

# **City of Lincoln Policy for Implementing Section 3 of the Housing and Urban Development Act of 1968**

## **I. Background**

This Policy is developed in order to implement the provisions of Section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended to date. The City of Lincoln's Policy is specific to the City and, therefore, is separate from policies adopted by other entities, including the Lincoln Housing Authority.

## **II. Purpose**

The purpose of the City's policy is to ensure that employment and other economic opportunities generated by certain programs funded by the U.S. Department of Housing and Urban Development 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.

## **III. Applicability**

The applicability of this policy applies when the City of Lincoln is expending funds under programs covered by the Section 3 regulations (24 CFR Part 75). The covered federal program expenditures include, but are not necessarily limited to, Community Development Block Grant (CDBG), HOME Investment Partnership program (HOME), Emergency Solutions Grant Program (ESG), and related funding sources administered by HUD when these funds are used for:

- Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement)
- Housing construction
- Other public construction

#### **IV. Definitions**

The full definition of terms under this Policy are included in 24 CFR Part 75.5. Primary definitions used in this Policy consist of the following:

##### **Section 3 Business Concern**

Means a business concern, as defined in this section:

- That is 51% or more owned by low- to very low-income residents.
- That 75% or more of labor hours performed for the business on construction are by low- to very low-income residents.
- That is 51% or more owned by public housing residents or residents in Section 8 assisted housing.

##### **Section 3 Worker**

Means a person or resident as defined in this section:

- That is low- or very low-income, as established by HUD's income limits.
- That is employed by a Section 3 Business Concern.
- That is a Youth Build participant.

##### **Targeted Section 3 Worker**

For non-public housing assistance programs means a Section 3 worker who is also:

- A resident within the service area or neighborhood of the project.
- A Youth Build participant.

#### **V. Policy Goals and Selection Priorities**

The City of Lincoln abides by the HUD established benchmarks regarding Section 3 compliance, as referenced in 24 CFR Part 75.23 and in subsequent publications in the Federal Register. Current benchmarks require that Section 3 workers comprise at least 25% of the total labor hours on a Section 3 project and that Targeted Section 3 Workers comprise at least 5% of the total labor hours on the Section 3 project. These benchmarks apply to all Section 3 projects. The City commits to achieving these benchmarks to the greatest extent feasible in order to establish compliance with the regulatory requirements. This commitment extends to all sub-recipients, contractors, and subcontractors receiving a Section 3 eligible contract award from the City.

Said commitments are as follows:

A. **Workers / Employment:**

The order of priority for selecting Section 3 workers shall be, where feasible, as follows:

1. Section 3 residents residing in the service area or neighborhood in which the Section 3 covered project is located.
2. Participants in HUD Youth Build programs.
3. Other Section 3 residents (City of Lincoln).

Where the Section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood in which the Section 3 covered project is located shall be given the highest priority.

A Section 3 worker seeking training and employment provided by this part shall certify, or submit evidence to the recipient, contractor or subcontractor, if requested that the person is a Section 3 worker, as defined in 24 CFR Part 75 (an example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program). Nothing in this part shall be construed to require the employment of a Section 3 worker who does not meet the qualifications of the position to be filled.

B. **Business Concerns / Contracting:**

The order of priority for selecting Section 3 business concerns shall be, where feasible, as follows:

1. Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located (City of Lincoln).
2. Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD YouthBuild programs.
3. Other Section 3 business concerns (City of Lincoln).

A business concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a Section 3 business concern as defined in 24 CFR Part 75.

A Section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract (the ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36(b)(8)). This regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

## **VI. Application and Required Actions**

### **A. Covered Activities**

Section 3 covered projects are those projects that involve construction, reconstruction, housing rehabilitation, and other publicly funded construction including other buildings or improvements, regardless of ownership. Section 3 covered projects include the reduction and abatement of lead-based paint hazards, but exclude routine maintenance, repair and replacement.

### **B. Dollar Thresholds**

This policy applies when the following dollar thresholds are met or exceeded:

1. When HUD funding to the City of Lincoln exceeds \$200,000 or if a project above \$200,000 has any federal funds.
2. The City is required to pass these requirements on to all recipients and their subrecipients when the City's assistance exceeds the \$200,000 threshold. However, Lead Hazard Control and Healthy Homes programs will have a project threshold of \$100,000.
3. 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.

### C. City of Lincoln

As a recipient of covered Section 3 funds (i.e., any allocation from HUD), the City of Lincoln will undertake the following actions in order to meet its obligations under the regulations.

1. Maintain a local database of self-identified businesses through the City's eBid system through the Purchasing Division. Access will be shared with the Lincoln Housing Authority.
2. Maintain a local database of self-identified certified Section 3 workers and Targeted Workers. Share access with the Lincoln Housing Authority.
3. Maintain a local database of self-identified contractors. Share access with the Lincoln Housing Authority.
4. Notify Section 3 workers and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance. This includes sending a bid notice to all Section 3 contractors listed on the City of Lincoln's Business registry on projects exceeding the \$200,000 threshold requirement.
5. Notify potential contractors for covered projects of Section 3 requirements.
6. Incorporate the Section 3 Clause set forth in 24 CFR 135.38 and as amended by 24 CFR Part 75 in all solicitations and contracts on projects meeting the threshold requirements
7. Maintain a local database of certified Section 3 workers. Share access with the Lincoln Housing Authority.
8. Facilitate the training and employment of Section 3 workers via the American Job Center.
9. Facilitate the award of contracts to Section 3 business concerns, after evaluations.
10. Assist and actively cooperate with the Assistant Secretary in obtaining contractor and subcontractor compliance with Section 3 requirements.
11. Refrain from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the Section 3 regulations.
12. Document actions taken to comply with Section 3, the results of actions taken and impediments, if any.
13. Submit required reports. Require timely submission of Section 3 reports from covered sub-recipients, contractors and sub-contractors. A Section 3 file shall be established for all covered contracts.

The City will pass these responsibilities and data on, via-Agreement, to any covered sub- recipient. Covered sub-recipients are subject to the above requirements.

D. **City Procurement Procedures**

All of the City's procurement activities are conducted in a competitive manner. On projects requiring Section 3 compliance, potential contractors are notified about Section 3 requirements for covered projects in the request for proposals, at the pre-bid meeting, and at the pre-construction meeting. The project bid packet will include a current printout of HUD's Section 3 Business Registry for the City of Lincoln to further encourage contractors to confer with and include Section 3 business concerns.

The City has incorporated the Section 3 Clause in all contracts subject to Section 3 compliance. The contractor awarded the contract may be requested to submit supporting documentation to confirm whether the business is a Section 3 Business. The City will ensure that when selecting a contractor that the contractor complies with all Section 3 guidelines.

To the greatest extent feasible, the City will strive to meet Section 3 benchmarks. Whenever feasible, Section 3 contracts and/or professional services needed for Section 3 projects will be awarded to a certified Section 3 business or professional. The Section 3 business concern must meet all other eligibility criteria, including but not limited to the ability to complete the contract, having responsible bidding practices, and provide guarantees that they have followed all Section 3 requirements,

Reference Lincoln Municipal Code Section 2.18 regarding city purchasing practices.  
<https://online.encodeplus.com/regs/lincoln-ne-cc/doc-viewer.aspx#secid-816>

## **E. Contractors**

All contractors and subcontractors on projects subject to Section 3 compliance are required to undertake the following actions to implement the requirements.

1. Include the "Section 3 Clause" set forth in 135.38 and amended by 24 CFR Part 75 in every subcontract subject to the Section 3 regulations.
2. Send a notice advising of the contractor's commitments under Section 3 Clause to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding.
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 shall:  
Describe the Section 3 preference. Set forth a 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. Vacant employment and training positions may be filled prior to contract execution if the hiring and training commitments are not intended to circumvent the contractor's obligations under 24 CFR Part 75.
5. Refrain from entering into any contract with any subcontractor where the contractor has notice or knowledge that the contractor has been found in violation of Section 3 regulations.
6. Direct efforts to award covered subcontracts to Section 3 business concerns in the order of priority set forth in 24 CFR Part 75.
7. Direct efforts to employ and train Section 3 workers in the order of priority set forth in the 24 CFR Part 75.
8. Document actions taken to comply with Section 3 requirements.
9. Submit required reports.

Each covered sub-recipient, contractor and subcontractor shall be provided with a copy of this Policy and any supplemental material pertaining to Section 3 compliance by the primary recipient of the contract.

City of Lincoln, Nebraska  
Urban Development Department  
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