considered a Section 3 business provided that:
 - (a) the business concern is 51% or more owned by a Section 3 resident; or
 - (b) the business concern's workforce consists of sufficient numbers of Section 3 residents to qualify the vendor as a Section 3 business (30% or more of the full time, permanent workforce consists of Section 3 residents, or persons who were Section 3 residents within 3 years of first employment); or
 - (c) subcontracts 20% or more of the total amount of the contract (including modifications) and in turn subcontracts 25% of the subcontracted amount to Section 3 business concerns (25% of 20%); or
5. After award of a contract, if a business concern must hire to maintain the Section 3 workforce percentage, new hiring efforts must be made in accordance with the HABD preference category for hiring (Category I).
6. If a business concern claims Section 3 status by virtue of workforce composition, documentation of the 30% workforce requirement must be submitted to the HABD as part of the response to the bid, quote, or proposal. Further, the firm must maintain the Section 3 workforce percentage throughout the life of the contract. Workforce composition is subject to audit.
7. A business concern (including joint-ventures) seeking to qualify for a Section 3 preference shall certify and submit evidence that they are entitled to the applicable Section 3 preference and that they are a Section 3 business concern as defined in 24 CFR, Part 135 and by the HABD pursuant to this policy. Prime or subcontractors must submit documentation (including work force composition data) as part of any bid, quote, or proposal submitted to the HABD. Additional documentation is required for joint-ventures.
8. Firms that claim Section 3 business status by subcontracting (25% of 20% of the total contact) to other Section 3 businesses must require that the subcontractor(s) provide ownership or workforce documentation as applicable. The prime contractors must keep such records on file and available for review by the HABD. Such documentation must also be submitted as part of any bid, quote or proposal.
9. Subcontractors identified by any prime contractor claiming Section 3 status per item 6 must be a Section 3 business by ownership and/or workforce as defined in this policy. Subcontractors used by prime contractors to comply with item 6 cannot claim Section 3 status by further subcontracting.
10. Section 3 Joint Ventures -- To meet Section 3 contracting goals the HABD is permitted to contract with an association of firms at least one of which meets the HABDs definition A or B of a Section 3 Business Concern. A definition of a joint-venture is provided in the definition section of this policy. Compliance requirements for joint-ventures are discussed below.

11. Joint-ventures are subject to the following documentation requirements:
- a) The joint-venture agreement must be in writing and must be submitted as part of the response to any bid or proposal solicited by the HABD. In order for HABD to evaluate the "adequacy" and "capacity", the agreement must describe in sufficient detail the area(s) of work assigned to each member of the joint-venture.
 - b) The joint-venture agreement must reference a completed and fully executed joint venture certification, as provided by the HABD, which must also be attached to the joint venture agreement as an exhibit.
 - c) HABD requires that the Section 3 joint-venture partner is a bona-fide Section 3 business, therefore the joint-venture shall provide documentation that shows that the Section 3 partner meets the ownership and workforce, or workforce requirements established in this policy. Section 3 joint-venture partners cannot use subcontracting to establish their status as a Section 3 business concern.
 - d) Section 3 requires that the joint-venture partner be responsible for a clearly defined portion of the work. Proposals or bids must specify the labor hours assigned to and the compensation to be received by the Section 3 joint-venture firm.
 - e) Section 3 firms in the joint-venture must be qualified to perform the scope of work and have the capacity to complete the work assigned under the joint-venture agreement (see item b above).

III. OTHER ECONOMIC OPPORTUNITIES

A. Contract Values

1. For contracts or purchase orders valued at \$100,000 or more, other economic opportunities may only be used where a vendor cannot comply with the hiring or subcontracting goals set forth in the Preference Category structure.
2. For contracts valued under \$100,000, other economic opportunities may be used at any time.

B. Economic Opportunities:

1. Daycare/Transportation to support HABD residents who are working or are in training or education programs -- the vendor may contribute to the daycare/transportation fund. The funds will be used to pay day care providers or provide MAX cards or stipends exclusively for HABD residents. The daycare/transportation fund will be administered by a third party service provider under a cooperative agreement with the HABD.
1. Part-Time Employment/Job Training Programs-- vendors may provide part-time work or paid training opportunities for HABD residents (especially on the job training). The hours of part-time work or training when converted to dollars must equal or exceed the threshold requirements established in D. below.

Contract Values

- C.** HABD will permit the use of other economic opportunities, without regard to the HABD Preference Tiers, for contracts or purchase orders under \$100,000. For such contracts, firms may still comply by hiring or subcontracting but are not required to propose these options or provide the reasons why they cannot hire or contract to meet the Section 3 requirements.

Threshold requirements for other economic opportunities:

- D.** HABD has established the following minimum threshold requirements for use of other economic opportunities:
- c.) For trade, construction and rehabilitation work the "value" of the other economic opportunity must equal or exceed 3% of the total contract amount plus any modifications;
 - d.) For other types of contracts, including service contracts, the "value" of the other economic opportunity must equal or exceed 1.5% of the total contract amount plus any modifications.

IV BID OR PROPOSAL EVALUATION

- A. Contractors who fail to address Section 3 requirements will be deemed non-responsive. This means that in the proposal or bid documents submitted to the HABD, the Contractor's Affidavit and Compliance Commitment must be completed including applicable attachments and supporting documentation.

- B. After written notice from the HABD specifying the defects in the Section 3 information, vendors will be given no more than 5 business days to complete the form and provide all required documents. Failure to respond within the 5 days will result in HABD declaring the bidder or respondent non-responsive. The contract or bid will then be awarded to the next lowest bidder or to the respondent with the next highest score. Where the selection is a qualifications based procurement, HABD will award to the firm that is the next highest ranked.