

**CITY OF BILLINGS - COMMUNITY DEVELOPMENT DIVISION**  
**SECTION 3 PROCEDURES**

**Requirement:** Subpart B, Section 3 at 24 CFR Part 135

**Reporting:** HUD-60002 - Annual Summary Report 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, 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.* If Section 3 covered assistance is awarded and the recipient has no need for additional employees or trainees, or the recipient has no need to contract for work, then the Section 3 requirements are not triggered.

***Covered Activities***

Section 3 covered projects are those projects that involve construction, reconstruction, conversion or rehabilitation of housing, and other publicly-funded construction including other buildings or improvements, regardless of ownership. Therefore, some of the 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 developer (recipient) and the project receives. If the amount of the assistance exceeds \$200,000 to a recipient, certain Section 3 obligations apply.

However, for a developer (recipient), certain Section 3 obligations apply if the aggregate amount of assistance received by the developer (recipient) from the City for all developer's (recipient's) projects with the City exceeds \$200,000 at one time. If, on the same project, there are contracts and subcontracts in excess of \$100,000, obligations will be passed on to the contractor and subcontractor(s).

If a developer or recipient 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 is required to comply with Section 3 requirements, as a recipient of federal funding in excess of \$200,000, 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).

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 Rehab 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 Division receives federal funding in excess of \$200,000 and also dedicates more than \$200,000 to this activity.

**Section 3 residents are:**

- **Public housing residents; or**
- **Persons who live in the area where a HUD-assisted project is located and who have a household income that falls below HUD’s Income Limits, either low income (80% of the area median income) or very low income (50% of the area median income).**

**Section 3 businesses:**

- **Owned by at least 51% individuals qualifying as Section 3 residents; or**
- **The business employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or**
- **The business provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.**

**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 [135.5] 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 at least:

- 10% of the total dollar amount for section 3-covered contracts for building trades work arising in connection with housing rehab, housing construction and other public construction; and
- 3% of the total dollar amount of all other section 3-covered contracts [135.30(c)]

And to the greatest extent feasible:

- Provide employment and training opportunities to Section 3 residents by meeting the percentage goals in 24 CFR 135.30(b)(3)

- Provide subcontracting opportunities to Section 3 businesses by meeting the percentage goals in 24 CFR 135.30(c) (**NOTE:** This only applies to subcontracts in excess of \$100,000 each).
- Notify labor unions and organizations of the contractor's commitments under Section 3.
- Post notices conspicuously at all Section 3-covered work sites describing:
  - The section 3 preference.
  - The minimum number and job titles subject to hire.
  - Apprenticeship and training positions available; the qualifications for each; and the name and location of the person taking applications.
  - The anticipated start date of the work.

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 minimum numerical goals found at 24 CFR Part 135.30;
- 2) Complying with the specific responsibilities at 24 CFR Part 135.32; and
- 3) Submitting Annual Summary reports in accordance with 24 CFR Part 135.90.

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. Specifically, the grantee shall be responsible for awarding 10 percent of the total dollar amount of all covered contracts to Section 3 business concerns. 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 residents and business concerns: 30% of new hires, 10% of construction contracts, 3% of non-construction contracts. They also must notify the Community Development Division about the 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 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 135.38 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 "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 135 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 residents.
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 has agreed 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 Housing and Urban Development Act of 1968. 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.*

*The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, 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 Part 135 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 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 C.F.R. Part 135.*

The Community Development Division will link contractors with employment and training programs to ensure that 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 residents.

### **Standardized Practices & Procedures**

Section 3 residents 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. Employment goals are based on "new hires", which is defined as full-time employees for permanent, temporary or seasonal employment opportunities.

Recipients and contractors are encouraged to provide long-term employment. They may count a Section 3 resident employee for three years to meet the business criterion that at least 30 percent of the permanent, full-time employees are Section 3 residents.

If Section 3 covered assistance is awarded and the recipient has no need for additional employees or trainees, or the recipient has no need to contract for work, then the Section 3 requirements are not triggered. However, the recipient agency must still submit a Section 3 Annual Summary report (HUD form 60002), in accordance with 24 CFR § 135.90.

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 the *Housing Authority of Billings* to post / distribute to persons residing in public / assisted housing units.
- Utilize the *Neighborhood Task Force Newsletters* to advertise employment, training, contracting and other business opportunities offered by the Community Development Division to ensure distribution to low-income areas / residences.
- Distribute employment, training, contracting, and other business opportunities to the *Mayor's Committee on Homelessness* and 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 - should new hires be anticipated for the project.
- 3) The prime contractor and its subcontractors must complete and submit a signed Section 3 plan for review and approval by the City 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 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 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

<b>Requirement</b>	<b>Intent</b>	<b>Procedures</b>
Notify and give priority to Section 3 residents about employment, training and contracting opportunities.	New hire job applicants are given priority status for employment and training opportunities:	Ensure employment and training opportunities are forwarded to Section 3 residents.
	<ul style="list-style-type: none"> <li>• Persons in public / assisted housing.</li> </ul>	<ul style="list-style-type: none"> <li>• Employment / Training notices are forwarded to the Housing Authority of Billings for posting.</li> </ul>
	<ul style="list-style-type: none"> <li>• Low income persons in the area where HUD financial assistance is spent.</li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Require Housing Rehab contractors to advertise, recruit and hire Section 3 applicants.</li> </ul>
	<ul style="list-style-type: none"> <li>• Homeless persons.</li> </ul>	<ul style="list-style-type: none"> <li>• Employment / Training notices are forwarded to the Mayor's Committee on Homelessness &amp; Billings Area Resource Network for posting.</li> </ul>
Notify and give priority to Section 3 businesses about employment, training and contracting opportunities.	Businesses are given priority status for contracting opportunities:	<ul style="list-style-type: none"> <li>• Advertise for Housing Rehab contractors in the Task Force Newsletters, stating listing preference for Section 3 individuals / businesses.</li> <li>• Advertise for Weed Contract in the Task Force Newsletters, stating selection preference for Section 3 individuals / Businesses.</li> <li>• Advertise all other employment, training and contract opportunities offered by the Division in the Task Force Newsletters.</li> <li>• Forward all other employment, training and contract opportunities offered by the Division to the Housing Authority of Billings to post for persons in public / assisted housing.</li> </ul>
	<ul style="list-style-type: none"> <li>• Owners of the business are comprised of 51% Section 3 residents</li> </ul>	Notice of Section 3 benefits at front counter and application for business certification.
	<ul style="list-style-type: none"> <li>• Business employs Section 3 residents for at least 30% of the full-time, permanent staff</li> </ul>	Notice of Section 3 benefits at front counter and application for business certification.
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 new hire / new contracts 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"> <li>• Ensure all advertisements for contracts specify Section 3 opportunity.</li> <li>• Ensure all Request for Proposals / Qualifications specify Section 3 opportunity.</li> <li>• Include Section 3 requirements in annual contractor letter to update information.</li> </ul>
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"> <li>- Construction Agreements</li> <li>- Development Agreements</li> <li>- Request for Qualifications</li> <li>- Request for Proposals</li> </ul>
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 135.30.	Maintain applications for Section 3 certification at front counter along with Section 3 benefit information for prospective applicants.	Process applications for Section 3 application and maintain compliance information.
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.*

If Section 3 covered assistance is awarded and the recipient has no need for additional employees or trainees, or the recipient has no need to contract for work, then the Section 3 requirements are not triggered.

- I WILL NOT be hiring any new employees for this contract.**
  
- I WILL be hiring new employees for this contract** *(please choose one of the following options):*
  - I will 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:
    - Housing Authority of Billings
    - Mayor's Committee on Homelessness
    - Billings Area Resource Network
    - Task Force Chairs / Newsletters
  
  - I will be submitting my own Section 3 Compliance Plan to the Community Development Plan for approval prior to beginning work on the project.

Contractor Name: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_

Contract Awarded: \_\_\_\_\_ Date: \_\_\_\_\_