

# PART II: SECTION 3 IMPLEMENTATION

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# Agenda

## **PART I: SECTION 3 PROGRAM DESIGN**

1. Section 3 Final Rule
2. Overview of Section 3
3. Designing Your Section 3 Plan

## **PART II: SECTION 3 IMPLEMENTATION**

1. Putting Your Section 3 Plan Into Action on Projects  
*(documenting qualitative efforts)*
1. Documenting Compliance with Section 3
2. Section 3 Compliance Scenarios

# Putting Your Section 3 Plan Into Action





# Section 3 and Procurement

## Small Purchase (*When Under \$250K*) and Competitive Sealed Bids (*When Over \$250K*)

- If you estimate the bids will come in near or over the Section 3 dollar threshold (*currently \$200K*), request that bidders provide a Section 3 Project Implementation Plan as exhibit in RFP and request Section 3 information from bidder

## Competitive Proposals (RFP)

- *Section 3 not required for professional services but encouraged*
- Option to give scoring incentive for Section 3 status (example of qualitative efforts)

## Sole Source

- *If project is over \$200K*, ensure contractor understands that Section 3 is triggered if they hire additional workers or subcontract
- Document best efforts to collect any information that may currently qualify existing vendor as Section 3 business or with Section 3 worker



# Items to Include in Section 3 Covered Contracts

(All items referenced below are elements from a grantee [Section 3 Project Implementation Plan](#))

## **Contractual language:**

- FORM 5 – Section 3 standard Contract Clause

## **Completed forms that were submitted with bid:**

- FORM 1 – Section 3 Assessment and Certifications
- FORM 2 – Subcontractor Information
- FORM 3 – List of Permanent Employees
- FORM 4 – Documentation of Qualitative Efforts

## **Blank forms for use in quarterly and final reporting:**

- FORMS 2 – 4 (updated as needed)
- FORM 6 – Section 3 Project Compliance Report
- FORM 7 – Sample Section 3 Business Outreach Form
- FORM 8 – Sample Section 3 Worker Outreach Form



# Contractor Section 3 Capacity Building

Contractors and subcontractors are accountable for complying with Section 3 but may be unfamiliar with the requirements. To maximize contractor compliance, UGLGs should:

- Discuss Section 3 Plan requirements at the pre-bid meeting
- Clearly identify the contractor's staff member who will handle Section 3 compliance
- Walk through Section 3 requirements at the pre-construction meeting and/or schedule a separate meeting to discuss Section 3 reporting form
- Consider providing a Section 3 presentation for contractors as part of a pre-qualification bid meeting and/or annually



# Overcoming Barriers to Participation

## Technology



- Accept Section 3 applications via multiple methods such as phone, online and in person
- Provide 1:1 technical assistance to applicants
- Consider hosting open-house applicant support sessions
- Post pre-recorded presentations

## Childcare



- If holding job fairs, applicant support sessions or other events, consider offering childcare for applicants
- Provide food or snacks and other services during events
- Schedule during convenient times most candidates are likely to be available

## Transportation



- Hold job fairs, applicant support sessions and other events at facilities that are located in LMI areas and/or easily accessible by public transportation
- Partner with workforce development organizations that help LMI workers find transportation to work





# Examples of Qualitative Efforts

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

- Engage in outreach efforts to generate job applicants who are Targeted Section 3 workers
- Provide training or apprenticeship opportunities
- Provide technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching)
- Assist or connect Section 3 workers with drafting resumes, preparing for interviews, and finding job opportunities
- Hold regular job fairs
- Provide or refer Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare)
- Provide assistance to apply for or attend community college, a four-year educational institution, or vocational/technical training



# Examples of Qualitative Efforts Cont.

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

- Help Section 3 workers to obtain financial literacy training and/or coaching
- Engage in outreach efforts to identify and secure bids from Section 3 business concerns
- Provide technical assistance to help Section 3 business concerns understand and bid on contracts
- Divide contracts into smaller jobs to facilitate participation by Section 3 business concerns
- Provide bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns
- Promote use of business registries designed to create opportunities for disadvantaged and small businesses
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act



# Sample Outreach Methods

Document outreach to develop a list of pre-qualified Section 3 businesses and/or available workers as an example of a grantee's qualitative effort.

Efforts may include:

- Radio public service announcements (free to post)
- Press releases
- Ads in community newsletters, especially those that serve LMI neighborhoods
- Social media (Facebook, Twitter, LinkedIn, Next Door, etc.)
- Signage and information intake forms and logs at/near the project site
- Ads in newspapers of general and minority circulation



## Additional Considerations

- Consider instituting a preference for awarding contracts to Section 3 business concerns, i.e. if a qualified Section 3 bid is within 10% of the lowest bid, award to the Section 3 business.
- Refrain from executing contracts with any contractor that previously failed to comply with Section 3
- Grantees/subrecipients should periodically monitor project sites and interview workers to assure a contractor is truthfully reporting Section 3 participation
- *To qualify a Section 3 worker under the final rule, a public housing resident is not automatic qualification as a Section 3 worker. Must follow the final rule guidance to qualify Section 3 workers.*

# Documenting Compliance with Section 3 (Review of Sample Forms 0-8)





## Section 3 Project Implementation Plan

- Sample Forms (1-8) can be completed by bidder/contractor to document how they will comply with Section 3 on the project
- **These are not HUD forms** but they are examples for how to capture information required in order to assess Section 3 compliance
- Grantees/subrecipients may use the template provided or develop their own forms or systems for documenting compliance and coordinating collection of required information
- Forms may be modified to capture additional info such as MBE/WBE status of contractor and subcontractors, verification of non-debarment and E-Verify participation



## FORM 0: Section 3 Overview

- General Section 3 information one page form. Briefly describes intent of Section 3, threshold for a covered project, programmatic responsibilities and numeric goals.
- Includes instructions to bidders for completing the subsequent Forms (1-8)

(Review Form 0)



## FORM 1: Section 3 Assessment and Certifications

- Assesses whether a project will likely trigger Section 3 and how the bidder will achieve safe harbor
- Contains certifications that obligate bidder to make best efforts to comply with Section 3
- Subrecipients should require ALL bidders to submit this form with their bid, even if the project is not anticipated to trigger Section 3 (can count toward qualitative efforts)
- For Section 3 covered contracts, the completed form can be incorporated into the contract by attachment





## FORM 2: Subcontractor Information

- Captures relevant information about all subcontractors working on a project
- May be compared against Section 3 project interviews to assure truthful reporting of hours
- Because subcontractors may be added or removed at any time, this form should be submitted at least three times during the project: with initial bid, upon contract execution, and with the final Section 3 compliance report – verification is not “one and done” and avoids disputes or misunderstanding
- May also be modified to capture MBE/WBE status and/or assist with Davis Bacon or Prevailing Wage monitoring



## FORM 3: List of Permanent Employees

- Captures information about all workers (not just those working on the Section 3 project) employed by contractor and all subcontractors
- May be compared against Section 3 project interviews and time records to assure truthful reporting of hours
- Because workers may be hired or terminated at any time, this form should be submitted at least twice during the project: with initial bid, and with the final Section 3 compliance report



## FORM 4: Documentation of Qualitative Efforts

- Narrative form to document qualitative efforts
- Should be submitted with initial bid and also with each compliance report where numeric goals were not met
- Can be modified to assess efforts to meet other targets such as MBE/WBE or other local hiring requirements



## FORM 5: Section 3 Sample Contract Clause

- 24 CFR § 135.38 contains a Section 3 clause that was required to be incorporated into contracts under the previous requirements
- The Section 3 clause spelled out the contractor's obligations to uphold the provisions of Section 3
- **24 CFR § 75 does not include an updated clause**
- For now, we **recommend updating the existing clause with the new implementing regulation** and including in all contracts and subcontracts that are subject to Section 3

*\*Make sure your legal or other divisions responsible for contracts understand when this clause should be used and are informed if they choose to revise, strike or edit it.*



## FORM 6: Section 3 Compliance Report

- Documents total hours, Section 3 hours and Targeted Section 3 hours worked on project
- Must be accompanied by supporting documentation such as certified payrolls or time and attendance records
- Submitted quarterly and at the end of the project for entry into DRGR. *However, we recommend monthly submissions or with each invoice by contractor.*



## FORMS 7 & 8: Section 3 Sample Outreach Forms

- Optional/sample forms that awarded contractors may use to try assess which of their subcontractors and workers may qualify for Section 3
- After forms are submitted, the subrecipient Section 3 coordinator follows up with any firms or workers who indicated they may qualify for Section 3 to help them complete an application
- Using forms like these can count toward qualitative efforts even if respondents indicate they do not qualify for Section 3



# Required File Documentation

- Outreach efforts
- Bid solicitations
- Contracts
- Subcontractor and employee lists
- *Compliance reports that show total hours worked as well as Section 3 hours and targeted Section 3 hours*
- Section 3 worker, *targeted worker* and business concern applications and supporting documentation (certification forms)
- Documentation of other qualitative efforts



# Reporting Compliance to State/HUD

- *Report Section 3 compliance through program-specific reporting systems (IDIS, DRGR)*
- *Grantees must enter projected Section 3 hours into DRGR Action Plan and report actuals via Quarterly Performance Reports*
- *Only public housing assistance recipients are required to use SPEARS (the existing Section 3 reporting system)*
- *See HUD video “Section 3 New Rule Guidance for CDBG-DR and CDBG-MIT Grantees” published 7/1/21:  
[https://youtu.be/7\\_khTGDLauw](https://youtu.be/7_khTGDLauw)*





## Tracking Section 3 Hours

Hours tracked may be based on any of the following:

- Prevailing wage data
- Time-and-attendance system data
- Good faith assessments of hourly workers not tracked through a data system or
- Good faith assessments of salaried employees

Good faith assessments may only be used if a contractor is not required to report prevailing wage or does not have a time and attendance system in place.

Contractors are not permitted to self-certify hours in lieu of providing data (even if the data is just good faith assessments).

Recommend grantees review good faith assessments from contractors to ensure the number of hours reported is reasonable.

# Section 3 Compliance Scenarios





## Scenario I: Repair of Fire Station

The City of Metroville is using CDBG-DR funds to repair a fire station that was damaged during a recent disaster. According to an estimate from the City engineer, the total cost is projected to be \$800K. **Does Section 3 apply?**

Yes. Keisha Johnson, the Metroville designated Section 3 Coordinator, is responsible for ensuring the City complies with Section 3 since the total amount of HUD funds invested in the project will exceed \$200K.



# 1. Bid Package Materials

First, Keisha assembles a bid package for the fire station repairs that includes the following Section 3 documents:

- A. Notice of Section 3 Applicability
- B. Section 3 ***Project*** Implementation Plan and reporting forms
- C. Preference for a Section 3 Business hire applies when a bid is within 10% of the lowest bidder



## A. Notice of Section 3 Applicability

The following is an example of the public notification that Keisha is including in both the “Notice of Bid” advertisements and the bid package:

“This project is funded in whole or in part with HUD Community Development Block Grant Disaster Recovery funds. All applicable federal regulations shall be in full force and effect, including Section 3 of the Housing and Community Development Act of 1968 (Section 3). Section 3 requires that, to the greatest extent feasible, hiring and contracting opportunities be afforded to low- and very low-income persons.”



## B. Section 3 *Project* Implementation Plan

Form	Purpose
- Section 3 Overview	Informs bidders of Section 3 requirements including numeric targets.
1 Section 3 Assessment and Certifications	Captures whether contractor is a Section 3 business or how they plan to achieve safe harbor on the project and includes certifications.
2 Subcontractor Information	Lists all firms who will subcontract on project.
3 List of Permanent Employees	Lists all employees of the contractor, including which ones are Section 3 workers—also required for each subcontractor.
4 Documentation of Qualitative Efforts	Consists of narrative fields to allow contractor to describe qualitative efforts.
5 Section 3 Contract Clause	Contractual language detailing contractor's obligations for Section 3 compliance. Must be included in any subcontracts subject to Section 3.
6 Section 3 Project Compliance Report	Quarterly and final report for tracking total hours, Section 3 hours and Targeted Section 3 hours worked on project.
7 Section 3 Business Outreach Form	Optional form contractor may provide to subcontractors to assess if they qualify for Section 3 status. Can count toward qualitative efforts.
8 Section 3 Worker Outreach Form	Optional form contractor may provide to workers to assess if they qualify for Section 3 status. Can count toward qualitative efforts.



## 2. Notify Potential Section 3 Bidders

**What are some outreach methods that could be used to inform potential Section 3 firms of this bidding opportunity?**

- Use internal registry, HUD Section 3 Portal and/or similar directories to locate and directly solicit bids from Section 3 firms
- Provide Invitation for Bid to local government M/WBE and business assistance offices for listserv distribution
- Advertise in community development e-newsletters
- Other ideas?

**Remember to document your outreach efforts by saving items such as screen shots, email confirmations, and publications!**



### 3. Pre-Bid Walkthrough

On the appointed date, Keisha conducts a pre-bid walkthrough at the project site. All attendees are asked to sign in on a sign-in sheet.

Keisha devotes part of the meeting to discussing Section 3 requirements on the project and answering any questions posed by the attendees. Afterward she uploads and saves the sign-in sheet, Section 3 talking points, and questions and answers.





## 4. Bid Opening

The City of Metroville chose to use the sealed bid method of procurement, and received four responsible and responsive bids for this project:

Firm	Bid Amount	Section 3 Business?	Planning to subcontract and/or hire new workers?
ABC Contracting	\$435,000	No	Yes
Smith & Jones Construction Co.	\$495,000	No	Yes
Acme Constructors	\$560,000	Yes	Yes
The Very Good Building & Development Co.	\$785,000	No	Yes

**Which firm should the City award the contract to and why?**

The City awards the contract to ABC Contracting, who is the lowest responsible and responsive bidder. ABC indicated on their Section 3 compliance form that they intend to subcontract a portion of the work, so Section 3 reporting of hours is anticipated.

Note that a Section 3 business did submit a bid, but it did not qualify for the Section 3 preference because it was not within the City's Section 3 plan requirements of 10% of the lowest bid.



## 5. Execute the Contract

**What documents and/or information should be incorporated into the contract to ensure the contractor is held accountable for complying with and reporting on Section 3?**

- Section 3 contract clause (See FORM 5)
- Specific numeric targets (FORM 0) and a list of examples of acceptable qualitative efforts (FORM 4)
- Project compliance (FORMs 1-4) completed and submitted by ABC Contracting with bid
- Blank reporting forms (FORMs 2, 3, 4, 6) that ABC Contracting must submit monthly and at the end of the project
- Other ideas?



## 6. Pre-Construction Meeting(s)

After the contract has been executed but prior to the start of construction, Keisha holds a pre-construction conference with the project manager for ABC Contracting. They discuss what Section 3 compliance will look like for this project and review which Section 3 compliance reporting forms must be submitted and when.

The staff member at ABC who handles Section 3 compliance is out sick the day of the meeting, so Keisha schedules a separate call with that person to cover this same information.



## 7. Quarterly Section 3 Reporting

Every three months, ABC Contracting submits (FORM 6) a compliance report that includes:

- Total number of hours worked on the project to date
- Number of Section 3 hours and Targeted Section 3 hours to date
- Time records for the reporting period
- Supporting documentation of any qualitative efforts made to comply with Section 3

Keisha uses the report to monitor ABC's progress toward meeting the numeric goals. If the contractor is struggling to meet the goals, Keisha will identify ways to assist such as connecting ABC with Section 3 workers or subcontractors or suggesting additional qualitative efforts that can be undertaken. Keisha is careful to keep notes of these discussions, which can count toward the City's qualitative efforts.



## 7. Quarterly Section 3 Reporting Cont.

Keisha reviews each report for completeness and accuracy. She also uses the report to monitor ABC's progress toward meeting the numeric goals.

If the contractor is struggling to meet the goals, Keisha will identify ways to assist such as connecting ABC with Section 3 workers or subcontractors or suggesting additional qualitative efforts that can be undertaken. Keisha is careful to keep notes of these discussions, which can count toward the City's qualitative efforts.

Each time a draw is processed, Section 3 information is entered in DRGR based on the most recent quarterly report.



## 8. Construction Site Interviews (Section 3 Verification)

Keisha conducts site interviews periodically throughout construction. She notes the name and employer of each worker she speaks to, as well as their duties on the project and how many hours they worked that day.

When she returns to the office after each site visit, Keisha compares her interview notes to the list of employees and subcontractors provided by ABC Contracting to ensure data collected during interviews aligns with the reporting forms submitted by the contractor.

Fortunately, Keisha does not find any issues and keeps a case note in the project file of her effort and these results.



## 9. Final Section 3 Report

Within 30 days of project completion, the contractor submits the final Section 3 report. This report contains the same information as the quarterly reports but serves as the final measure of whether the numeric goals were met and what qualitative efforts were undertaken.

(See Sample Form 8)

When the final draw is processed, the information from the final Section 3 report is entered into DRGR.



## 10. Closeout

When the project is completed, Keisha completes a Section 3 closeout checklist to ensure all reports, qualitative efforts narratives, supporting documents and discussion notes are uploaded and saved. Final review and supporting documentation should be saved in a file that is explicitly for Section 3 closeout. This helps to prevent audit findings.

Keisha then submits the Section 3 project file to her supervisor for quality check (QC) review and sign-off.



# End of Scenario I Replacement of Fire Station

## Additional Questions Before Scenario II?





## Scenario II: Multi-Family Housing Development

The Town of Hawkins has competitively awarded \$10 million in CDBG-DR funds to a developer for the construction of a new multifamily apartment building.

The developer has selected Hopper Construction, a Section 3 firm, to be the prime general contractor. As part of its company mission, Hopper seeks to only subcontract with Section 3 firms.

*Many of the steps for ensuring Section 3 compliance on this project will be the same as the previous scenario, but there are some important differences, which are discussed on the following slides.*



# 1. Responsibility for Ensuring Compliance

The developer is responsible (through the Section 3 clause in the developer agreement) for ensuring Section 3 compliance with Hopper Construction as well as any subcontractors who may be required to comply with Section 3.

This means that all Section 3 compliance reporting forms are submitted to the developer, who tracks progress toward meeting numeric goals. Hopper Construction must also provide the developer with time records and all other documentation that supports Section 3 compliance. After reviewing the documents, the developer forwards them to the Town of Hawkins.

The Section 3 coordinator for Hawkins reviews the reporting forms, enters or assists with Section 3 information into IDIS, and maintains the Section 3 file for the project.

It is the responsibility of Hawkins (as the Grantee or Subrecipient) to verify and monitor the Section 3 compliance information for accuracy and to report it to State and/or HUD as specified in the Subrecipient Agreement.



## 2. Section 3 Business Verification

Because all the firms working on the multifamily project are verified Section 3 firms, 100% of their hours worked on the project can be counted as Section 3 hours.

However, the developer must still work with the Hawkins Section 3 coordinator to support Hawkins's verification and documentation file for how each of the Section 3 firms meets one of the Section 3 qualifying criteria.



## 3. Documentation Requirements

### **What documentation is still required of Hawkins if the Contractor is a Section 3 business?**

- Info for all subcontractors working on project
- Monthly and final Section 3 compliance reports
- Documentation of Section 3 site interviews
- Discussion notes

### **What may not be required if the Contractor is a Section 3 business? (confirm with State and local HUD field office)**

- Employee List
- Time records
- Documentation of qualitative efforts for the project (however, documenting the effort to meet it for this project is still encouraged)

# Discussion on How to Resolve Potential Section 3 Issues: “What if?” Scenarios





## Discuss how safe harbor can be achieved for these sample scenarios:

- All bids are over \$200K. No Section 3 firms bid on the project. The low bidder is planning to subcontract part of the work and is willing to make “best efforts” to meet numeric targets. Shortly before the project is to start, the contractor informs the UGLG that they have not been able to locate any Section 3 subcontractors.
- All bids are over \$200K. No Section 3 firms bid on the project. The contract is awarded to a non-Section 3 firm who indicated they do not plan to hire new subcontractors or hire additional workers to complete the project. However, during a site visit, UGLG staff discovers an un-reported subcontractor who is not Section 3 working on site.
- Original contract amount is for \$180K, so Section 3 compliance is encouraged but not required. However, a series of change orders result in a budget increase so the final project cost is \$215K.



# Regulatory References

Section 3 requirements are found in several different HUD statutes and regulations, and therefore grantees and subrecipients must refer to different sections of the regulations to find all the requirements.

Code of Federal Regulations: **24 CFR 75 (new rule)**, 24 CFR 135 (old rule), 24 CFR 5, 24 CFR 91, 24 CFR 92, 24 CFR 93, 24 CFR 266, 24 CFR 570, 24 CFR 574, 24 CFR 576, 24 CFR 578, 24 CFR 905, 24 CFR 964, 24 CFR 983, 24 CFR 1000

Federal Register Notices: FR-6085-P-01, FR-6085-F-03





# Additional Resources

**Section 3 Landing Page on HUD Exchange:**

<https://www.hudexchange.info/programs/section-3/>

**HUD Section 3 Portal:** <https://www.hud.gov/section3>

**HUD Section 3 Training Curriculum:**

<https://www.hudexchange.info/trainings/section-3/>

**HUD Section 3 FAQs:** <https://www.hud.gov/sites/documents/11SECFAQS.PDF>

**YouthBuild:** <https://www.dol.gov/agencies/eta/youth/youthbuild>

**HUD Income Limits:** <https://www.huduser.gov/portal/datasets/il.html>

**Federal Register:** <https://www.federalregister.gov>

**Section 3 New Rule Guidance for CDBG-DR and CDBG-MIT Grantees:**

<https://files.hudexchange.info/resources/documents/Section-3-New-Rule-Guidance-for-CDBG-DR-and-CDBG-MIT-Grantees-Slides.pdf> and

[https://youtu.be/7\\_khTGDLauw](https://youtu.be/7_khTGDLauw)



# Thank You!

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