

HOUSING AUTHORITY OF ELGIN, ILLINOIS AMENDED AND RESTATED

SECTION 3 POLICY

For purposes of this Section 3 policy, the following terms and conditions shall apply.

Definitions

Applicant – Any entity which makes an application for Section 3 Covered Assistance, and includes, but is not limited to, any State, unit of local government, public housing agency 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.

Board – the Board of Commissioners of the HAE.

Business Concern – a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

City – the City of Elgin, Illinois.

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.

Department Director – the head of a HAE department.

HAE – the Housing Authority of Elgin, Illinois, an Illinois public body corporate.

Employment Opportunities Generated by Section 3 Covered Assistance – all employment opportunities generated by the expenditure of Section 3 Covered Assistance, i.e., operating assistance, development assistance and modernization assistance, as described in Section 135.3 (a) (1). With respect to Section 3 Covered Assistance, this term means all employment opportunities arising in connection with Section 3 Covered Projects, as described in 24 CFR 135.3 (a) (2)), including management and administrative jobs. 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 specialist, payroll clerk, etc.

Executive Director – the chief executive officer of the HAE appointed by the Board.

Housing Development – low-income housing owned, developed, or operated by public housing agencies in accordance with HUD’s public housing program regulations codified in 24 CFR Chapter IX.

HUD – the United States Department of Housing and Urban Development.

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

Low-Income Person – families, including single persons, whose incomes does not exceed 80% of the median income for the area, as determined by the Secretary of HUD, with adjustments for smaller and larger families, except that the Secretary of HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of the Secretary of HUD’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families.

Metropolitan Area – a metropolitan statistical area (MSA), as established by the United States Office of Management and Budget.

New Hires – full-time employees for permanent, temporary or seasonal employment opportunities.

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, public housing agency, 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 – a Business Concern,

- 1) That is 51% or more owned by Section 3 resident(s): or
- 2) Whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 residents, or who were section 3 residents at the time the persons were employed by the business but whose income now exceed 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 years.; or

- 3) That provides evidence 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 set forth in paragraphs 1 or 2 above.

Section 3 Clause – the contract provisions set forth in 24 CFR 135.38 that are required to be included in all Section 3 Covered Contracts. It provides: 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 generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very-low income persons, particularly persons who are recipients of HUD assistance for housing.

B. The Parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediments that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is

executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

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 this provision 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).

Section 3 Covered Assistance

- 1) Housing Development assistance provided pursuant to Section 5 of the 1937 Act;
- 2) public housing operating assistance provided pursuant to Section 9 of the 1937 Act;
- 3) public 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 housing rehabilitation, (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement housing) construction, or other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 Contract – a contract or subcontract 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 contracts do not include contracts for the purchase of supplies and materials unless the contract includes the installation of the materials.

Section 3 Resident – a public housing resident or a Low-Income Person or Very Low-Income Person who resides in the Metropolitan Area in which the Section 3 Covered Assistance is expended.

Section 3 SOP – the Standard Operating Procedure for Implementing HAE’s Section 3 Policy.

Subcontractor – 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.

24 CFR Part 135 – federal regulations at **24 CFR 135** Subtitle A, et. al.: Economic Opportunities for Low- and Very Low Income Persons; Interim and Final Rules

Very Low-Income Person – families, including single persons, whose income does not exceed 50% of the median family income for the area, as determined by the Secretary of HUD with adjustments for smaller and larger families, except that the Secretary of HUD may establish income ceilings higher or lower than 50% of the median for the area on the basis of the Secretary of HUD’s findings that such variations are necessary because of unusually high or low family incomes.

I. OVERVIEW

As an entity that receives funding from HUD, HAE is obligated to comply with Section 3 as implemented through 24 CFR Part 135. The purpose of Section 3 is to ensure employment and other economic opportunities generated by HUD assistance shall, to the greatest extent feasible, be directed to Low and Very-Low Income Persons, particularly those who are recipients of HUD housing assistance.

This policy details how HAE and its Contractors will implement the actions necessary to comply with 24 CFR Part 135. The prescribed actions are designed to insure both HAE and its Contractors take affirmative action(s) to provide economic opportunities to Section 3 eligible persons.

HAE is committed, “to the greatest extent feasible”, to:

- hiring Section 3 eligible households to fill 30% of the aggregate number of new HAE hires each year;
- insuring HAE Contractors hire Section 3 eligible persons to fill 30% of the aggregate number of new hires each year of the Section 3 Contract;
- insuring HAE and its Contractors award at least 10% of the subcontracts for building trades, maintenance, repair, modernization or development work to Section 3 Business Concerns; and
- insuring HAE and its Contractors award at least 3% of the total dollar amount of all other Section 3 Contracts to Section 3 Business Concerns.

All Applicants, bidders, Contractors and Subcontractors are encouraged to review the complete text of HAE’s Section 3 Policy and the Section 3 SOP. Both documents may be obtained, on line at HAE’s website, www.haelgin.org, or, at no cost, by contacting the Housing Authority of Elgin, Illinois’ Procurement Division, 120 South State Street, Elgin, Illinois 60123, Telephone (847) 742-3853.

II. REQUIRED CONTRACT LANGUAGE

Every HAE Section 3 Contract shall include a Section 3 Clause that contains language which requires Contractors to comply with Section 3, 24 CFR Part 135 and the provisions of HAE’s Section 3 Policy and the Section 3 SOP. Furthermore, every Applicant, Recipient, contracting party, Contractor, and Subcontractor shall incorporate, or cause to be incorporated into all Section 3 Contracts the language in the Section 3 Clause (see the Definitions for the language).

III. SETTING SECTION 3 GOALS AND METHODS OF COMPLIANCE

HAE and its Contractors and Subcontractors are responsible for establishing Section 3 goals. Such goals will reflect a commitment to hiring Section 3 Residents and/or

subcontracting work to qualified Section 3 Business Concerns. Contractors shall demonstrate compliance with the “greatest extent feasible” requirement of Section 3 by selecting one of the following:

1. ► Meeting the numerical goals set forth in this section for providing training or employment opportunities to residents of public housing or other low income persons (section 3 residents);
2. ► Subcontracting work for the covered contract to a Section 3 Certified Business Concern(s);
3. ► Provide other economic opportunities to low income persons;
4. ► Contributing to HAE’s Educational and Training Fund; or
5. ► Becoming a Section 3 Certified Business Concern

Each proposal must provide an implementation plan in narrative form that identifies the chosen method of compliance and the supporting evidence for that compliance method as outlined below.

A. The Hiring and Training Method of Compliance

Every contractor and subcontractor, in order to comply with Section 3, must commit, in writing, to the following:

1. When additional personnel are needed to complete the contract work, 30% of all new hires will be Section 3 residents. If the contractor hires only one employee, that employee will be a Section 3 resident.
2. Order of preference for Section 3 hires are as follows:
 - a. Residents of the housing development(s) for which the Sections 3 covered assistance is expended (category 1 residents);
 - b. Residents of other housing developments managed by HAE (category 2 residents);
 - c. Participants in HUD Youth build programs being carried out in the Elgin metropolitan area;
 - d. Other Section 3 residents.
3. The contractor shall maintain all records, reports and other documents to demonstrate compliance with the Section 3 requirements.
4. Implementation of Section 3 by the contractor may be accomplished using the following examples. The examples provided are not all inclusive.

Additional examples of efforts to offer training and employment opportunities to Section 3 Residents may be found in the Appendix to 24 CFR part 135 Appendix 1.

- a. Advertising any training and employment positions by distributing flyers which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons reside.
- b. Contacting agencies administering HUD Youth build programs, and requesting their assistance in recruiting HUD Youth build program participants for the contractor's training and employment positions.
- c. Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the contractor's training and employment positions.
- d. Advertising the positions to be filled through the local media, such as public television channels, newspapers of general circulation, and radio advertising.

If this compliance method is chosen, each offeror **must** provide its Section 3 Hiring and Training Implementation Plan and supporting documentation demonstrating compliance with the Section 3 requirements.

B. The Subcontracting Method of Compliance

A Contractor for building trades work for maintenance, repair, modernization or development or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction will subcontract at least 10% of the dollar value of the contract to Section 3 Business Concerns.

A Contractor may satisfy this goal through contracts awarded by its Subcontractors.

A Contractor for other types of work will subcontract at least 3% of the dollar value of the contract to Section 3 Business Concerns. A Contractor may satisfy this goal through contracts awarded by its Subcontractors.

If this compliance method is chosen, each offeror **must** provide its Section 3 Subcontracting Implementation Plan and supporting documentation demonstrating compliance with the Section 3 requirements.

The order of priority for subcontracting is specified in Section E. below.

C. The Other Economic Opportunities Method of Compliance

Contractors and Subcontractors will undertake efforts to provide economic opportunities other than training, employment and contract awards to Section 3 residents.

Other economic opportunities to train and employ Section 3 residents include, but need not be limited to, use of “upward mobility”, “bridge”, and hiring Section 3 residents in part-time positions.

A Contractor or Subcontractor may provide economic opportunities to establish, stabilize or expand Section 3 Business Concerns, including micro-enterprises. Such opportunities may include, but are not limited to, the formation of Section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, or purchase of supplies and materials from Category 1, 2 or 4 Section 3 certified Business Concerns. Contractors and Subcontractors may utilize these methods directly or may provide financial incentives to non-Section 3 business concerns to provide economic opportunities to Section 3 residents.

If this compliance method is chosen, each offeror **must** provide its Section 3 “Other Economic Opportunities” Implementation Plan and supporting documentation demonstrating compliance with the Section 3 requirements.

D. The Education/Training Fund Method of Compliance

A Contractor may satisfy its Section 3 goal by contributing an amount equivalent to 2% of the amount paid to the Contractor under the contract to a HAE approved education and/or training fund that provide assistance to Section 3 residents.

If this compliance method is chosen, each offeror **must** provide its Education/Training Fund contribution commitment statement demonstrating compliance with the Section 3 requirements.

E. The Section 3 Certified Business Concern Method of Compliance

Contractors and Subcontractors may demonstrate compliance by becoming a certified Section 3 Business Concern. Section 3 Business Concerns are defined as follows:

1. Category 1 Businesses – Section 3 Business Concerns that are 51% or more owned by residents of the HAE housing development(s) for which the contract is expended or whose full-time, permanent workforce includes 30% or these persons as employees.
2. Category 2 Businesses – Section 3 Business Concerns that are 51% or more owned by residents of other HAE housing developments or housing developments managed by HAE or whose full-time, permanent workforce includes 30% of these persons as employees.
3. Category 3 Businesses – HUD Youth build programs being carried out in the Elgin metropolitan area in which the contract is expended.
4. Category 4 Businesses – Section 3 Business Concerns that are 51% or more owned by Section 3 residents or whose full-time, permanent workforce includes no less than 30% Section 3 residents or that subcontract in excess of 25% of the total amount of subcontracts to Category 1 or Category 2 business concerns.

If this compliance method is chosen, a Contractor or Subcontractor seeking to become a Section 3 certified Business Concern shall submit such evidence, as may be reasonably required by HAE that the Contractor or Subcontractor qualifies as a Section 3 Business Concern in one of the 4 categories outlined above. Such evidence may include, but is not limited to, an affidavit certifying that 30% of the subject Contractor's or Subcontractor's employees are low-income as defined by federal guidelines; a list of employees and the household income of each employee, etc.

Also, a Section 3 Business Concern seeking a contract or subcontract shall submit such evidence, as may be reasonably required, sufficient to demonstrate to HAE that the Section 3 Business Concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract.

F. Consideration of Section 3 Compliance/Plan in the Awarding Section 3 Covered Contracts

HAE will take the proposed Section 3 plan into consideration in awarding Section 3 covered contracts as follows:

1. For competitively negotiated contracts (when price is not the primary determination for award) compliance with Section 3 requirements must be one of the evaluation criteria. This criterion shall have a minimum value of 5 points to a maximum value of 15 points depending upon the nature of the services requested under

the Section 3 covered contract.

2. For fixed price contracts, generally sealed bids, (when price is the primary determinate for an award) the following procedure will be applied:

Preference in the award of **Section 3 covered contracts** that are awarded under a sealed bid process will 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:

When The Lowest Responsive Bid Is:	X-lesser of:
Less than \$100,000	10% of that bid or \$9,000.
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.
At least \$7 million or more	1-1/2% of the lowest responsive bid, with no dollar limit.

If **The Housing Authority of Elgin, Illinois (HAE)** elects to award the Contract, the **HAE** will make the award to the Bidder who submitted the lowest responsive, responsible Bid (including the Section 3 preference) conforming in all material respects with the requirements stated above, that is, the Contract shall be awarded to a responsible Bidder with the lowest responsive bid.

G. Right to Reject Bid/Proposal As Non-Responsive

If the Offeror fails to submit a Section 3 plan with its proposal, the Offeror's proposal may be rejected as non-responsive.

IV. COMPLIANCE MONITORING AND PERFORMANCE REVIEWS

HAE has the right, authority and responsibility to monitor the Contractor's implementation of each element of the Contractor's Section 3 plan, including awarding subcontracts and Section 3 hiring and training. HAE staff shall develop and implement a Section 3 SOP that includes strategies required to accomplish the monitoring function and to implement this Section 3 policy. If voluntary compliance cannot be obtained, sanctions, described and referenced in Section VI below, may be imposed by HAE to enforce compliance. HAE reserves the right to allow contractor's to comply with Section 3 by combining or adjusting methods of compliance when necessary to ensure the overall goal of compliance with Section 3 is being met to the greatest extent feasible. It

is desired that contractors select a single method of compliance. However, in some instances particularly when contractors have difficulty complying with a single method, an alternative method of compliance may be approved by HAE.

The Contractor shall provide a quarterly status report identifying its progress in meeting its Section 3 goals. The quarterly status report shall be submitted no later than ten (10) days after the end of each calendar quarter. The status report shall be in at least the same level of detail as the approved Section 3 Plan. For any goal not met, the report shall identify any other economic opportunities, which the Contractor has provided, or intends to provide to Section 3 Residents and the dollar value of each.

V. INFORMATION REGARDING HAE EDUCATIONAL & TRAINING FUND

A Contractor may satisfy its Section 3 goal by contributing an amount equivalent to 2% of the amount paid to the Contractor under the contract to the HAE Section 3 Education and Training Fund that provides assistance to Section 3 Residents. These funds will be used for education and/or training and providing education and/or training assistance to Section 3 residents. Contributions shall be made payable and mailed to the HAE Section 3 Education and Training Fund.

Funds from the HAE Section 3 Education and Training Fund can only be used for:

- a. Equipment required for employment or educational training purposes.
- b. Employment/training internships with the HAE or designee.
- c. Supplies needed for education and training purposes.
- d. Assistance with first-time license or exam/test fees.
- e. Approved transportation expenses for Section 3 Residents.
- f. ACT/SAT prep courses, college entrance exams, and college/technical/vocational application fees.
- g. First pay-period stipend.

Contractors who elect this method of Section 3 compliance shall make their contributions solely to the HAE Section 3 Education and Training Fund. HAE shall maintain these funds separate from all other funds. Contributions designated for the purpose of providing education or training assistance to Section 3 Residents received from Contractors or others which are contributed without the objective of being a method of Section 3 compliance shall not to be commingled with contributions to the HAE Section 3 Education and Training Fund.

The Director of Resident Services will oversee and approve the use of the HAE Section 3 Education and Training fund.

The Finance Department will track individual contributions and provide information to the Director of Resident Services on expenditures, deposits and balances on a quarterly basis.

VI. ENFORCEMENT MEASURES

If the Contractor fails to submit a Section 3 plan with its bid, the Contractor's bid may be rejected as non-responsive.

If the Contractor fails to comply with its Section 3 obligations, enforcement measures that HAE may utilize singularly or in combination, at its sole discretion, include but are not limited to:

- (a) Withholding some or all future contract payments pertaining to the Section 3 Contract determined to be in non-compliance or any other contract the Contractor may have with HAE until compliance has been achieved;
- (b) Withholding a portion of the Contractor's final payment as liquidated damages;
- (c) Terminating the contract;
- (d) Imposing a suspension from future HAE contracting opportunities for a period not to exceed 12 months; or
- (e) Imposing debarment from future participation in HAE contracting opportunities for up to three years.

Contractors may appeal sanctions imposed by HAE for non-compliance with this Section 3 Policy utilizing the appeal procedures in Section VIII. B., Suspension and Debarment, of HAE's Procurement Policy.

VII. REPORTING

The Executive Director or designee shall submit a quarterly and annual report to the HAE Board of Commissioners detailing the accomplishments related to the Section 3 policy.