

CITY OF BILLINGS - COMMUNITY DEVELOPMENT DIVISION
SECTION 3 PROCEDURES

Requirement: Section 3 of the HUD Act of 1968 (12 U.S.C. § 1701u) and its associated regulations (24 CFR Part 75)

Reporting: HUD-60002 - Annual Summary Report, or another HUD-approved report form, submitted to HUD

Introduction

The City of Billings - Community Development Division is committed to the principles of Section 3 of the Housing and Urban Development Act of 1968 and its associated regulations (24 CFR Part 75), which *ensures that employment and economic opportunities generated by certain 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 that provide economic opportunities to low- and very low-income persons.*

Covered Activities

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold noted below.

Other public construction projects includes infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, and installing conduits for utility services.

Publicly-funded construction includes other buildings or improvements, regardless of ownership. Therefore, some programs available through the City for community and economic development and housing activities are covered by Section 3. Section 3-covered projects include the reduction and abatement of lead-based paint hazards, but exclude routine maintenance, repair and replacement.

Dollar Thresholds

The applicability of Section 3 requirements is determined based on the amount of HUD assistance the City (grantee) and/or developer (recipient) and the project receives. If the amount of the assistance exceeds \$200,000 to a recipient, certain Section 3 obligations apply. If, on the same project, there are subcontracts, Section 3 obligations will be passed on to subcontractor(s).

The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs.

If a developer (recipient) or contractor also acts as the general contractor for a project, the amount of assistance need only exceed \$100,000 for Section 3 requirements to apply. If the dollar threshold(s) for

assistance is/are met, Section 3 requirements apply to the entire project or activity, regardless of whether the project or activity is fully or partially funded with HUD assistance.

The Community Development Division, as a recipient of federal funding in excess of \$200,000, is required to comply with Section 3 requirements in the following areas:

- New hires for the Community Development Division staff positions.
- New contracts executed by the Community Development Division for housing construction / rehabilitation or public improvements (streets, water, sewer).

The Housing Rehabilitation Loan Program is included in this procedure, as the Division receives federal funding in excess of \$200,000 and also dedicates more than \$200,000 to this activity. As the City of Billings does not hire the contractors for the Housing Rehabilitation Loan Program, the City will offer “listing preference” to the homeowners who hire / select contractors, identifying them as a Section 3 business.

The Affordable Housing Development Program is also included in this procedure, as the Community Development Division receives federal funding in excess of \$200,000 and also dedicates more than \$200,000 to this activity.

Section 3 Worker: Any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:

- The worker’s income for the previous or annualized calendar year is below the income limit established by HUD (80% of the Area Median Income), or
- The worker is employed by a Section 3 business concern, or
- The worker is a YouthBuild participant.

YouthBuild: A community-based pre-apprenticeship program that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school. The Division of Youth Services within the Employment and Training Administration’s Office of Workforce Investment at the U.S. Department of Labor administers the YouthBuild program.

Targeted Section 3 Worker: Is a Section 3 worker who:

- Is employed by a Section 3 Business Concern, or
- Currently fits, or when hired fit at least one of the following categories, as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR Subpart B § 75.15; or
 - A YouthBuild participant.

Section 3 Business Concern: Meets at least one of the following criteria, documented within the last six-month period:

- At least 51% owned and controlled by low- or very low-income person(s); or
- Over 75 percent (75%) of the labor hours performed for the business over the prior three-month period were performed by Section 3 workers; or
- A business at least 51 percent (51%) owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Service Area or Neighborhood of the Project: Means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Requirements

Contracts and subcontracts for work to be paid with Section 3-covered HUD assistance; or work arising in connection with a Section 3-covered project [24 CFR § 75.3(2)] where the individual contract or subcontract exceeds \$100,000 and the amount of HUD assistance for the project exceeds \$200,000. Both conditions must be present.

The Community Development Division will prioritize commitments to Section 3-covered businesses that meet the Section 3 Worker and Targeted Section 3 Worker definitions above and they document at least the following:

- Section 3 workers perform 25 percent (25%) or more of the total number of labor hours worked by all workers on a Section 3 project; and
- Targeted Section 3 workers perform 5 percent (5%) or more of the total number of labor hours worked by all workers on a Section 3 project. This means that the 5% is included as part of the 25% threshold.

If the developer, contractor, or the Community Development Division did not meet Section 3 benchmarks for the project, the Community Development Division must report on the qualitative nature of its activities and those of its contractors and subcontractors pursued per 24 CFR § 75.15(b) and § 75.25(b) to the greatest extent feasible:

- Engage in outreach efforts to generate job applicants who are Section 3 workers or 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).
- Provide or connect Section 3 workers with assistance in seeking employment including drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

- Hold one or more job fairs.
- Provide or refer Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, text fees, transportation, childcare).
- Provide assistance to apply for/or attend community college, a four-year educational institution, or vocational / technical training.
- Assist 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 businesses.
- 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€(2) of the Workforce Innovation and Opportunity Act.

The Community Development Division’s combined investment in excess of **\$200,000** of federal funding into projects arising in connection with ***housing construction, demolition, rehabilitation, or other public construction*** makes the requirements of Section 3 applicable to all individual properties that receive services with these funds – regardless of the actual amount that is spent on each individual unit/property.

Accordingly, the Community Development Division shall ensure compliance with the statutory and regulatory requirements of Section 3 in its own operations, and those of covered contractors. These responsibilities include:

- 1) Making efforts to meet the benchmarks goals found at 24 CFR Part 75;
- 2) Complying with the specific responsibilities at 24 CFR Part 75; and
- 3) Submitting Annual Summary reports in accordance with 24 CFR Part 75.

If covered contractors receive awards that exceed **\$100,000** for the construction and rehabilitation activities listed above, responsibility for Section 3 compliance is shared with that firm (with the exception of the submission of the Section 3 Annual report (Form HUD 60002), which must be submitted by the direct recipient of covered funds).

If **no contractor receives an award exceeding \$100,000**, responsibility for complying with the requirements of Section 3 stays with the Community Development Division. Each recipient shall fulfill the responsibilities described below to meet the requirements of Section 3.

Contractor Requirements

If a contractor / subcontractor needs to hire new persons as a result of Community Development activities, or needs to subcontract portions of the work to a new business, they are required to direct

newly created employment / subcontracting activities to Section 3 workers and/or Targeted Section 3 workers and Business Concerns. They must also notify the Community Development Division about their efforts to comply **and** provide documentation of compliance.

Contracts are not cumulative. Therefore, if a contractor receives three contracts of \$40,000 each in a 12-month period, the amount of the individual contracts does not exceed the \$100,000 threshold. The requirements of Section 3 apply to contractors and subcontractors performing work on a Section 3 covered project for which the amount of the assistance exceeds \$200,000; and each contract or subcontract exceeds \$100,000.

All contractors and subcontractors covered by the Section 3 requirements are required to undertake the following implementation actions:

1. Include the "Section 3 Clause" set forth in 24 CFR Subpart B § 75.9 and § 75.17 in every subcontract subject to the Section 3 regulations.
2. Send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding a notice advising them of the contractor's commitments under the Section 3 clause.
3. Post copies of the notice in item 2 above in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice must:
 - Describe the Section 3 preference.
 - Specify the minimum number of job titles subject to hire.
 - List the availability of apprenticeship and training positions, and the qualifications for each.
 - Specify the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. Refrain from filling any vacant employment and training positions after the contractor is selected, but before the contract is executed to circumvent the contractor's obligations under 24 CFR Part 75 of the Section 3 Regulations.
5. Refrain from entering into any contract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the Section 3 regulations.
6. Direct efforts to award covering contracts to Section 3 Business Concerns.
7. Direct efforts to employ and train Section 3 workers and/or Targeted Section 3 workers.
8. Document actions taken to comply with Section 3 requirements.
9. Submit required reports.

Required Contract Language

By receiving federal program assistance from the City of Billings, the Developer / Owner / Subrecipient will agree to include the following language (or similar references / language) in all contracts and subcontracts executed under its Development Agreement with the City.

The work to be performed under the City's Development / Subrecipient Agreement is subject to the requirements of Section 3 of the HUD Act of 1968 (12 U.S.C. § 1701u) and its associated regulations (24 CFR Part 75). The purpose of Section 3 is to ensure that employment and economic opportunities generated by certain 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 that provide economic opportunities to low- and very low-income persons.

The parties to this contract agree to comply with HUD's regulations at 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the 24 CFR Part 75 regulations.

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

The contractor will certify that 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.

The Community Development Division will link contractors with employment and training programs to ensure qualified, eligible jobseekers are referred for consideration for employment and economic opportunities (for small businesses). The Community Development Division staff can also assist through postings and mailings aimed at qualified Section 3 workers and Targeted Section 3 workers.

Standardized Practices & Procedures

Section 3 workers and Targeted Section 3 workers must demonstrate that they meet the qualifications for new employment opportunities created as a result of the expenditure of covered assistance.

Section 3 Business Concerns must submit evidence to the satisfaction of the party awarding the contract to demonstrate that they are responsible firms and have the ability to perform successfully under the terms and conditions of the proposed contract.

Recipients and contractors are required, to the extent feasible, to direct all employment opportunities to low- and very low-income persons, including seasonal and temporary employment opportunities.

Recipients and contractors are encouraged to provide long-term employment. They may count a Section 3 worker or Section 3 Targeted worker who currently fits, or when hired within the past five years fit, at least one of criteria mentioned in the definition of a Section 3 worker or Targeted Section 3 worker.

The recipient agency is responsible for complying with 24 CFR Subpart D § 75.31 Recordkeeping. Recipients are required to maintain documentation to demonstrate compliance with the regulations and are responsible for requiring their contractors / subcontractors to maintain or provide any documentation that will assist recipients in demonstrating compliance, including documentation that shows hours worked by Section 3 workers, Targeted Section 3 workers, and any qualitative efforts to comply with Section 3. Examples of documentation can be found in 24 CFR § 75.31. and must still submit a Section 3 Annual Summary report (HUD form 60002) in accordance with 24 CFR Part 75.

The Community Development Division will adhere to the following notification procedures:

- Forward employment, training, contracting, and other business opportunities offered by the Community Development Division to Homefront (formerly Housing Authority of Billings) to post / distribute to persons residing in public / assisted housing units.
- Distribute employment, training, contracting, and other business opportunities to the Billings Area Resource Network to ensure distribution and posting in organizations serving the very low-income.

The internal process to ensure contractor and subcontractor compliance is as follows:

- 1) Section 3 requirements will be provided in writing to developers, contractors and labor and job training organizations, as applicable, when a Request for Proposal (RFP) is issued.
- 2) Section 3 will be discussed during the pre-construction conference prior to issuance of a Notice to Proceed. At this conference, the successful prime contractor, subcontractors, and City staff will meet to discuss the requirements of the construction contract, which may include Davis-Bacon wage rate / labor standards, Equal Employment Opportunity compliance; and to outline a Section 3 plan for the project.
- 3) The prime contractor and its subcontractors must complete and submit a signed Section 3 plan for review and approval by Community Development Division staff prior to issuance of a Notice to Proceed. The Section 3 plan must be approved by the City and will include the following elements:
 - A current workforce profile and hiring plan (if hiring for the project).
 - Training plan.
 - Section 3 Notice to be provided to all subcontractors.
 - Description of outreach efforts to comply with Section 3 hiring and contracting goals.
 - Section 3 Resident Affidavit as applicable for current employees.
 - Subcontractor Activity Report format.

- 4) The contractor's Section 3 Plan will be reviewed by the Community Development Division for adherence to regulations. If the plan does not meet HUD's or the City's requirements, written comments will be provided to the contractor with a request to revise and resubmit for further review.
- 5) Upon review and approval of an acceptable Section 3 plan, the Community Development Division will notify the contractor and document that the Section 3 Plan required prior to issuance of a Notice to Proceed has been met.
- 6) All documents related to the preparation, review and approval of the Section 3 Plan will be placed in the project file.

The City will monitor for Section 3 compliance throughout the course of the contract.

STANDARDIZED SECTION 3 COMPLIANCE PLAN

Requirement	Intent	Procedures
Notify and give priority to Section 3 workers and Targeted Section 3 workers about employment, training and contracting opportunities.	<ul style="list-style-type: none"> Is employed by a Section 3 business concern; or 	Ensure employment and training opportunities are forwarded to Section 3 workers.
	<ul style="list-style-type: none"> Currently fits or when hired fit at least one of the following categories, as documented within the past five years: 	<ul style="list-style-type: none"> Employment / Training notices are forwarded to Homefront (formerly Housing Authority of Billings) for posting.
	<ul style="list-style-type: none"> Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or 	<ul style="list-style-type: none"> Section 3 compliance recruitment / reporting are mandated for all construction projects - and are provided to the City by the Developer / Contractor for new hires / contracts. Require Housing Rehab contractors to advertise, recruit, and hire qualified Section 3 workers, if needed.
	<ul style="list-style-type: none"> A YouthBuild Participant. 	<ul style="list-style-type: none"> Employment / Training notices are forwarded to the Billings Area Resource Network for posting.
Notify and give priority to Section 3 Business Concern about employment, training and contracting opportunities.	Section 3 business concerns are given priority status for contracting opportunities:	<ul style="list-style-type: none"> Advertise for Housing Rehab contractors stating listing preference for Section 3 workers / businesses. Advertise all other employment, training and contract opportunities offered by the Community Development Division. Forward all other employment, training and contract opportunities offered by the Community Development Division to Homefront (formerly Housing Authority of Billings) to post for persons in public / assisted housing.
	<ul style="list-style-type: none"> At least 51 percent (51%) owned and controlled by low- or very low-income persons, or 	Notice of Section 3 benefits at front counter and application for business certification.
	<ul style="list-style-type: none"> Over 75 percent (75%) of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers, or 	Notice of Section 3 benefits at front counter and application for business certification.
	<ul style="list-style-type: none"> A business at least 51 percent (51%) owned and controlled by current public housing residents 	Notice of Section 3 benefits at front counter and application for business certification.

	or residents who currently live in Section 8-assisted housing.	
Construction contracts involving housing, rehabilitation and public improvements in amounts of \$100,000 or greater trigger Section 3 compliance and reporting.	All construction contracts awarded in amounts of \$100,000 (for each contract) or greater must comply with Section 3 requirements.	Review each opportunity for Section 3 applicability and document in project files.
Notify potential contractors about the requirements of Section 3.	Potential contractors receive Section 3 requirement information and technical assistance.	<ul style="list-style-type: none"> • Ensure all advertisements for contracts specify Section 3 opportunity. • Ensure all Request for Proposals / Qualifications specify Section 3 opportunity. • Include Section 3 requirements in annual contractor letter to update information.
Standard Section 3 language is included in all solicitations and contracts.	Incorporate Section 3 clause in covered solicitations and contracts	<p>Include Section 3 clauses in the following solicitations / contracts:</p> <ul style="list-style-type: none"> - Construction Agreements - Development Agreements - Request for Qualifications - Request for Proposals
Facilitate training, employment and award of contracts to Section 3 residents and business concerns as appropriate to meet minimum numerical goals set in 24 CFR Part 75.	Maintain applications for Section 3 certification at front counter along with Section 3 benefit information for prospective applicants.	Process Section 3 applications and maintain compliance information / records.
Obtain compliance of contractors / subcontractors.	Require Section 3 compliance plan for all construction projects.	Provide standardized compliance plan with staff support to implement Section 3 requirements.
Refrain from entering into contracts with contractors that have violated Section 3.	Review contractor compliance with Section 3 requirements.	<p>Remove award eligibility for contract / response to requests for proposals for contractors not compliant with Section 3.</p> <p>Certify that the contractor did not circumvent the Section 3 employment opportunity requirements, if the contractor hired any persons not covered by Section 3 between the time the contractor was selected and the contract was executed.</p>
Document actions taken by the City to comply with regulations.	Ensure adequate reporting to demonstrate City compliance with Section 3.	Maintain records to document actions taken by the City for compliance.



CONTRACTOR SECTION 3 COMPLIANCE

As a participating contractor in the City’s Housing Rehabilitation Loan Program, I understand that I am bound to the principles of Section 3 of the Housing and Urban Development Act of 1968, which *ensures that employment and economic opportunities generated by certain 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 that provide economic opportunities to low- and very low-income persons.*

The value of the contract is (check one):

Less than \$100,000 Section 3 does not apply to this project.

≥ \$100,000 **Section 3 worker** benchmark is 25 percent (25%) or more of the total number of labor hours worked by all workers on this Section 3 project.

Targeted Section 3 worker benchmark is 5 percent (5%) or more of the total number of labor hours worked by all workers on this Section 3 project (this 5% is included as part of the 25% threshold).

If contractor is unable to meet the above benchmarks, contractor agrees to forward employment, job training and contract opportunities to the Community Development Division for distribution / posting to the following organizations in accordance with the City’s Standardized Section 3 Compliance Plan:

- Homefront (formerly Housing Authority of Billings)
- Billings Area Resource Network

I will submit my own Section 3 Compliance Plan to the Community Development Division for approval prior to beginning work on the project. The plan will include, at a minimum, the following:

- A current workforce profile and hiring plan (if hiring for the project).
- Training plan.
- Section 3 Notice to be provided to all subcontractors.
- Description of outreach efforts to comply with Section 3 hiring and contracting goals.
- Section 3 Resident Affidavit as applicable for current employees.
- Subcontractor Activity Report format.

Contractor Name: _____

Contractor Signature: _____

Contract Awarded: _____ Date: _____