Compliance Requirements

Section 3, Procurement, & Federal Labor Standards
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
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.
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.
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
- 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

• 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

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.
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 residents apply for technical training
  - Provided technical assistance to Section 3 Businesses

<table>
<thead>
<tr>
<th>QUARTERLY EXPENDITURES AND PROGRESS REPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
<tr>
<td><strong>Outreach efforts to generate job applicants who are CDBG Funded workers</strong></td>
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<tr>
<td><strong>Direct, on-the-job training (including apprenticeships)</strong></td>
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<tr>
<td><strong>Indirect training such as arranging for, or paying tuition for, off-site training</strong></td>
</tr>
<tr>
<td><strong>Technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching)</strong></td>
</tr>
<tr>
<td><strong>Outreach efforts to identify and secure bids from Section 3 business concerns</strong></td>
</tr>
<tr>
<td><strong>Technical assistance to help Section 3 business concerns understand and bid on contracts</strong></td>
</tr>
<tr>
<td><strong>Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns</strong></td>
</tr>
<tr>
<td><strong>Provided or connected residents with assistance in seeking employment including, drafting resumes, finding job opportunities, connecting residents to job placement services</strong></td>
</tr>
<tr>
<td><strong>Held one or more job fairs</strong></td>
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<tr>
<td><strong>Provided or connected residents with supportive services that can provide direct services or referral services</strong></td>
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<tr>
<td><strong>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</strong></td>
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<tr>
<td><strong>Assisted residents with finding childcare</strong></td>
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<tr>
<td><strong>Assisted residents to apply for or attend community college or a four-year educational institution</strong></td>
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<tr>
<td><strong>Assisted residents to apply for or attend vocational/technical training</strong></td>
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<tr>
<td><strong>Assisted residents to obtain financial literacy training and/or coaching</strong></td>
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<tr>
<td><strong>Bonding assistance, guarantees, or other efforts to support viable bids from Section 3 business concerns</strong></td>
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<tr>
<td><strong>Provided or connected residents with training on computer use or online technologies</strong></td>
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<tr>
<td><strong>Other, specify...</strong></td>
</tr>
</tbody>
</table>
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
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:

- Unreasonable requirements
- Noncompetitive pricing practices
- Noncompetitive awards to consultants that are on retainer contracts
- Organizational conflicts of interest
- Specifying only a brand name product
- Any arbitrary action in the procurement process
• 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](https://www.hud.gov/section3businessregistry)

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<th>Construction Contract Opportunities</th>
<th>Must be posted in at least 3 locations</th>
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<tbody>
<tr>
<td>GPR, your website, Dodge Room, newspaper, DOL, DFCS</td>
<td></td>
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</table>

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.
<table>
<thead>
<tr>
<th>Contractor/Subcontractor Affidavit</th>
<th>(Compliance with OCGA 13-10-91) Applicable to All Contracts and Subcontracts</th>
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<tbody>
<tr>
<td>Section 3 Clause</td>
<td>All Contracts</td>
</tr>
<tr>
<td>Provision for Remedies</td>
<td>All Contracts</td>
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</tbody>
</table>

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<thead>
<tr>
<th>ARCHITECTURAL &amp; ENGINEERING SERVICES</th>
<th>HOUSING REHAB</th>
<th>CONSTRUCTION CONTRACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Less than 8 Units</td>
<td>8 or More Units</td>
</tr>
<tr>
<td>Provision for termination</td>
<td>✓ If over $10,000</td>
<td>✓ If over $10,000</td>
</tr>
</tbody>
</table>

Executive Orders 11246/11375
- EEO Clause
- EEO Specifications
- Affirmative Action
- Non-Segregated Facilities

Federal Labor Standards
- Copeland Anti-Kickback
- Davis-Bacon Clause
- Wage Rate from DCA
- Work Hours & Safety ✓ If over $10,000
- Performance Bonds
- 5% Bid Bond
- Clean Air/ Water Clause
- Provision for Disability Accessibility (if a bldg.) ✓
- Provision for GA Energy ✓
Resources

GMA’s Public Works Construction Guidebook,
https://www.gmanet.com/GMASite/media/PDF/publications/publicworks.pdf

HB 322,

CDBG-MIT Procurement Policy,
https://www.dca.ga.gov/node/7120
Thank you!

Kathleen Vaughn:
(404)679-0594
Kathleen.Vaughn@dca.ga.gov
GA DCA

Compliance Requirements