



NYS HOME Local Program Section 3 Participation Policy

Background:

The NYS HOME Local Program is funded by the federal U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnership Program. The funds are to provide financial assistance for affordable housing assistance directed to persons with incomes below 80% of area median income.

Section 3 of the Housing and Urban Development Act of 1968, as amended, ("Section 3") specifies that, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, that job training, employment, contracting and other economic opportunities generated from NYS HOME Local Program funds be made available to low- and very low-income persons, contractors and business concerns within the community where the project is located.

Pursuant to Section 3 of the Housing and Urban Development Act of 1968, as amended and 24 CFR Part 135, the Local Program Administrator (LPA) adopts this Section 3 Participation Plan for all covered contracts in the NYS HOME Local Program.

Definitions:

Section 3 Eligible Resident:

- A public housing resident; or
- A low- or very low-income person residing in the community where the project is located or throughout the State of New York, as applicable.

Section 3 Business Concern is a business that can provide evidence of:

- 51% or more owned by Section 3 residents; or
- At least 30% of its full time employees are currently Section 3 residents, or within three years of the date of first employment with the Business Concern were Section 3 residents; or
- Provides evidence, as required, 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 in the above two paragraphs.



Section 3-Covered Assistance

Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

- a. New construction or housing rehabilitation of an existing residential structure (including labor and materials, reduction of lead-based paint and asbestos hazards, etc). in conjunction with a NYS HOME Local funded project.
- b. Covered Assistance excludes routine maintenance, repair or replacement after the work has already been completed.
- c. Other construction, such as sewage line repair or installation and updates to building facades, in conjunction with a HOME Local program funded project.

Section 3-Covered Contract - Applicable Thresholds

Recipient Threshold: Section 3 requirements must be met for all NYS HOME Local Program contracts awarded by the HTFC to an LPA in excess of \$200,000.

Contractor and Subcontractor Threshold: Section 3 requirements must be met if an LPA awards a contract or subcontract (including a professional service contract) in excess of \$100,000 dollars for work generated by the expenditure of NYS HOME Local Program funds or for work arising in connection with a Section 3-covered project.

Section 3-covered contracts do not include contracts solely for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3-Covered Contract. For example, a contract for the purchase and installation of a furnace would be a Section 3 covered contract, as the contract is for work (i.e., the installation of the furnace) and thus would be covered by Section 3.

Section 3 Covered Project

- a. A Section 3 covered project involves new construction or rehabilitation of existing residential housing (including labor and materials purchase, reduction of lead-based paint and asbestos hazards, etc.) in conjunction with a NYS HOME Local funded project.



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Employment Goals for Section 3 residents:

To meet the goals for employing Section 3 residents, LPAs, contractors and Business Concerns must select Section 3 residents based on the following priorities pursuant to § 135.34, 24 CFR Part 135:

For public housing programs:

- First Priority –If applicable, residents of the development where the project is located.
- Second Priority – Other public housing residents of the community where the project is located.
- Third Priority - Other residents of the community where the project is located who are participants in HUD-Youth Build or other federal, state, and/or local job programs being carried out in a city or county area.
- Fourth Priority - Other persons from the State of New York who meet the definition of Section 3 resident defined at § 135.5 of 24 CFR Part 135.

For other housing and community development programs:

- First Priority –Section 3 residents residing in the community in which the project is located.
- Second Priority – Participants in HUD Youthbuild programs.
- Third Priority – Where project is assisted under the McKinney Homeless Assistance Act, homeless persons residing in the community.
- Fourth Priority: Other Section 3 residents.

All contractors will seek low- or very low-income persons residing in the community where the project is located or throughout the State of New York as applicable, with a goal that 30% of all new hires generated by the use of NYS HOME Local Program funds be Section 3 residents.

Eligibility for employment: this policy should not be construed to require the employment of a Section 3 eligible resident that does not meet the qualifications of the employment requirements.

Construction Contract Goals:

To meet the minimum goals to award housing construction and/or housing rehabilitation contracts to section 3 contractors or Business Concerns:

- 10% of the total dollar amount of all Section 3 covered contracts for new construction or rehabilitation of existing residential housing shall be awarded to Section 3 eligible contractors and Business Concerns, and
- 3% of the total dollar amount of all non-construction Section 3 covered contracts shall be awarded to Section 3 eligible contractors and Business Concerns.



Preference for Section 3 Eligible Contractors and Business Concerns:

Preference shall be awarded to contractors and Section 3 business concerns according to the following:

1. For the NYS HOME Local Program, contracts are to be awarded to the lowest, responsible bidder. If all other contract requirements are equal in response to the bid, including that the section 3-eligible bidder and the non-section 3-eligible bidders have proposed bids that are within 10% of each other in pricing, then the LPA must award the contract to the Section 3-eligible bidder.
2. Where the Section 3 Covered Contract is to be awarded based on factors other than price, such as a request for proposals, LPAs must develop the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3-eligible contractors and Business Concerns. The proposal shall be awarded to the responsible proposer whose quotation is the most advantageous, considering price and all other factors specified in the rating system.
3. Eligibility for employment for contracting and Business Concerns: this policy should not be construed to require the employment or contracting of a contractor or Business Concern that does not meet the qualifications of the employment or procurement requirements.

Competitive Sealed Bids:

Preference in the award of Section 3 Covered Contracts awarded under a sealed bid process may be provided as follows:

1. Bids shall be solicited from all businesses (i.e. Section 3 contractors and business concerns and non-Section 3 contractors and business concerns).
2. If all other contract requirements are equal in response to the bid, and the Section 3 bidders and the non-Section 3 bidders are within 10% of each other in price, then the contract must be awarded to the Section 3 bidder.
3. If no responsive bid by a Section 3 bidder meets the requirements of paragraph 2 of this section, then the contract shall be awarded to the lowest, responsible bidder with a responsive bid.



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4. To be considered as responsible, the bidder must demonstrate compliance with the greatest extent feasible requirement of Section 3.

Policy Statement:

The LPA shall provide, to the greatest extent feasible, that job training, employment, contracting and other economic opportunities are made available to low- and very low-income persons, contractors and Business Concerns within the community where the project is located.

Additionally, if unable to deliver, access and/or reach Section 3 residents, contractors and Business Concerns with the community where the project is located, then the LPA shall provide the same as in the paragraph above throughout the State of New York (as defined in § 135.5 of 24 CFR Part 135), as applicable.

Accordingly, the LPA shall implement policies and procedures, as applicable, to ensure that Section 3 requirements are met. The LPA must develop procedures to implement this policy to cover all applicable contracts and maintain adequate program records to demonstrate compliance.

This policy shall not apply to contractors that only furnish materials or supplies through Section 3-covered assistance. It will apply to contractors who install materials or equipment.

This policy should not be construed to require the employment or contracting of a Section 3 resident, contractor or business concern that does not meet the qualifications of the employment or procurement requirements.

Responsibilities:

The LPA has the responsibility to ensure compliance with Section 3 in its NYS HOME Local program funded operations. This responsibility includes:

1. Notifying and providing employment and contracting opportunities to Section 3 residents, contractors and Business Concerns to ensure they may seek jobs and submit bids/proposals.
2. Notifying potential contractors of the objectives of Section 3 and requiring, as applicable, ways in which they can help the LPA meet its Section 3 goals, including, but not limited to, incorporating the Section 3 Construction Clause in applicable construction contract documents.
3. Facilitating the training and employment of Section 3 residents.



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4. Documenting the actions taken by the LPA to comply with the Section 3 requirements and notation of impediments, if any.
5. Respond to complaints made to the LPA by Section 3 residents, contractors and/or business concerns.
6. Agree to cooperate with HUD to obtain compliance when allegations are made that the LPA's Business Concerns and contractors are not in compliance.

Reporting:

1. LPAs will be required to demonstrate compliance with the "greatest extent feasible" requirement under Section 3.
2. LPAs will be required to report Section 3 activity quarterly and annually to HCR's Fair and Equitable Housing Office (FEHO) who reports annually to HUD. LPAs will report to HCR and HTFC as requested throughout the contract term.
3. LPAs will be given Section 3 template reporting forms at contract execution.

Compliance:

HUD holds the HTFC and LPA's accountable for compliance with Section 3. When an LPA is unable to meet the required Section 3 goals, the HTFC and HCR will place the burden of proving compliance with Section 3 to HUD, on the LPA.

Safe Harbor and Compliance Determinations:

In the absence of evidence to the contrary (i.e., evidence that efforts to the "greatest extent feasible" were not completed), if the LPA and/or contractor meets the minimum numerical goals shown above, the LPA is considered to have complied with Section 3 preference requirements.

For non-compliance, the LPA will be expected to demonstrate why it was not feasible to meet the goals.

Certification:

The LPA will certify compliance with this Policy and all HUD and State of NY Section 3 requirements when executing the HOME Local Contract with the HTFC.