

**SECTION 3 COMPLIANCE STRATEGY  
COMMUNITY DEVELOPMENT DEPARTMENT  
BIRMINGHAM, ALABAMA**

The City of Birmingham recognizes that the Department of Community Development and any other department of the City that receives over \$100,000 in Community Development Block Grant (CDBG) funds (hereafter referred to as the department), must comply with Section 3 of the Housing and Urban Development Act of 1968, as amended. As a mechanism to grant economic opportunities to Section 3 residents and business concerns, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, the department is subject to the herein policies and procedures.

The purpose of these policies and procedures, is to provide Section 3 residents (low and very low income persons), as well as businesses that have an ownership of 51% or more Section 3 residents, the type of economic opportunity that will allow them to become self-sufficient.

Section 3 focuses on three construction projects assisted in whole or in part with CDBG, HOME, NSP1, or other HUD funds:

1. Housing rehabilitation (including reduction and abatement of lead-based paint hazards)
2. Housing construction
3. Other public construction projects

Jobs arising in connection with these projects are not only the construction jobs, but also management, maintenance, clerical, and administrative jobs that come into existence because of a construction project.

**SECTION 3 JOB CREATION REQUIREMENT:**

Section 3 does not require the creation of economic opportunities for low and very low income persons, simply for the sake of creating economic opportunities. Section 3 does however require that when employment opportunities are generated, because a project/activity is undertaken using CDBG assistance, and necessitates the employment of additional personnel through individual hiring, preference in hiring must be granted to low and very low income persons.

**CITY OF BIRMINGHAM HIRING POLICY:**

The City of Birmingham operates under the Personnel Board of Jefferson County, Alabama, a public agency administering the civil service law which governs and controls all classified employees of Jefferson County, The Jefferson County Board of Health and the cities of Bessemer, Birmingham, Fairfield, Fultondale, Gardendale, Homewood, Hueytown, Irondale, Leeds, Midfield, Mountain Brook, Pleasant Grove, Tarrant, and Vestavia Hills, Alabama and law enforcement officers in the cities of Graysville, Trussville, and Warrior, Alabama. It is the objective of the Jefferson County Personnel Board rules to set forth the intent of the Civil Service Law and the specific provisions of the law with respect to appointment, career development, removal, discipline, and related conditions of employment in the classified service.

The Community Development Department cannot lawfully give preference in its employment hiring or advancement outside of the referenced Personnel Board Rules.

### SECTION 3 BID AWARDING REQUIREMENTS:

Contract award preference shall be given to:

1. A business in which 51% or more ownership of the business is by low or very low income person(s); or,
2. Business concerns that employ a substantial number (30%) of low or very low income persons. The business that is seeking this preference must employ low and very low income person(s) and show that the incomes of previously low and very low income person(s) now exceeds the income level of low or very low income person(s) and the date of first employment does not exceed a period of three (3) years; or
3. A business that provides evidence of a commitment to subcontract 25% of the total contract amount to business concerns that meet either the first or second definition of Section 3 business concerns. The purpose of this definition is to provide a preference to primary contractor(s) that have a successful record of subcontracting with Section 3 business concerns.

### BIRMINGHAM BID AWARD POLICY:

All departments of the City of Birmingham, Alabama, are subject to the purchasing policies of the City as set out in the City Code, City of Alabama. For construction projects of \$7,500.00 or more, the City of Birmingham is subject to Section 41-16-50 Code of Alabama.\* Under Section 41-16-50 all contracts must be awarded to the lowest qualified bidder. Therefore, it is not currently within the authority of the City of Birmingham to award construction contracts of \$7,500.00 or more, to any business that is not the lowest bidder.

\* Note: Cities in the State of Alabama do not have home rule authority. Cities can only undertake those things that are expressly permitted by the State of Alabama.

**SECTION 3  
POLICIES AND PROCEDURES  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
BIRMINGHAM, ALABAMA**

Pursuant to the interim rule amending Part 135 to implement the comprehensive changes made to Section 3 of the Housing and Urban Development Act of 1992, the City of Birmingham, Department of Community Development (hereafter referred to as the department) has identified and adopted five (5) policies and procedures herein. These policies and procedures will ensure that sub recipients, contractors, and subcontractors receiving U.S. Department of Housing and Urban Development (HUD) funding, of \$100,000 or more, for Housing Rehabilitation, Housing Construction, and other public construction projects adhere to and comply with Section 3 (provide to the greatest extent feasible economic opportunity to low and very low income persons, particularly to those who are recipients of governmental assistance for housing or living in the project area, and to businesses that provide economic opportunity for low and very low income persons). The department will administer as well as provide information and technical assistance that will minimize the burden on sub recipients, contractors, and subcontractors.

The Department of Community Development will conduct the following administrative functions:

- Provide information and technical assistance
- Participate in pre-award activities
- Monitor recipient performance under Section 3
- Process Section 3 grievances
- Conduct Section 3 compliance reviews

**PROVIDE INFORMATION AND TECHNICAL ASSISTANCE**

The department will provide information and technical assistance to sub recipients, contractors, and subcontractors as follows:

1. Assist sub recipients, contractors, and subcontractors in understanding their obligations under Section 3.
2. Provide a registry of Section 3 business concerns.
3. Determine Section 3 areas as it applies to the project.
4. Consult in the recruitment of Section 3 residents.
5. Provide on-site consultations.
6. Participate in meetings and workshops.
7. Provide additional assistance as requested or as the department deems necessary.

## PRE-A WARD ACTIVITIES

The pre-award activities are designed to assure that all sub recipients, contractors, and subcontractors will comply with their Section 3 obligations. The department will at a minimum:

1. Provide information as to how Section 3 applies to the project and answer questions or concerns.
  2. Identify past performances and current commitments to employ and train Section 3 residents and to contract with Section 3 business concerns.
3. Determine the expected number of full-time and part-time new hires and what positions will be available, if any, then examine the procedures and practices to be used by the sub recipient, contractor, and subcontractor in filling those positions.

## MONITOR PERFORMANCE UNDER SECTION 3

The monitoring process is essential in that it allows the department to obtain information as to whether the requirements of Section 3 are being carried out, thus creating a way to identify any success or existing problems and assessing the impact. The department will measure the performance by using a variety of methods, but are not limited to the following:

1. On-site visits.
2. In-house review of pre-award documents and performance reports.
3. Reports from sub recipients and contractors received pursuant to 135.120(b).
4. Section 3 grievances and compliance reviews.

## PROCESSING SECTION 3 GRIEVANCES

The department will receive, investigate, and where appropriate, seek voluntary resolution of Section 3 grievances. A grievance is an allegation of noncompliance with Section 3 statute or regulation and will be forwarded to the Assistant Secretary for Fair Housing and Equal Opportunity.

## CONDUCTING SECTION 3 COMPLIANCE REVIEW

The compliance review will determine whether sub recipients, contractors and subcontractors are complying with the requirements of Section 3. A compliance review consists of a comprehensive analysis and evaluation of performance with respect to the requirements imposed by Section 3. The review will include, but not be limited to following:

1. Contract documents, to assure that Section 3 is referenced.
2. Minutes of pre-construction conferences, to determine if Section 3 requirements were discussed.
3. The affirmative action plan of the sub recipient, contractors, and subcontractor to assure that

opportunities are being made available for Section 3 area residents and businesses.

4. The hiring records, to determine the extent to which local residents have been utilized as employees and trainees.
5. Procurement documents and records, to determine the type of outreach undertaken to attract and utilize Section 3 businesses.
6. Sub recipient's procedures to monitor or otherwise assure that contractor and subcontractors are complying with Section 3.
7. Correspondence or other records from Section 3 residents and business concerns about training, employment or contracting opportunities, to determine adequate response to those issues.

**SECTION 3  
GUIDELINES FOR  
SUBRECIPIENTS, CONTRACTORS AND SUBCONTRACTORS  
BIRMINGHAM, ALABAMA**

Regulations governing Section 3 are found in 24 CFR Part 135 of the Economic Opportunities for Low and Very Low Income Persons.

**SUMMARY AND PURPOSE**

This interim rule amends Part 135 to implement the comprehensive changes made to Section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992. Section 3, as amended on June 30, 1994, requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance of \$100,000 or more, for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be granted to low and very low income residents, particularly to those who are recipients of governmental assistance for housing, and to businesses that provide economic opportunities for low and very low income residents (135.1). The business must employ 51% of Section 3 residents of the area where the assigned project is located.

The objective of Section 3 is to provide low and very low income persons, especially those on government assistance, with the type of economic opportunity that will allow them to become self-sufficient.

**JOB CREATION**

Section 3 does not require the creation of economic opportunities for low and very low income persons, simply for the sake of creating economic opportunities. Section 3 does however, require that when employment and/or contractual opportunities are generated because a project/activity undertaken by a recipient of HUD financial assistance necessitates the employment of additional personnel through individual hiring or the awarding of contracts for work, the sub recipient(s), contractor(s), and subcontractor(s) must give preference in hiring to low and very low income persons, and give preference in contracting to businesses owned by these persons or those businesses that substantially employ low and very low income persons (51% of Section 3 residents of the area where the assigned project is located).

Section 3 preference requirements are only triggered by need for new hires; which is frequently the case when HUD financial assistance is extended, and when the need to employ additional personnel or to contract for work occurs. Section 3 requires that the awarded sub recipient(s), contractor(s), and subcontractor(s) not only include low and very low income persons in recruitment and solicitation efforts, but, extra or greater efforts be undertaken to make these persons (low and very low income persons living in the residential area of the proposed project) aware of the existence of the economic opportunities, encourage their application for these opportunities, and facilitate the employment of (including training as needed), or award of contracts to, Section 3 persons and business concerns.

If, however, the awarded sub recipient(s), contractor(s), or subcontractor(s) has no need for additional employees or trainees, or the recipient(s) has no need to contract work, then the Section 3 preference requirements are not triggered, because the recipient(s) is not recruiting any individual for jobs, or soliciting any business concerns for contract.

If employees or training, or contract work is required the sub recipient(s), contractor(s), and subcontractor(s) must proceed as follows:

1. In recruitment for individual employment, the sub recipient(s), contractor(s), and subcontractor(s) are to target low and very low income persons residing in public housing developments (when public or Indian housing assistance is involved) or those residing close to the proposed project (in the service area or neighborhood).
2. Section 3 requires that, to the greatest extent feasible, sub recipient(s), contractor(s), and subcontractor(s) will include all employment positions, at all levels, and give preference to Section 3 residents.
  - 2.1: If the skills of the residents only meet the qualifications of entry level and there is no evidence that contradicts said employment, then the sub recipient(s), contractor(s), and subcontractor(s) is in compliance with Section 3.
  - 2.2: A numerical goal is designed to facilitate the hiring of Section 3 employees - 10% of the aggregate number of new hires for FY 1995, an increase of 20% for FY 1996 and 30 % for FY 1997 and thereafter.
  - 2.3: A recipient that does not meet the numerical goal has the burden of demonstrating why it was not feasible to meet said goal.
  - 2.4: The numerical goals are exactly that, "a goal" that the sub recipient(s), contractor(s), and subcontractor(s) should strive to reach. Hopefully, the sub recipient(s), contractor(s) and/or subcontractor(s) will exceed said goals. The goals are not to be construed as requirements, quotas, set asides, or a cap on hiring or contracting with low and very low income persons. The goal, if met, constitutes a safe harbor for sub recipient(s), contractor(s), and subcontractor(s) on the issue of compliance with Section 3. If, however, the goal is not met, this does not automatically trigger sanctions against sub recipient(s), contractor(s), or subcontractor(s). However, if challenged on the issue of compliance with Section 3, the sub recipient(s), subcontractor(s) or contractor should be ready to demonstrate that it strived, but was unable to reach the safe harbor level.

## PROJECT COST

The interim rule provides that the requirements of Part 135 apply to Section 3 Housing and Community Development assistance for which the amount of the sub recipient(s) award exceeds \$100,000 and the contractor(s) or subcontractor(s) exceeds \$100,000, regardless of whether the activity is wholly or partially funded with Section 3 assistance. If the sub recipient(s) award of assistance exceeds \$100,000, but the contract(s) and subcontract(s) does not exceed \$100,000, then only the sub recipient(s) is subject to the Section 3 preference requirements. The sub recipient(s), contractor(s), and subcontractor(s) responsibility includes awarding contracts, to the greatest extent feasible, to Section 3 business concerns.

## DEFINITION OF SECTION 3 BUSINESS CONCERN

The proposed rule defines a Section 3 business concern three ways:

1. A business in which 51% or more ownership of the business is by low or very low income persons; or,
2. A business whose permanent, full-time employees consist of persons, at least 30% of whom are Section 3 residents (or were Section 3 residents at the time of their initial employment). Greater award consideration is given to business concerns that employ a substantial number (30%) of low or very low income persons at the time the persons were employed by the business, but whose income now exceeds the income level of a low or very low income person and the date of first employment by the business concern has not exceeded a period of three (3) years; or,
3. A business that provides evidence of a commitment to subcontract in excess of 25% of the dollar amount to business concerns that meet either the first or second definition of Section 3 business concern. The purpose of this definition is to provide a preference to primary contractor(s) that have a successful record of subcontracting with Section 3 business concerns.
  - 3.1: If requested, it is the responsibility of the business concern that wants to take advantage of the preference to provide acceptable support of documentation that qualifies them, as a Section 3 business concern.
  - 3.2: Greater consideration will be given to sub recipient(s), contractor(s), and subcontractor(s) that are willing to train and employ Section 3 residents and contract with Section 3 business concerns for economic opportunities generated in connection with the project/activity financed by HUD.
  - 3.3: The preference requirement by Section 3 is neither gender specific nor race, nor ethnic specific. The preference requirement is solely based on income.

Although the Economic Development portion of Community Development Block Grant (CDBG) supports employment of low and very low income persons, the strategy is different. Section 3 requires the employment of low and very low income persons in the construction of as well as after construction employment when using HUD funding for Economic Development projects.

## CONSTRUCTION PROJECTS

Section 3 housing and community development focuses on three construction projects:

1. Housing rehabilitation (including reduction and abatement of lead-based paint hazards).
2. Housing construction.
3. Other public construction projects.

Jobs arising in connection with these projects are not only the construction jobs, but also management, maintenance, clerical and administrative jobs that come into existence because of the construction project.

The sub recipient(s), contractor(s), and subcontractor(s) engaged in hiring should retain the records of new hires, if any, including the names and addresses of these employees, the race, ethnic origin and gender of the employees as well as the positions for which they were employed and the salaries provided.

## PURCHASE OF MATERIALS AND SUPPLIES

The purchase of material and supplies from Section 3 business concerns as a means of providing economic opportunities other than those connected with Section 3 covered assistance is encouraged.

## PROOF OF SECTION 3 STATUS

Section 3 residents include all persons living in public housing. The interim rule does not mandate that the sub recipient(s), contractor(s) or subcontractor(s) require certification or evidence of a person's Section 3 status. If, however, verification of status is requested, it is the responsibility of the individual seeking the preference employment to provide needed document(s), thus showing evidence that the individual is a Section 3 low or very low income person.

Acceptable documentation:

1. Evidence of persons residency in Public Housing.
2. Evidence of Section 8 certification.
3. Voucher Assistance.
4. Other Federally assisted programs such as: JTPA, AFDC, JOBS or evidence of participation in a State or local assistance program or receipt of welfare assistance.

If an individual wants to take advantage of employment preference provided by Section 3, the individual must be willing to disclose his or her income. This is not unusual to require the individual claiming the preference to support eligibility for the preference.

## RESPONSIBILITIES OF THE DEPARTMENT OF COMMUNITY DEVELOPMENT

The Department of Community Development (hereafter referred to as the department) acknowledges that compliance with Section 3 is not without cost or burden to the sub recipient(s), contractor(s), or subcontractor(s) but the burdens, in large part, are imposed by statute. The statute requires sub recipient(s), contractor(s), and subcontractor(s) to provide, to the greatest extent feasible, economic opportunities to low and very low income persons. Thus, the department shall make every effort possible to minimize the burden on the sub recipient(s), contractor(s), or subcontractor(s). To assist sub recipient(s), contractor(s), or subcontractor(s) the department has adopted policies and procedures titled "Section 3, Policies and Procedures, Department of Community Development, Birmingham, Alabama".

A copy is attached.

135.38 Section 3 Clause

**All Section 3 covered contracts shall include the following clause (referred to as the Section 3 clause):**

- 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 granted 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 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 preference, shall set forth minimum number and job title subject to hire, availability of 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 regulation in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contract 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.

G. With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).