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**Section 3 Covered Contract Clause**

Section 3 covered contracts after November 30<sup>th</sup>, 2020 shall include the following Clause:

- 1) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- 2) The Parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the Parties to this contract certify they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- 3) The contractor agrees to notify Section 3 workers and Targeted Section 3 workers about the availability of training and/or employment opportunities, and follow Section 3 bid procurement policy. Track and provide all employees hours per project and provide this information to IHFA in order to meet the Section 3 benchmarks as set by HUD. A good faith estimate of the labor hours for each full- or part-time employee can be used if a detailed time an attendance system is not in place.
- 4) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants

for training and employment positions can see the notice. The notice shall describe Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

5) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to collect and provide all subcontractor information and take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

6) The contractor will certify any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

7) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

8) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

### **Definitions**

The following definitions apply to Section 3 covered projects:

#### **Employment, training and contracting opportunities generated by HUD assistance:**

Employment, training and contracting opportunities generated by HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, 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.

Any person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence they are eligible, have the ability and capacity to perform successfully under the terms and conditions of the proposed contract.

**Section 3 benchmark**

HUD required percentage of project labor hours worked by Section 3 Workers and Targeted Section 3 Workers

- Section 3 workers is set at 25% or more of total number of labor hours worked by all workers employed on a project with HUD financial assistance.
- Targeted Section 3 workers is 5% or more of the total number of labor hours worked by all workers employed on a project with HUD financial assistance. The Targeted Section 3 percentage is included within the Section 3 Worker benchmark.

**Section 3 Worker**

Any worker\* who meets at least one of the following criteria

- Low- or Very low-income, as established by HUD's income limits
- Or employed by a Section 3 business concern
- Section 3 resident is a public housing resident or person who lives in the area where the HUD-assisted project is located and who has a household income that falls below HUD's income limits.

**Targeted Section 3 Worker**

A Targeted Section 3 Worker is a Section 3 Worker\* who is also

- A worker employed by a Section 3 business concern
- A worker who is currently or who was when hired by the worker's current employer, a resident in a public housing project or Section 8-assisted housing
- A resident within a one-mile radius of the project. If fewer than 5,000 people live within that one-mile radius, the circle may be expanded outward until that population is reached
- A resident of other projects managed by IHFA that is expending assistance
- A current YouthBuild participant

**Section 3 Business Concern**

A Section 3 Business Concern meets one of the following

- It is at least 51% or more owned by low- or very low-income persons
- Over 75 % of the labor hours performed for the business are performed by low- or very low-income persons
- It is a business at least 51% owned by current public housing residents or residents who currently live in Section 8- assisted housing

The status of the Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owners(s) or employees.

\*A Section 3 worker who has been employed for 5 years may no longer be counted towards meeting the requirement. This encourages recipients to continue hiring Section 3 residents when employment opportunities are available.

### **Recipient**

Any entity which receives Section 3 assistance directly from HUD or from another recipient and includes but is not limited to: States, units of local governments, Public Housing Authorities, other public bodies, or public or private non-profit organizations, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include the ultimate beneficiary under the HUD program to which Section 3 applies and does include contractors.

### **YouthBuild**

A non-profit organization which on a voluntary basis provides education, counseling and job skills to unemployed young American adults. <https://youthbuild.org/>

### **Covered Activity**

Any activity that uses HUD funds for the development that provides training, employment, contracting, and/or economic opportunities.

### **Covered Assistance**

Public and Indian housing development assistance, modernization or operating assistance; any assistance provided under any HUD housing or community development program that is expended for work in connection with housing rehabilitation, housing construction or other public construction.

### **Covered Contract**

Any contract/ subcontract awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, when a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.

### **Housing and Community Development Covered Project**

The requirements of Section 3 apply to all direct recipients of HUD Housing and Community Development funding exceeding \$200,000. Section 3 covers all projects whenever any portion of HUD funding is invested into projects involving construction, demolition, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

### **Subcontractor**

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 generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

### **Section 3 Preference**

Section 3 preference should be given in training and employment opportunities to people in public and assisted housing, people living in the area where the HUD financial assistance is expended, people that are homeless or participants in Department of Labor (DOL) Youth Build programs. Business that meet the definition of a Section 3 business concern should be given a preference in contracting.

### **Section 3 Resources**

Businesses can seek Section 3 employee applications through the Section 3 Opportunity Portal, which allows for job opportunity postings and potential employee applications. Businesses can also post contracts on the Section 3 Opportunity Portal. The Section 3 Business Registry is a listing of firms who have self-certified they meet at least one of the regulatory definitions of a Section 3 business and registering on the site can increase visibility and increase opportunities.

### **Bid Procurement**

(1) Small Purchase Procedures. For Section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3).

(i) Solicitation. (A) Quotations may be solicited by telephone, letter or other informal procedure provided the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

- the Section 3 covered contract to be awarded with sufficient specificity;
- the time within which quotations must be submitted; and
- the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) Award. (A) Where the Section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. 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 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) Procurement by sealed bids (Invitations for Bids). Preference in the award of Section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

(i) Bids shall be solicited from all businesses (Section 3 business concerns, and non-section 3 business

concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows: -----

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x=lesser of: -----

When the lowest responsive bid is less than \$100,000. 10% of that bid or \$9,000.

When the lowest responsive bid is:

At least \$100,000, but less than \$200,000. 9% of that bid, or \$16,000.

At least \$200,000, but less than \$300,000. 8% of that bid, or \$21,000.

At least \$300,000, but less than \$400,000. 7% of that bid, or \$24,000.

At least \$400,000, but less than \$500,000. 6% of that bid, or \$25,000.

At least \$500,000, but less than \$1 million 5% of that bid, or \$40,000.

At least \$1 million, but less than \$2 million 4% of that bid, or \$60,000. At least

\$2 million, but less than \$4 million 3% of that bid, or \$80,000. At least \$4

million, but less than \$7 million 2% of that bid, or \$105,000. \$7 million or

more..... 1 1/2% of the lowest responsive bid, with no dollar limit. -

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(ii) If no responsive bid by a Section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

### Section 3 SAMPLE Developer Plan

\_\_\_\_\_, in conjunction with Idaho Housing and Finance Association, has developed the below Section 3 plan to identify goals, objectives and actions that will be implemented to ensure compliance with the requirements of Section 3.

#### **Section 3 Employment & Training Goals**

It is the policy of \_\_\_\_\_ to follow the required prioritization of Section 3 workers and Targeted Section 3 workers and Section 3 business concerns in contracts partially or wholly funded with monies from the Department of Housing and Urban Development (HUD). Additionally \_\_\_\_\_ has established employment and training goals for themselves, and their contractors and subcontractors in order to comply with Section 3 safe harbor benchmark requirements.

The safe harbor benchmark goals are as follows:

- 1) Twenty-five (25%) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\text{Section 3 Labor Hours/Total Labor Hours} = 25\%$$

And

- 2) Five (5%) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.21.

$$\text{Targeted Section 3 Labor Hours/Total Labor Hours} = 5\%$$

#### **Section 3 Outreach**

\_\_\_\_\_ will notify Section 3 workers and targeted Section 3 workers and Section 3 business concerns of job opportunities using the following strategies:

1. Add Section 3 language to all RFPs, procurement documents, bid offerings and contracts.
2. Clearly indicate Section 3 eligibility on all job postings with the following statement: "This job is a Section 3 eligible job opportunity. We encourage applications from individuals that are low income and/or live in Public Housing and/or receive a Section 8 voucher".
3. Utilize the Section 3 Opportunity Portal and the Section 3 Business Registry to notify qualified candidates and Section 3 businesses of upcoming bid opportunities.
4. Contact local community organizations and provide them with job postings for Section 3 eligible applicants.
5. Coordinating a programmatic ad campaign, which results in widespread job posting across diverse ad networks including:
  - a. Advertising job opportunities via social media, including LinkedIn and Facebook;
  - b. Advertising job opportunities via flyer distributions and mass mailings and posting ad in common areas of housing developments and all public housing management offices.
  - c. Advertising job opportunities via \_\_\_\_\_'s website at \_\_\_\_ (URL) \_\_\_\_\_.

- d. Send a digital copy of project/job advertisements to the IHFA Finance Officer for the project, for it to be posted on IHFA's website at: <https://www.idahohousing.com/federal-programs/section-3/>
- e. Contacting resident councils, resident management corporations, and neighborhood community organizations to request their assistance in notifying residents of available training and employment opportunities.

All evidence of qualitative efforts to assist low and very low-income persons with employment and training opportunities will be documented and submitted to Idaho Housing and Finance Association for review.

### Section 3 Contracting Policy and Procedure

\_\_\_\_\_ will include standard Section 3 contract language in all Section 3 covered contracts or agreements to ensure compliance with regulations in 24 CFR Part 75. \_\_\_\_\_ will take appropriate actions upon finding a contractor is in violation of 24 CFR Part 75 and does not knowingly contract with any contractor that has been found in violation of the Section 3 regulations.

Under Idaho Housing and Finance Association's Section 3 Program, \_\_\_\_\_ will make every effort to solicit bids and award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following order or priority:

- 1) Business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which assistance is located in the following order of priority (*where feasible*):
  - a) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project; and
  - b) YouthBuild programs.

Businesses that meet Section 3 criteria may seek Section 3 preference at the time of bid. To qualify as a Section 3 business concern, the contractor/subcontractor must complete and submit the Contractors Certification form (located at <https://www.idahohousing.com/documents/contractor-certification-form.pdf>) with the bid to self-certify that they meet the applicable criteria\*.

*\*Businesses who misrepresent themselves as Section 3 business concerns and report false information may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities.*



\_\_\_\_\_ uses the following bid procurement policy for Section 3 covered contracts:

### **Examples**

#### **Solicitation and Small Purchase Procedure (Contracts under \$25,000)**

Quotations will be solicited from a minimum of three qualified competitive sources. \_\_\_\_\_ will document all solicitation and responses. Fewer than three quotations are acceptable provided the price is reasonable. At the time of solicitation, the parties will be informed of:

- Contract to be awarded with sufficient specificity;
- The time within which quotations must be submitted; and
- The information that must be submitted with each quotation. This includes the Contractor Certification Form.

#### **Award**

1. Contracts are awarded based on factors other than price, a request for quotations shall be issued including the following rating system for the assignment of points to evaluate the merits of each quotation.

- 1) Section 3 Business concern
  - 2) Price
  - 3) Experience
  - 4)
- Or,

2. The purchase order shall be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation from any qualified source, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

#### **Procurement by sealed bids**

Preference in the award of contracts that are awarded under a sealed bid process may be provided as follows:

- Bids shall be solicited from all businesses (Section 3 business concerns, and non-Section 3 business concerns)
- An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—
  - o (A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and
  - o (B) is not more than ``X" higher than the total bid price of the lowest responsive bid from any responsible bidder. ``X" is determined as follows:

### **Section 3 Reporting**

Idaho Housing and Finance Association requires \_\_\_\_\_ to submit documentation of Section 3 compliance throughout the various stages of a construction project.

#### Pre-Construction

Contractors who are Selected/Awarded bid(s) will submit estimated labor hours for the awarded contract. Estimated labor hours will be broken down by Section 3 workers, Targeted Section 3 workers, and Non-Section 3 workers.

The estimated labor hours for the entire project will be compiled and submitted to Idaho Housing and Finance Association with the awarded bids and project budget prior to loan closing.

#### Construction

During construction \_\_\_\_\_ will collect *Labor Hour Certification forms* from all Section 3 covered Contracts\* along with each invoice and lien waiver for the billing period. These forms will be submitted to Idaho Housing and Finance regardless of the reimbursement source.

*\*Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, when a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.*

#### Post-Construction

Once a project is completed, contractors must submit a final Section 3 cumulative labor hour report for the project. Idaho Housing and Finance Association will conduct a final review of the project's overall performance and compliance.

### Section 3 Complaint Procedure

Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR Part 75.

Complaints should be submitted directly to Idaho Housing and Finance Association  
IHFA HOME Programs - P.O. Box 9405, Boise, ID 83702-1899.  
Or emailed to [homeprograms@ihfa.org](mailto:homeprograms@ihfa.org)

\_\_\_\_\_ will work with Idaho Housing and Finance Association in a timely manner to resolve any non-compliance complaints.

Complainants may be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about complainant rights, please contact EEOC at: [www.EEOC.gov](http://www.EEOC.gov).

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: <http://www.dol.gov/ofccp/>.