

CHAPTER 16 – EMPLOYMENT & TRAINING OPPORTUNITIES & CONTRACTING WITH RESIDENTS, RESIDENT-OWNED, SMALL, MINORITY, & OTHER DISADVANTAGED BUSINESSES

The purpose of Section 3 is to ensure that, to its best efforts, employment, training, and business opportunities created by HUD financial assistance be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent. Efforts to promote Section 3 objectives must be consistent with existing Federal, State, and local laws and regulations.

16.1 GENERAL

HUD strongly supports a policy of providing training and employment opportunities to residents and contracting with residents and resident-owned businesses, including RMCs, whenever possible. In addition, HUD encourages PHAs to establish goals for contract awards to small and minority-owned businesses and minority business enterprises (MBEs), women's business enterprises (WBEs), and businesses in labor surplus areas.



16.2 SECTION 3 OF THE HOUSING & URBAN DEVELOPMENT ACT OF 1968 (24 CFR 75)

- A. **Overview.** The purpose of Section 3 is to ensure that, to the greatest extent feasible, employment, training, and business opportunities created by HUD financial assistance be directed to 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, or residents of the community in which the Federal assistance is spent. Efforts to promote Section 3 objectives must be consistent with existing Federal, State, and local laws and regulations.

- B. **Covered Programs.** Section 3 requirements apply to training, employment, contracting, and other economic opportunities arising in connection with the expenditure of public housing assistance for public housing development, operations, and Capital Fund programs. In addition, certain Notification of Funding Opportunity (NOFO) and grant agreements governing assistance to PHAs may contain Section 3 requirements.
- C. **Covered Contract.** Section 3 covers contracts for activities that are funded by Section 3-covered assistance and does not apply to material supply contracts. If the contract includes installation of purchased equipment (supplies and materials), the contract would be covered by Section 3.
- D. **Mandatory Section 3 Contract Clause.** The mandatory Section 3 contract clause can be found at 24 CFR 75.17, which applies to all contracts covered by Section 3. Covered contracts described at 24 CFR 75.3(b) include developments, operating, and modernization assistance. This clause is included in Forms HUD-5370, HUD-5370C, and HUD-5370-EZ.
- E. **Annual Report.** Pursuant to 24 CFR 75.15(a), PHAs must report the total number of labor hours worked, the total number of labor hours worked by Section 3 workers, and the total number of hours worked by Targeted Section 3 workers. Additional reporting is required by 24 CFR 75.15(b) if the labor benchmarks are not met. Small PHAs may elect to use the optional reporting allowed by 24 CFR 75.15(d).

16.3 RESIDENT-OWNED BUSINESSES

- A. A resident-owned business is any business concern (as defined in Chapter 1) that is owned and controlled by public housing residents.
- B. HUD strongly encourages PHAs to contract with resident-owned businesses to its best efforts.
- C. The regulation at 24 CFR 963.12 allows PHAs to use an alternative procurement process when contracting with businesses owned in substantial part by public housing residents (resident-owned businesses) for public housing services, supplies, or construction. The alternative procurement process must comply with procedures and requirements as set forth in HUD's procurement regulations at 2 CFR 200.317-327, except that solicitations are limited to resident-owned businesses. Use of this alternative procurement process is not a requirement. The alternative procurement process under 24 CFR Part 963 is as follows:
 - 1) It is recommended that the PHA prepares an ICE for the procurement.
 - 2) The PHA selects the appropriate method of procurement (simplified acquisition, sealed bidding, competitive proposals, or non-competitive proposals).
 - 3) The PHA solicits a bid, proposal, or offer from one or more resident-owned businesses.
 - 4) The PHA receives offer(s) from one or more resident-owned businesses and ensures that:
 - a. The offeror has submitted the required certification described in 24 CFR 963.10(d) regarding previous contracts received under the alternative procurement process and the total amount of such previous contracts is less than \$1,000,000;
 - b. The PHA performs a cost or price analysis of the offer(s) received and determines that the price is reasonable, i.e., the price that normally would be paid for comparable supplies, services, or construction in the project area;

- c. The PHA makes an award to the responsive and responsible bidder/offeror/respondent whose bid/offer/proposal is most advantageous overall to the PHA, consistent with the evaluation factors stated in the solicitation. The resident-owned business must be capable of performing satisfactorily; and
- d. The PHA documents the procurement file and complies with all other procurement requirements of 2 CFR 200.317-327, including the requirement for economy and efficiency.

16.4 CONTRACTING WITH A RESIDENT MANAGEMENT CORPORATION (RMC)

- A. A PHA may enter into a contract with an RMC to provide property management under 24 CFR Part 964, Tenant Participation and Tenant Opportunities in Public Housing. As with any other property management contract, the management agreement must specify the functions for which the RMC will be responsible.
- B. The property management contract between the PHA and the RMC is administered as any other contract for services and is subject to any collective bargaining agreement provisions. However, the requirements for competitive procurement and prior written contract approval by HUD, where applicable (see Chapter 12), do not apply to the decision of a PHA to contract with an RMC for property management.
- C. For the PHA to make a single source award to an RMC, certain conditions must be met that differentiate an RMC from a resident-owned business. They are:
 - 1) The duly elected resident council or councils of the development(s) and a majority of the residents must officially approve the RMC;
 - 2) If no resident council exists, a majority of the residents of the development must approve the RMC;
 - 3) The RMC's voting members must be 18 years of age, or heads of households (of any age) whose name appears on the lease of the development to be represented by the RMC;
 - 4) The RMC must be a validly incorporated nonprofit organization; and
 - 5) The RMC must be governed by an elected Board of Directors and include representatives from each participating resident council. It must have bylaws stating qualifications of officers, frequency of elections, and procedures for recall. Elections must be held at least every three years.
- D. Before making a single source award, the PHA must ensure that the organization meets all criteria to qualify as an RMC, that the RMC can demonstrate that it can perform the proposed work, and that the price is reasonable.
- E. The RMC is obligated to provide fidelity bond coverage and insurance or equal protection to the PHA and HUD against loss, theft, embezzlement, or fraudulent acts by the RMC or its employees.

- F. In performing services, the RMC must comply with the requirements of 2 CFR Part 200. The RMC must also be audited each year by a licensed CPA and submit the audit report to HUD and the PHA within 30 days of issuance.

16.5 ASSISTANCE TO SMALL AND OTHER DISADVANTAGED BUSINESSES

- A. **Required Efforts.** Consistent with Executive Orders 11625, 12138, and 12432, the PHA shall make every feasible effort to ensure that small businesses MBEs, WBEs, and labor surplus area businesses participate in PHA contracting. Suggested steps are included in the sample procurement policy in Appendix 1.
- B. **Goals.** PHAs are encouraged to establish goals by which they can measure the effectiveness of their efforts in implementing programs in support of Section 3 and contracting with disadvantaged firms. It is important to ensure that the means used to establish these goals do not have the effect of limiting competition and should not be used as mandatory set-aside or quota, except as may otherwise be expressly authorized in regulation or statute. Some localities have adopted minority contracting set-aside policies or geographic limitations, which may conflict with Federal requirements for full and open competition.
- C. When developing an outreach program for small, WBE, MBE, or labor surplus area, or Section 3 businesses, consider how to ensure that the program has the effect of enhancing competition by increasing the number of potential bidders and contractors capable of competing effectively for work generated by the PHA. Among the steps that have proved effective in some PHAs are:
 - 1) Study the existing barriers facing low-income persons and disadvantaged businesses;
 - 2) Examine PHA policies and procedures that may contribute to these barriers and determine how to improve those policies and procedures;
 - 3) Target participants in a PHA's workforce development program that may also include HUD-funded grants, e.g., Family Self-Sufficiency, Jobs Plus, etc.
 - 4) Communicate directly with disadvantaged firms and resident-owned businesses about contracting opportunities, the standards the PHA requires for quality work at a reasonable cost, and how to succeed in bidding for PHA work;
 - 5) Maintain a list of disadvantaged and resident-owned firms and notify them of planned procurement activities;
 - 6) Establish partnerships with other community agencies, Federal, State and local agencies, and educational institutions. Many have as their mission the fostering of job creation, training, and business development; and
 - 7) Consider partnering in a consortium or interagency agreement with other PHAs or units of local government to enhance capacity to achieve Section 3 and disadvantaged contracting goals.
 - 8) Remember that the best programs will serve the needs of the PHA, assist resident-owned businesses and low-income persons, and promote a more competitive environment. A list is provided in Appendix 16 that includes sources of information on working with resident-owned businesses.