

Compliance Requirements

Section 3, Procurement, & Federal Labor Standards



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YAY



COMPLIANCE

Section 3



Jobs



Training



Contracts

“ To ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons ”

Section 3 of the Housing and Urban Development Act of 1968

provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR part 882, subpart G.

Service area means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

Subcontractor means 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

Law is supported by regulation.

section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to funding awards made under the NOFA. Additionally the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) *Statement of purpose in NOFAs.* (1) For competitively awarded assistance

Legacy Projects

Final Rule Timeline

Legacy Projects: Contracts executed or projects for which assistance or funds were committed prior to November 30, 2020

Requirement:

- Adhere to the old rule (24 CFR Part 135)
- Expected to maintain records but will no longer be required to report Section 3 compliance to HUD in SPEARS.

Final Rule Timeline

Transition Period

Transition Period: Projects for which assistance or funds are committed between November 30, 2020 and July 1, 2021

Requirement:

- Adhere to requirements of the new Final Rule (Part 75)
- Expected to maintain records but will not be required to report to HUD on the 24 CFR Part 75 requirements





Applicability

Section 3 requirements apply to **all** housing rehabilitation, housing construction or other public construction projects

- Threshold is met if the total amount of CDBG assistance exceeds \$200,000
- Applies to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

A Project is defined as a site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

Procedures promoting outreach to Section 3 workers & Business Concerns

When *hiring, contracting or job training opportunities* arise in connection with housing rehabilitation, housing construction or other public construction.

- **Recruitment of Section 3 Workers & Business Concerns**

Definitions

Section 3 Worker §75.5

- Any worker who currently fits or when hired within the past five years fit at least one of the following criteria:
 - Low- or very low-income, as established by HUD's income limits;
 - Employed by a Section 3 business concern
 - YouthBuild participant

Targeted Section 3 Worker (§75.21)

- Worker employed by a Section 3 business concern
- low and very low-income workers residing within **neighborhood or service area of the project**
 - Neighborhood service area – one-mile radius of project site, or if fewer than 5,000 people, radius on project containing 5,000 people.
- YouthBuild participants

Service Area as Defined in 24 CFR 75.5

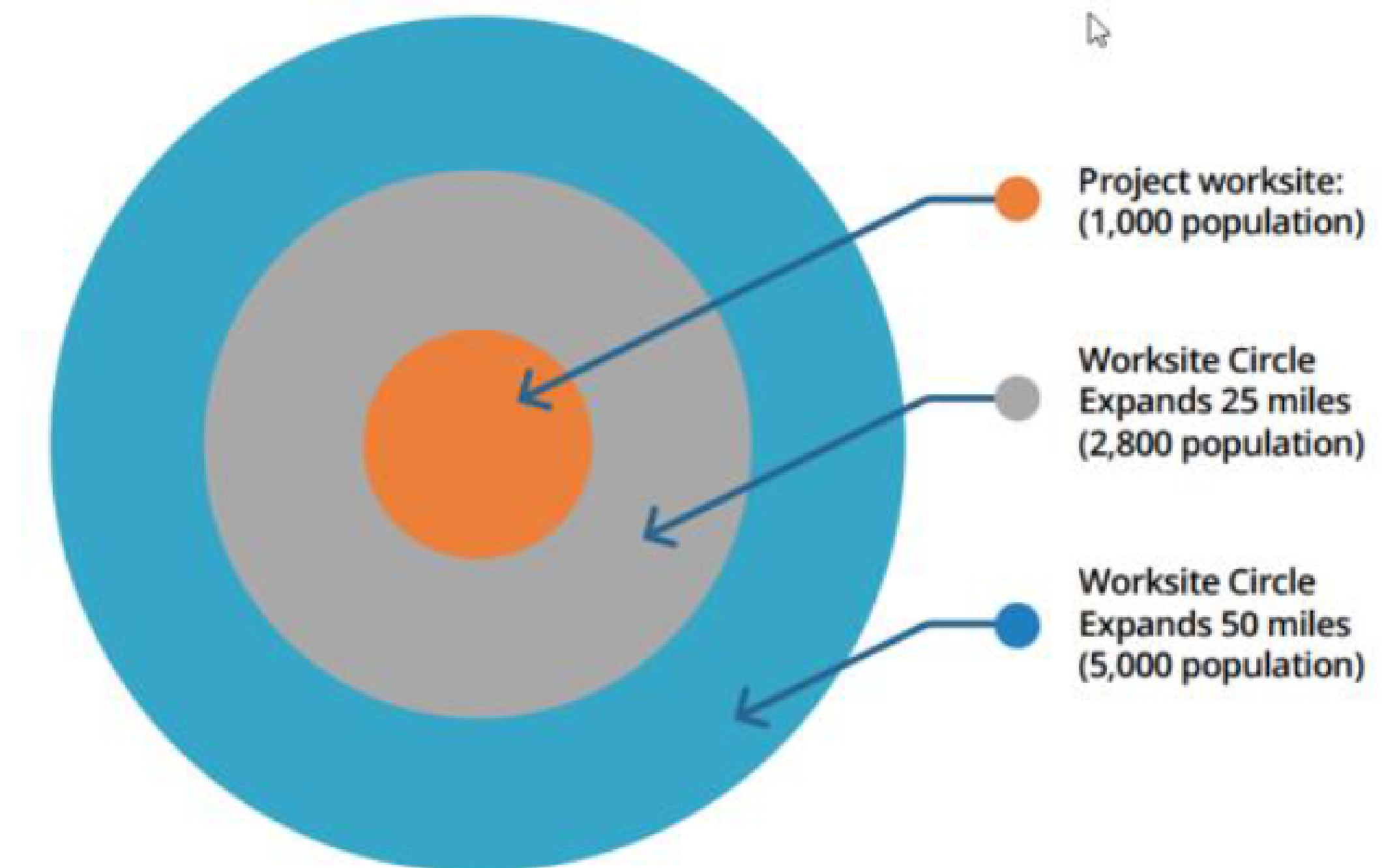
A. *Service Area* = an area within one mile of the Section 3 project

OR

B. If < 5,000 people live within one mile of Section 3 project,

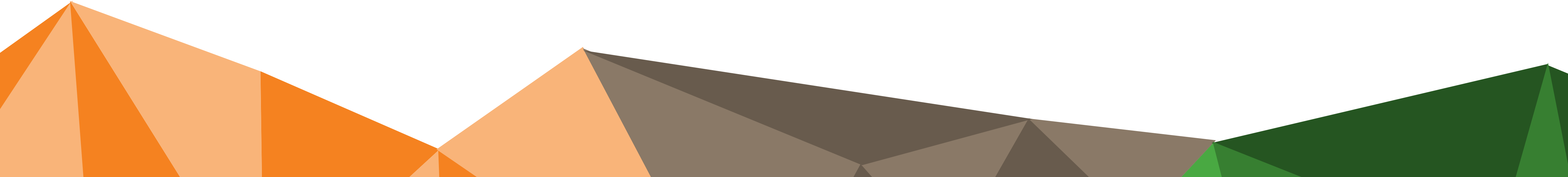
Then, *Service Area* = an area within a circle centered around the Section 3 project site that encompasses 5,000 people.

*According to the most recent U.S. Census



Definitions

Section 3 Business Concern (meets criteria within the past 6 months)

1. 51% or more owned by low- or very low-income persons
OR
 2. 75% or more labor hours are performed by Section 3 workers who are low or very low-income persons or YouthBuild participants
OR
 3. 51% or more owned by current residents of public housing
- 

Benchmarks

Safe Harbor §75.23

Certify met or exceeded two benchmarks and considered in compliance

Initial Section 3 Benchmarks:


- 25% of total labor hours worked by Section 3 workers
- 5% of total labor hours worked by “Targeted Section 3 workers”

Benchmarks set by separate Federal Register notice

- Will be updated periodically

<https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-19183>

How are benchmarks achieved?

- ✓ **Outreach to Section 3 workers and businesses**
 - ✓ **Documentation of Outreach**
 - ✓ **Give a Preference in hiring and contracting to Section 3 workers and businesses**
- 



Recipient Responsibilities

Employment & Training

- Ensure employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) where project is located
- Priority of opportunities
 - Section 3 workers residing within the service area or the neighborhood of the project, and
 - Participants in YouthBuild programs.

Contracting

- Ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.
- Priority of contracts awarded
 - Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
 - Youthbuild programs.

Document actions taken to comply

Reporting

Recipients also must implement at least one (1) of the following actions:

- ❖ Facilitating an opportunity fair annually for contractors to meet interested low-income & very-low-income residents for possible employment.
- ❖ When employment opportunities arise or are anticipated, posting all job sites funded by DCA with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting. The sign should be no smaller than 24" x 24" in Black ink and specifically read:

“This project is covered under Section 3 of the HUD Act of 1968 which requires that any new hiring opportunities first be directed to low- and very low-income persons in this community. Please contact (list the contact person name and number) for information on any employment, contracting and sub-contracting opportunities.”

Operating Procedures

- Post positions in at least three community sources (see Policy)
- Use of temporary agencies
 - Placements must self-certify and be offered Preference
- Post contracting opportunities in at least three community sources
- Contractor must convey history of compliance
- Contract language regarding compliance for those that claim a Preference
 - Preference must be maintained or subject to penalties
 - Contractors may be banned from future participation

Solicitation Package

Section 3 Self-Certification and Action Plan

- Allows a contractor to claim preference
or
- Allows a contractor to decline preference

Previous Section 3 Compliance Certification

- Allows a contractor to certify compliance on previous work

Assurance of Compliance Certification/Action Plan

- List subcontractors (if known)
- List of workforce
 - Changes will constitute NEW hires
 - Provides “Before and After” picture for compliance documentation
 - Provides record keeping requirements

Self-Certifications – have been changed to reflect new definitions



Solicitation Package

Contract award exceeding \$200,000 & Claiming Preference

- Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification portions at time of BID

Contract award exceeding \$200,000

- Entire package completed and submitted prior to AWARD

Contract award less than \$200,000

- Package is made available and submitted prior to AWARD
- If claiming a preference
 - Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification portions at time of BID/PROPOSAL

Reporting Requirements

QUARTERLY EXPENDITURES AND PROGRESS REPORT

Section 3 – Labor Hours - Please enter unreported hours. If submitting the 2nd Quarter report (ending 6/30) enter the cumulative hours as well. The cumulative reporting period is 7/01 - 6/30.

	Quarterly Hours	Annual Report - Quarter ending 6/30
Total Labor Hours		
Section 3 Target Worker		
Section 3 Worker Hours		

A Section 3 Target Worker is: Employed by a Section 3 business concern, OR Living within the service area or the neighborhood of the project, as defined in 24 CFR 75.5, OR a YouthBuild Participant.

A section 3 worker is: A low or very low-income worker, OR employed by a Section 3 business concern, OR a YouthBuild participant.

Please enter unreported hours. If submitting the 2nd Quarter report (ending 6/30) enter the cumulative hours as well. The cumulative reporting period is 7/01 - 6/30.

- **Reporting of labor hours**
 - (i) The total number of labor hours worked;
 - (ii) The total number of labor hours worked by Section 3 workers; and
 - (iii) The total number of labor hours worked by Targeted Section 3 workers.
- Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31

Qualitative Reporting §75.25(b)

If unable to meet goals, must describe efforts taken to meet

- Examples include:
 - Held job fairs
 - Conducted on-the job training
 - Outreach efforts to public housing residents
 - Connected residents with supportive services
 - Helped residence apply for technical training
 - Provided technical assistance to Section 3 Businesses

QUARTERLY EXPENDITURES AND PROGRESS REPORT

Section 3 – Efforts

Please indicate which efforts the Recipient has executed to recruit or provide training and opportunities to Section 3 Businesses and Workers by checking all that apply.

<input type="checkbox"/>	Outreach efforts to generate job applicants who are CDBG Funded workers
<input type="checkbox"/>	Direct, on-the-job training (including apprenticeships)
<input type="checkbox"/>	Indirect training such as arranging for, or paying tuition for, off-site training
<input type="checkbox"/>	Technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching)
<input type="checkbox"/>	Outreach efforts to identify and secure bids from Section 3 business concerns
<input type="checkbox"/>	Technical assistance to help Section 3 business concerns understand and bid on contracts
<input type="checkbox"/>	Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns
<input type="checkbox"/>	Provided or connected residents with assistance in seeking employment including; drafting resumes, finding job opportunities, connecting residents to job placement services.
<input type="checkbox"/>	Held one or more job fairs
<input type="checkbox"/>	Provided or connected residents with supportive services that can provide direct services or referral services
<input type="checkbox"/>	Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation
<input type="checkbox"/>	Assisted residents with finding childcare
<input type="checkbox"/>	Assisted residents to apply for/ or attend community college or a four-year educational institution
<input type="checkbox"/>	Assisted residents to apply for/ or attend vocational/technical training
<input type="checkbox"/>	Assisted residents to obtain financial literacy training and/or coaching
<input type="checkbox"/>	Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns
<input type="checkbox"/>	Provided or connected residents with training on computer use or online technologies
<input type="checkbox"/>	Other, specify: _____



Resources

- Section 3 Solicitation Package

<https://www.dca.ga.gov/node/6088>

- New Rule FAQs

<https://www.hud.gov/sites/documents/11SECFAQS.PDF>

- Section 3 New Rule

[Federal Register](#)

- HUD's Website

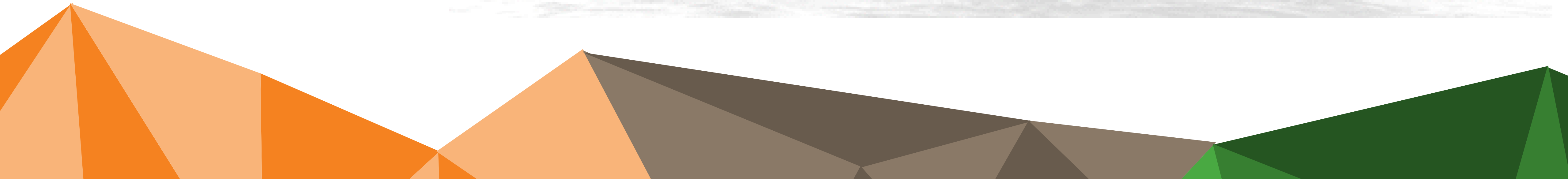
<https://www.hud.gov/section3>

- Income Limits

<https://www.huduser.gov/portal/datasets/il.html>

Procurement

- ✓ Standards
- ✓ Methods
- ✓ Sole Source Requirements
- ✓ Contract Requirements



Procurement Standards

DCA's procurement policies and procedures implement the requirements of 24 CFR 570.489 (g), which says the State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition.

- Identification of Methods of Procurement and their applicability
- Prohibition of cost plus a percentage of cost
- Assurance that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations
- Subrecipient and contractor determinations shall be made in accordance with the standards in 2 CFR 200.330.

Procurement transactions will be provided in a manner providing full & open competition

Avoid:

- x Unreasonable requirements
- x Noncompetitive pricing practices
- x Noncompetitive awards to consultants that are on retainer contracts
- x Organizational conflicts of interest
- x Specifying only a brand name product
- x Any arbitrary action in the procurement process



Procurement Standards

- Documented Conflict of Interest Policy, which states:

No employee, officer, or agent...

“May participate in the selection, award, or administration of a contract supported by a Federal award if a real or apparent conflict of interest is present.”

Prohibited Conflicts


Persons with CDBG responsibilities, decision-making power or information may **NOT:**

- Obtain a financial interest or benefit from CDBG activity
- Have any interest in contract or subcontract
- Applies to family members and business ties
- Applies during tenure and 1 year after

Example: Grant Administrator cannot assist grantee with drafting statements of work or RFPs for grant administration if they intend to submit proposal.

May explain process, discuss instructions/process publicly available on DCA website

Standards – Selection Procedures

- ✓ Accurate description of the technical requirements for material, product, or service without restricting competition
 - ✓ Clear requirements and evaluation factors
 - ✓ The review of proposed procurement actions by Recipient officials to avoid purchasing unnecessary or duplicative items.
 - ✓ A cost or price analysis for every procurement action
 - ✓ Consideration of contractor integrity, compliance with public policy, record of past performance, and financial and technical resources in the selection process
- 

Methods of Procurement

- **Small purchase:** Procurements under \$100,000 (if allowed by local policy).
 - Require that price or rate quotations be obtained at least three (3) sources.
 - Not appropriate for procurement of administrative or professional services
- **Competitive Proposals:** Professional Services
- **Competitive Sealed Bids:** Public Works Construction
- **Sole Source:** Requires DCA Approval
 - ✓ The item or service is available from only one source;
 - ✓ Urgent public need will not allow for the delay caused by advertising;
 - ✓ Although a number of bids were solicited, only one response was received.

Competitive Negotiation

Method of procurement for Professional Services using publicized RFPs or RFQs

- Private grant writers/administrators
- Engineers and Architects
- Not applicable if contracting with Regional Commissions

Maintain Complete Records

- RFP
- Proof of Publication
- Distribution List
- Copies of Proposals Received
- Scoring Sheets
- Meeting Minutes – Council/Board Approval
- Executed Contracts
- Correspondence with Section 3 businesses

Competitive Sealed Bid

- DCA, under the authority of 24 CFR 570.489(g), has adopted Title 36, Chapter 91 of the Official Code of Georgia, Georgia Public Works Construction Law
 - Traditional design–bid–construct method
 - Alternative methods require DCA approval
 - Advertising Requirements (including Section 3)
 - Contract opportunity must be posted in the governing authority's office
 - Contract opportunity must be advertised in either the legal organ of the government, or on an Internet website of the government entity or one identified by the entity
 - Place on Georgia's Procurement Registry, (HB 322)

Competitive Sealed Bid – Advertising Requirements

- If advertised in newspaper, opportunity must be advertised at least two times:
 - The first advertisement must be at least 4 weeks prior to the bid opening date; and
 - The second advertisement must follow at least 2 weeks after the first advertisement
- Advertisements placed on an Internet website should run continuously for at least four weeks.
- Each advertisement shall include such details and specifications as will enable the public to know the extent and character of the bid or proposal opportunity

Section 3 Advertising Requirements

**HUD Section 3
Business
Registry**
<https://www.hud.gov/section3businessregistry>

Construction
Contract
Opportunities
must be
posted in at
least
3 locations

GPR, your website, Dodge
Room, newspaper, DOL,
DFCS

All ads must include this
Section 3 language: “This is a
Section 3 Covered Contract.
Section 3 Business Concerns
are encouraged to apply.”

Competitive Sealed Bid- Bonding Requirements

State requirements (contracts \$100,000+):

1. A performance bond from contractors executed in connection with each contract.
2. A payment bond on the part of the contractor for 100% of the contract price.

Federal requirements (contracts \$100,000+):

1. A bid guarantee from each bidder equal to 5% of the bid price.
2. A performance bond from contractors for 100% of the contract shall be executed in connection with each contract.
3. A payment bond on the part of the contractor for 100% of the contract price.

DCA requirements:

- adequate contractor's liability insurance from all contractors
 - \$25,000 property and \$50,000 bodily injury coverage

Sole Source Requests

- Chief Elected or Authorized Official's request letter
- Description of Procurement Methodology
- Tear Sheet of the Bid Advertisement or RFP/RFQ
- Local Government's Attorney Opinion
- Professional Services Procurement
 - list of the active, qualified consultants or engineers/architects that were mailed the RFPs/RFQs (7 for grant administrators and 10 for engineers/architects)
 - certified return receipt documentation or adequate email documentation
- Sealed Bid Procurements
 - Local Government's Engineer/Architect states that the one bid response's prices were reasonable and appropriate based on independent cost estimates.

<input type="checkbox"/> Contractor/Subcontractor Affidavit	(Compliance with OCGA 13-10-91) Applicable to All Contracts and Subcontracts						
<input type="checkbox"/> Section 3 Clause	All Contracts						
<input type="checkbox"/> Provision for Remedies	All Contracts						
	ARCHITECTURAL & ENGINEERING SERVICES	HOUSING REHAB		CONSTRUCTION CONTRACTS			
		<input type="checkbox"/> Less than 8 Units	<input type="checkbox"/> 8 or More Units	<input type="checkbox"/> Over \$100,000	<input type="checkbox"/> Over \$40,000	<input type="checkbox"/> Over \$10,000	<input type="checkbox"/> Over \$2,000
<input type="checkbox"/> Provision for termination	✓ If over \$10,000	✓ If over \$10,000	✓ If over \$10,000	✓	✓	✓	
Executive Orders 11246/11375							
<input type="checkbox"/> EEO Clause				✓	✓	✓	
<input type="checkbox"/> EEO Specifications				✓	✓	✓	
<input type="checkbox"/> Affirmative Action				✓	✓	✓	
<input type="checkbox"/> Non-Segregated Facilities				✓	✓	✓	
Federal Labor Standards							
<input type="checkbox"/> Copeland Anti-Kickback			✓	✓	✓	✓	✓
<input type="checkbox"/> Davis-Bacon Clause			✓	✓	✓	✓	✓
<input type="checkbox"/> Wage Rate from DCA			✓	✓	✓	✓	✓
<input type="checkbox"/> Work Hours & Safety			✓ If over \$10,000	✓			
<input type="checkbox"/> Performance Bonds				✓	✓		
<input type="checkbox"/> 5% Bid Bond				✓			
<input type="checkbox"/> Clean Air/ Water Clause				✓			
<input type="checkbox"/> Provision for Disability Accessibility (if a bldg.)	✓						
<input type="checkbox"/> Provision for GA Energy	✓						

Resources

GMA's Public Works Construction
Guidebook,

<https://www.gmanet.com/GMASite/media/PDF/publications/publicworks.pdf>

HB 322,

<https://gov.georgia.gov/document/signed-legislation/hb-322pdf/download>

CDBG-MIT Procurement Policy,

<https://www.dca.ga.gov/node/7120>

Thank you!

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GA DCA

Compliance Requirements

