North Carolina Office of Recovery and Resiliency

Section 3 of the Housing and Urban Development Act of 1968

Policy and Procedures

June 6, 2019
I. Purpose
The purpose of Section 3 of the U.S. Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u, is to ensure that, to the greatest extent feasible (GEF), employment and other economic opportunities generated by HUD financial assistance for housing and community development programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing. Section 3 regulations found in 24 CFR Part 135, require that “good faith, documented efforts” are made to direct economic opportunities towards Section 3 residents and business concerns. This manual sets forth the policies and procedures that the North Carolina Office of Recovery and Resiliency (NCORR) has implemented in its efforts to comply with Section 3 regulations.

Section 3 regulations apply to NCORR and all subrecipients to NCORR receiving greater than $200,000. Section 3 regulations specifically apply to the following activities:
1. Housing rehabilitation;
   a. Including reduction and abatement of lead-based paint hazards.
2. Housing construction; and
3. Other public construction projects.

Section 3 applies to contracts and subcontracts in excess of $100,000 awarded in connection with the Section 3 covered activities.

The Monitoring and Compliance Department is responsible for administering and enforcing Section 3 regulations on all covered contracts involving HUD financial assistance. Recipients or contractors subject to Section 3 requirements must agree to comply with Section 3 regulations and maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low and very-low income persons.

II. Mission and Vision
The mission of NCORR, consistent with Section 3 of the U.S. Housing and Urban Development Act of 1968, is to promote self-sufficiency of at-risk residents and businesses of the State of North Carolina by ensuring that employment, training, contracting and other economic and business opportunities are generated by HUD financial assistance. This will be accomplished through the awarding of contracts that meet or exceed $100,000 which are directed towards public housing residents and other low and very-low income persons, particularly those who are recipients of government housing assistance, and towards business concerns that provide economic opportunities to low and very-low income persons.

The vision of NCORR is to identify the goals, objectives and actions that will be implemented by the State to ensure compliance with the requirements of Section 3 in its own operations and the operations of covered contractors, subcontractors, and subrecipients. NCORR’s Compliance Director or his/her designee will serve as the program’s Section 3 coordinator and will partner with other state and local departments, contractors, Section 3 business owners, members of the community, and local public housing and resident councils to coordinate and monitor activities to contribute to Section 3 compliance.
III. Section 3 Goals

Contractors, subcontractors, and subrecipients on a covered Section 3 project must comply with all Section 3 regulations. A covered Section 3 project is defined as a HUD-funded project for housing rehabilitation, housing construction, or other public construction project. Contractors and subcontractors with a contract greater than $100,000 funded in whole or in part with HUD funds, and subrecipients that are sub-granted greater than $200,000. Entities conducting these Section 3 covered projects must acknowledge and actively seek to achieve the following Section 3 goals:

- **Thirty percent (30%)** of the aggregate number of new hires and trainees needed to complete a Section 3 covered project/activity shall be Section 3 residents.
- **Ten percent (10%)** of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or building trades work arising with housing rehabilitation, housing construction, and other public construction, shall be awarded to Section 3 businesses.
- **Three percent (3%)** of total dollar amount of all non-construction Section 3 covered contracts shall be awarded to Section 3 businesses.

NCORR is also responsible for meeting the above stated Section 3 goals when conducting covered activities.

IV. Contracting Procedure

NCORR will use the following methods to facilitate compliance with Section 3 by covered contractors, subcontractors, and subrecipients:

1. Pre-Award
   
   Prior to awarding a contract to a vendor, the following Section 3 pre-award activities must be completed:

   - The Monitoring and Compliance Department determines whether Section 3 regulations are applicable to the procurement.
   - The Section 3 Contract Clause specifies the requirements of contractors hired for Section 3 covered projects. The Section 3 Clause must be included, in its entirety, in the contract of all Section 3 covered projects.
   - Section 3 information and requirements are included in all applicable NCORR procurements (bid specifications, RFPs/RFQs, and NOFAs), which by reference become a part of NCORR’s contract with the procured respondent.
   - As a part of the post-bid document submission, selected respondents are required to certify that they will comply with Section 3 stipulations by submitting a signed Section 3 Project Plan. The plan outlines the business’ workforce needs and proactive efforts to direct economic opportunities to Section 3 residents and businesses.

   Section 3 Project Plans are reviewed by NCORR’s Section 3 Coordinator and either
accepted or returned to the respondent with necessary changes noted. Contracts may not be executed until the Section 3 Project Plan is accepted by NCORR. Section 3 Project Plans must be complete and must include the required substantiating documentation in order to be approved. If the respondent is not able to meet the subcontracting goals, the respondent must document good faith efforts to reach Section 3 goals.

If the Section 3 Project Plan is not complete or the required documentation is not submitted, the respondent will be considered non-responsive. NCORR’s acceptance of the Section 3 Project Plan is noted in the Section 3 Validation Form.

2. Contract Award
Once the Section 3 Project Plan has been accepted and the respondent has been selected, the selected respondent must submit a Section 3 Project Plan for each subcontractor with a projected contract amount greater than $100,000. It is the prime contractor’s responsibility to ensure that subcontractors correctly complete necessary Section 3 Project Plans. All covered subcontractor Section 3 Project Plans must be received by NCORR before the contract can be executed.

3. Contractor Responsibility
It is the responsibility of contractors and vendors to implement progressive efforts to attain Section 3 compliance. Any contractor that does not meet the Section 3 numerical goals must demonstrate why meeting the goals was not feasible.

V. Subrecipient Procedure
Subrecipients differ from contractors and subcontractors in the execution of grant activities. 2 CFR Part 200.330 sets forth the criteria for determination of subrecipient or contractor relationships. All subrecipients to NCORR which are sub-granted greater than $200,000 of housing and community development assistance (such as CDBG-DR funds) for housing construction, rehabilitation, or other public construction are required to certify that they will comply with the requirements of Section 3. Subrecipients must submit a Section 3 Plan for Subrecipients. (NCORR must review subrecipient Section 3 Plans. If the subrecipient has a pre-existing Section 3 Plan that is satisfactory to meet Section 3 goals, NCORR may allow the subrecipient to use its pre-existing plan rather than develop a new plan.

Subrecipients will be responsible for collecting and reviewing Section 3 Project Plans from all applicable prime contracts and subcontracts over $100,000.
VI. Section 3 Engagement

1. Section 3 Residents

A Section 3 resident is defined as a resident of public housing or a low or very-low income individual living within the service area of the provided housing assistance. The service area is defined as the Metropolitan Statistical Area (MSA) or non-metropolitan county where the HUD-assisted project is located. Low and very-low income thresholds are set by HUD annually. To ease determinations on income status, the North Carolina Housing Finance Agency (NCHFA) maintains a database of income levels by county. The income limits database is found at [https://www.nchfa.com/home-buyers/income-limits](https://www.nchfa.com/home-buyers/income-limits).

It is the responsibility of the contractor, subcontractor, or subrecipient to verify whether a new hire qualifies as a Section 3 resident. Contractors, subcontractors, and subrecipients document Section 3 resident hires using the Section 3 Resident Certification Form.

Section 3 Business Concerns

A business meets the definition of a Section 3 business concern when:

- a. The business is 51% or more owned by Section 3 residents; or
- b. At least 30% of the business’s permanent, full-time employees are current Section 3 residents, or within three years of the date of first employment with the business were Section 3 residents; or
- c. The business provides evidence of a commitment to subcontract greater than 25% of the dollar award of all subcontracts to businesses which meet criteria a) or b) above.

NCORR will use the following methods to notify and contract with Section 3 business concerns when contracting opportunities exist:

- Soliciting businesses registered with the North Carolina Office for Historically Underutilized Businesses (HUB). NCORR will endeavor to solicit businesses directly from the HUB registry if a registered business may be able to provide the service or item to be procured. Some businesses registered with HUB may also qualify as Section 3 business concerns. The HUB registry is located at [https://www.ips.state.nc.us/vendor/searchvendor.aspx?t=h](https://www.ips.state.nc.us/vendor/searchvendor.aspx?t=h).
- Soliciting businesses located within the project service areas using local Section 3 business registries and lists, if available.

NCORR strives to meet the Section 3 contracting goals of 10% of construction contracts and 3% of non-construction contracts on projects involving HUD financial assistance awarded to eligible Section 3 business concerns.

These goals apply to all construction costs of projects, not just the amount of HUD financial assistance. Records, such as contract agreements and good faith documented efforts, must be maintained for performance and efforts/actions taken to reach the goals. If the goals are not met, a description of impediments encountered despite actions taken should be included.

In compliance with Section 3 regulations, NCORR will require its staff, covered
contractors, and subcontractors (including professional service contractors) to direct their efforts to award contracts in housing and community development programs, where feasible, to Section 3 business concerns that provide economic opportunities for:

- Section 3 residents in the service area in which the Section 3 covered project is located.
- Applicants engaged in HUD Youthbuild programs.
- Homeless persons in the project area of McKinney Act projects.
- Other Section 3 business concerns.

It is NCORR’s goal to create economic opportunities that will be afforded to low- to very low-income residents of the State to promote self-sufficiency.

2. Section 3 Business Concern Certification

Any business seeking certification as a Section 3 business concern shall complete the Section 3 Business Certification Form. This form can be obtained from NCORR’s Section 3 Coordinator, and the business seeking Section 3 status must provide adequate documentation as evidence of eligibility under the Section 3 Program prior to the submission of bids for approval. If the Section 3 Coordinator previously approved the business concern to be Section 3 certified within the last three years, then the certification can be submitted along with the bid. A Section 3 business concern that is certified as such by another governmental entity, such as a county, is also considered to be a Section 3 business concern by NCORR. The recertification of a Section 3 business concern occurs once every three years on a rolling basis.

Businesses may also certify as a Section 3 business concern online via HUD’s online self-certification application at [www.hud.gov/Sec3biz](http://www.hud.gov/Sec3biz).

VII. Monitoring and Compliance

NCORR’s Internal Audit Unit will monitor performance of the following items, to include but not limited to outreach and marketing, hiring practices, use of subcontractors, and dollar value of subcontracts awarded to Section 3 business concerns. Monitoring will be performed throughout the year at the NCORR Internal Audit Unit.

Noncompliance with Section 3 by any business may be used to determine contractor responsibility and bid responsiveness on future contracting opportunities. In addition, noncompliance may result in sanctions, debarment, suspension, or limited denial of future participation in HUD programs in accordance with 24 CFR Part 135.

VIII. Reporting

Prime contractors and subcontractors are required to submit a Section 3 Status Update on a quarterly basis. Subrecipient agencies are responsible for collecting Section 3 activity updates from their covered prime contractors and subcontractors periodically, in accordance with approved Section 3 Plan for Subrecipients. Subrecipients are required to report all Section 3 activity to NCORR annually.

NCORR will report the progress of all Section 3 efforts in the submittal of Form 60002 electronically to HUD, as well as, submit the Section 3 Summary Report in the Consolidated Annual Performance and Evaluation Report (CAPER). Information on
submitting the Form 60002 is found online at HUD’s Section 3 SPEARS portal at https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3/spears.

IX. Section 3 Inquiries

Businesses and residents concerned about the outreach, engagement, marketing, and eventual contracting with Section 3 residents and business concerns may voice those concerns to NCORR directly. The submission of Section 3 inquiries or complaints may be submitted to the NCORR Section 3 Coordinator as follows:

- Complaints of noncompliance should be filed in writing and must contain the name of the complainant and description of the alleged violation of 24 CFR Part 135.
- Complaints must be filed within 30 days after the complainant becomes aware of the alleged violation.
- An investigation may be conducted to determine if the complaint is valid. If the complaint is found to be valid, the Section 3 Coordinator will conduct a formal investigation affording all interested parties, if any, an opportunity to submit his/her account and/or evidence pertinent to the complaint.
- The Section 3 Coordinator will provide written documentation detailing the findings of the investigation. The finding will be made available no later than 45 days after the filing of the complaint.
- If a contractor is found to be noncompliant with HUD’s regulations in 24 CFR Part 135, it may result in sanctions, termination of contract for default, and debarment or suspension from future HUD-assisted contracts.