Kalamazoo Neighborhood Housing Services

SECTION 3 HANDBOOK

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Introduction

Section 3 is the legislative directive from the U.S. Department of Housing and Urban Development (HUD), Act of 1968, for providing preference in new employment, training, and contracting opportunities that are generated by HUD-funded projects to low- and very low-income local residents (regardless of race or gender). Section 3 also provides contracting preferences to local businesses that substantially employ low- and very low-income residents of the local community.

Section 3 is activated when construction and rehabilitation projects create the need for new employment, contracting, or training opportunities. Recipients or contractors are not required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete a covered project. If the expenditure of a covered project does not result in new employment, contracting, or training opportunities, the requirement of Section 3 is not activated. Nevertheless, the recipient and its contractors are required to submit Section 3 report information.

As a condition of receiving HUD housing and community development program funds, recipients must certify they will comply with the requirements of Section 3. HUD has the legal responsibility to monitor recipients for compliance and can impose penalties upon those that fail to meet these obligations. Full HUD Section 3 regulations can be obtained from HUD at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12047.pdf

These guidelines have been prepared to provide information and guidance to Section 3 recipients on how Kalamazoo Neighborhood Housing Services, Inc. (KNHS) will administer the Section 3 regulations. This guide should not be treated as a comprehensive recitation of the Section 3 Act and regulations. It is a summary of the pertinent provisions, and focuses on the requirements imposed on the Developer, General Contractor and Subcontractor receiving the requisite amount of Section 3 funds. Developers, General Contractors and Subcontractors bear the responsibility to familiarize themselves with the Section 3 Act and regulations prior to accepting Section 3 covered assistance.

Policy Statement

KNHS shall provide opportunities to low- and very low-income people living in the Kalamazoo Metropolitan Statistical Area and to businesses meeting the definition of "Section 3 Business Concern." Accordingly, KNHS shall implement policies and procedures to ensure Section 3, when required, is followed for all contracts where labor and/or professional services are provided.

This policy shall not apply to contractors who only furnish materials or supplies through Section 3 covered assistance. It applies to contractors who install materials or equipment (see the definition of "Section 3 Contractor" below). Where federal housing and community development assistance provides partial funding for a Section 3 covered project or activity, the entire project or activity is subject to Section 3 requirements. Nothing in this policy shall be construed to require the employment or contracting of a Section 3 resident or contractor who does not meet the qualifications of the position to be filled or who cannot fulfill the contract requirements.

Successful compliance with the Section 3 Act and regulations by the Developer and/or General Contractor will be a factor in determining future awards of Section 3 covered assistance.

According to the Section 3 regulations, located at 24 CFR Part 135, Section 3 Recipients are required to provide employment, training and contracting opportunities to Section 3 Residents or Section 3 Business Concerns. However, the Section 3 requirements are not imposed upon a recipient who

does not engage in hiring or training, but instead awards contracts to Developers and General Contractors that hire and train in connection with Section 3 Covered Projects. According to the Section 3 regulations, these recipients may comply with Section 3 by ensuring that the Developers, General Contractors and Subcontractors receiving Section 3 Covered Assistance comply with the Section 3 Act.

To Whom Does Section 3 Apply?

The following definitions are intended to describe the differences between "recipient" and "contractor."

- Section 3 Recipient. The recipient is Kalamazoo Neighborhood Housing Services. KNHS is a Section 3 recipient because it receives Section 3 Covered Assistance from other Recipients whom receive funds in excess of \$200,000, including but not limited to, the City of Kalamazoo and MSHDA.
- Other Section 3 Recipients. In addition to KNHS, any entity that receives more than \$200,000 in housing and community development funding from KNHS for Section 3 covered activities is a recipient.

A Section 3 recipient has the responsibility to comply with Section 3 in its own operations and to ensure the compliance of its Section 3 contractors and subcontractors.

- Section 3 Contractor. A contractor is any entity that performs work for a Section 3 recipient in an amount greater than \$100,000, provided the work is for a Section 3 covered activity. (A subcontractor performing work for a Section 3 contractor in an amount greater than \$100,000 is considered a contractor.)
- **Section 3 Covered Activities.** Section 3 covered activities include all projects and activities involving construction, such as housing construction, demolition, rehabilitation, or other public construction (e.g. streets, sidewalks, sewers, community centers, etc.).

Section 3 covered contracts do not include contracts for the purchase of supplies and materials unless the contract includes the installation of the materials. Where federal housing and community development assistance provides partial funding for a Section 3 covered project or activity, the entire project or activity is subject to Section 3 requirements.

• KNHS Section 3 Projects. In addition to the monetary triggers set forth by HUD in regards to Section 3, KNHS will also adhere to any additional triggers set forth by the Section 3 policies of HUD Recipients awarding funding to KNHS within the scope of work funded by the HUD Recipients. In most cases where KNHS receives a Section 3 Award from MSHDA, the City of Kalamazoo, or other Recipients, this will mean that all projects funded by that award will be subject to Section 3 regulations, regardless of the contract amount.

Intended Beneficiaries of Section 3

For the federal housing and community development programs conducted by KNHS, the intended beneficiaries of Section 3 are two-fold.

Section 3 Residents. Low- and very low-income people living in the Kalamazoo Metropolitan Statistical Area (preferably those living in public housing or in neighborhoods defined as CDGB eligible by the current City of Kalamazoo Consolidated Plan).

Section 3 Business Concerns. Businesses that are 51% owned by low- and very-low income people; businesses whose permanent full-time staff consist of at least 30% or more low- and very-low income persons (preferably who live in neighborhoods where the Section 3 covered assistance is provided), or businesses that contract out over 25% of the total amount of a Section 3 covered contract to other Section 3 business concerns.

Preferences for Employment and Training Opportunities

All Developers, General Contractors, and Subcontractors undertaking Section 3 covered projects and activities are expected to meet the Section 3 requirements. A concerted effort shall be made to meet the goals set forth below for providing training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns. To meet the goals, contractors must select Section 3 residents based on the following priorities.

First Priority – Low- and very low-income residents of the development where the work is to be performed (where occupied).

Second Priority – Low- and very low-income residents living in the target neighborhood (which is determined by the location of the project).

Third Priority – Low- and very low-income residents living in neighborhoods defined as Consolidated Plan Eligible by the current City of Kalamazoo Consolidated Plan.

Fourth Priority – Low- and very-low income residents living in the Kalamazoo Metropolitan Statistical Area.

Numerical Goals

KNHS has established numerical goals that comply with Section 3 regulations and priorities, consistent with those set by the federal government. These goals and priorities serve as a tool for ensuring KNHS's effectiveness in fulfilling its commitment to the economic wellbeing of local citizens as well as for monitoring compliance with HUD requirements.

KNHS's Minimum Numerical Goals are as follows:

- 30% of the aggregate number of new hires in any fiscal year will be Section 3 residents.
- 10% of the total dollar amount of all Section 3 covered construction contracts will be awarded to Section 3 business concerns.
- 3% of the total dollar amount of all covered non-construction contracts will be awarded to businesses that qualify as a Section 3 business concern.

Preference for Section 3 Business Concerns

Preference shall be awarded to Section 3 Business Concerns according to the following system:

- 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 X 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 X percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.
 - 1. Bids shall be solicited from all businesses (i.e. 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 (as defined in 24 CFR Part 135) and with the lowest responsive bid if that bid:
 - A.) is within the maximum total contract price established in KNHS'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:

X = lesser of:

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

At least \$100,000, but less than \$300,000 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.

- 2. If no responsive bid by a Section 3 Business Concern meets the requirements of paragraph 1 of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.
- 3. In both paragraph 1 and 2 above, a bidder, to be considered as responsible, must demonstrate compliance with the "greatest extent feasible" requirement of Section 3.
- 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.

- C. Where homeowners are selecting the contractor based on a listing provided by KNHS, the homeowners will be encouraged to solicit a bid from a minimum of one Section 3 Contractor whenever possible. The homeowner, when making the selection will be made aware of Section guidelines and, all else being equal, be encouraged to consider an approved Section 3 Contractor in their selection process.
- D. Contractors and Developers are required to utilize Section 3 Residents and Section 3 Business Concerns, to the greatest extent feasible, on all construction-related projects receiving funding from HUD. The above numerical goals must be explicitly set forth in all Section 3 Plans. Employment and training goals may be met by either directly providing the employment or training or by facilitating the employment or training. A Contractor, Subcontractor, or Developer may satisfy the Section 3 employment and training goals by partnering with other organizations that provide employment and training opportunities, and working with those organizations to facilitate training or employment opportunities for Section 3 Residents.

Contract Compliance

Once KNHS has awarded the Section 3 Covered Assistance, it will schedule a meeting with the Developers or General Contractors to discuss the Section 3 Requirements. Attendees will include: the KNHS Section 3 Coordinator, General Contractors, and various KNHS personnel. The purpose of the meeting is to address any questions the attendees may have regarding compliance with Section 3 Regulations. All attendees will be provided with a copy of the KNHS Section 3 Guidelines, the Section 3 Act and the Section 3 Regulations. Each Developer and General Contractor will also be required to submit a statement to the KNHS Section 3 Coordinator acknowledging its receipt of the foregoing documents as well as its understanding that Section 3 Regulations apply to the specific Section 3 Covered Project, and its commitment to submit a Section 3 Plan in accordance with the deadlines set out in the conditional reservation agreement. This meeting may coincide with other development or pre-construction meetings.

Penalties

In order to ensure contract compliance, KNHS will withhold a 5% retainage from all Section 3 Contracts until required Section 3 documents are submitted by the Contractor to KNHS and approved by KNHS staff. For contracts with multiple draws, the 5% retainage can be avoided by providing the appropriate Section 3 timesheet (Form Sec3.06) with each draw request. Ideally, Contractors will submit all Section 3 documents on time, and the 5% retainage will not be necessary to withhold. All Section 3 documents are due upon contract completion. Should the Contractor fail to submit all documents within 15 days of contract completion, the funds remaining from the 5% retainage shall be re-programmed into other Section 3 projects as permissible by the sub-recipient agreement.

Compliance Time Period

Contract Period

The above range of dates identifies the compliance time frame that all developers, contractors, and subcontractors shall report efforts to meet the numerical goals of Section 3. Final reports shall be returned to KNHS no later than the completion of a contract in order to ensure full payment for work conducted. For larger projects that require multiple draws, contractors and subcontractors will be required to submit Section 3 tracking paperwork upon each draw request. Where KNHS is the subrecipient of Section 3 HUD funds, it shall adhere to the compliance time period set forth in the subrecipient agreement.

Section 3 Coordinator

KNHS will appoint the responsibilities of the Section 3 coordinator to the position of Construction Manager. This position will coordinate all Section 3 data collection, reporting, and contract compliance. This position will also work with other KNHS staff to ensure Section 3 goals are being met.

Good Faith Effort

KNHS shall verify that the contractor and subcontractor have completed a variety of the following tasks to demonstrate its good faith effort to comply with Section 3 requirements. Sub-recipients, contractors and subcontractors shall retain all records associated with all attempts to provide a good faith effort and provide KNHS and HUD with said records upon request. Construction may not commence until KNHS has recognized that the sub-recipient, contractor and subcontractor have demonstrated a "good faith effort" to meet the numerical goals of Section 3. Failure to be recognized as demonstrating a "good faith effort" may result in penalties including disbarment from submitting bids on future HUD funded projects

and penalty of payment. If the sub-recipient, contractor and subcontractor have the need to hire new persons to complete the Section 3 covered contract or needs to subcontract portions of the work to another business, they are required to direct their newly created employment and / or subcontracting opportunities to Section 3 residents and business concerns.

KNHS Responsibilities

KNHS will comply with Section 3 requirements in its own operation. This responsibility includes:

- **A)** Notifying Section 3 residents and business concerns about jobs and contracts generated by Section 3 covered assistance so that they may submit bids / proposals for available contracts and jobs opening with the subrecipient. This will be accomplished by notifying community partners that work within the Consolidated Plan eligible neighborhoods, contractors on KNHS's pre-approved contractor list, and placing opportunities on our website;
- **B)** Notifying potential contractors of Section 3 requirements. This will be accomplished by placing section 3 requirements in the KNHS Contractor Handbook and bid requests and making the KNHS Section 3 policy available online;
- **C)** Include the Section 3 Clause in all applicable contracts;
- **D)** Solicit new Section 3 contractors and maintain a database of contractors and subcontractors that are Section 3 business concerns. This process will, at a minimum, take place annually in conjunction with KNHS procurement procedures as it solicits new vendors.
- **E)** Document action(s) taken to meet the numerical goals. This will be accomplished by including Section 3 tracking and documents in the construction file for every Section 3 project. Each Section 3 project will have a final report filled out using the Section 3 HUD form 60002.
- **F)** Complete and submit any reports required by contract agreements with Section 3 recipients.
- **G)** Refrain from contracting with subcontractors as to whom they have received notice or have knowledge that the subcontractors have been found in violation of the requirements of 24 CFR Part 135;
- **H)** Make a list of Section 3 residents trained in KNHS's Lead Renovation Repair and Painting (RRP) Program available to contractors seeking new hires;
- I) Conduct random site visits to ensure validity of Section 3 reports submitted by Contractors;
- J) Respond to Section 3 complaints;

Contractor Responsibilities

Contractors will comply with Section 3 requirements in their operations on Section 3 projects. This responsibility includes:

- 1) Notify subcontractors of their responsibilities under Section 3 including, but not limited to, incorporating Section 3 Clause in subcontract documents;
- **2)** Refrain from contracting with subcontractors as to whom they have received notice or have knowledge that the subcontractors have been found in violation of the requirements of 24 CFR Part 135;
- **3)** Maintain records that document a good faith effort to utilize Section 3 residents and business concerns. This is required of both contractor and subcontractor;
- 4) Document action(s) taken to meet the numerical goals;
- **5)** Complete and submit the *Contractor Section 3 Certification Form* prior to bid opening;
- **6)** Complete and submit *Section 3 Acknowledgement* (Sec3.10) to verify receipt of KNHS Section 3 policies and understanding of Contractor responsibilities.
- **7)** Complete and submit the following reports / forms for all required contracts: *Resident Certification* (Sec3.01), Business Concern Certification (Sec3.02), Workforce Needed Estimate (Sec3.03), New Hires GC (Sec3.04), New Hires SC (Sec3.05), Timesheets (Sec3.06). Timesheets will be turned in with draw requests and shall include the hours of any sub-contracted work associated with the draw request.

COMPLAINT PROCEDURE

In an effort to resolve complaints generated due to non-compliance through an internal process, KNHS encourages submittal of such complaints to its Construction Department. A complaint of non-compliance shall be provided in writing and must contain the name of the complainant and a brief description of the alleged violation of 24 CFR Part 135. Complaints must be filed within thirty (30) days after the complainant becomes aware of the alleged violation.

An investigation will be conducted if the complaint is found to be valid. KNHS will conduct an informal, but thorough investigation affording all interest parties, if any, an opportunity to submit testimony and / or evidence pertinent to the complaint. KNHS will provide written documentation detailing the findings of the investigation no later than thirty (30) days after the filing of the complaint.

If complainant wishes to have their concerns considered outside KNHS, a complaint may be filled with: Assistant Secretary for Fair Housing and Equal Opportunity
US Department of Housing & Urban Development
451 Seventh Street, SW
Washington, DC 20410

The complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

SECTION 3 CLAUSE

All Section 3 covered contracts shall include the following clause (referred to as the "Section 3 Clause"):

- A. 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. 1701u (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.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR 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.
- C. 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; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions that are filled (1) after the contractor is selected by before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. 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 in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that 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).

CERTIFICATION FOR RESIDENT SEEKING SECTION 3 PREFERENCES IN TRAINING AND EMPLOYMENT

Section 3 Covered Project:

I,	, am a legal resident of the City of
, County of	
income eligibility guidelines for a low- or very-low Income Figures provided by The Secretary of Hou	-income person as set out in the most current
My permanent residence address is:	
Neighborhood:	
I have attached the following documentation as ev	ridence of my status:
 Copy of Lease (if with public housing authority) Copy of Evidence of participation in a public assistance program Proof of Household Income (ie: copy of last W-2s or tax returns with social security numbers blacked out) 	Copy of receipt of public assistance Other evidence: Please state
A Section 3 resident seeking the preference in t must submit evidence to the general contractor o resident, as defined in Section 135.5.	
I hereby certify the information provided by me falsification of any of the information could subject	
Signature	
Print Name	
Date	

CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPBILITY

Name of	Business			
Address	of Business			
Type of E	Business:	☐ Corporation☐ Sole Proprietorship		
Attached	is the followin	g documentation as evide	enc	e of status:
		g status as a Section 3 extification for Resident Se		dent-owned enterprise: ng Section 3 Preference
☐ Copy ☐ Assun ☐ List of % ow ☐ Organ	owners/stock nership of eac	ncorporation Name Certificate holders and th with names and titles		Certificate of Good Standing Partnership Agreement Corporation Annual Report Latest Board minutes appointing officers Additional documentation
qualified	Section 3 bu			ontracting 25 percent of the dollar awarded to
currently employm	Section 3 renember 5	sidents or were Sectior business:	3 6	g at least 30 percent of their workforce are eligible residents within 3 years of date of firs
□ PHA/I		-time employees Il lease less than 3 nployment		List of employees claiming Section 3 status Other evidence of Section 3 status less than 3 years from date of employment
	Current finan Statement of List of owned	cial statement ability to comply with pul	olic	e terms and conditions of the proposed contract:
 Authorizii	ng Name and	Signature		(Corporate Seal)
Attested		-		

WORKFORCE NEEDED FOR SECTION 3 COVERED PROJECT (GENERAL CONTRACTOR - ESTIMATED)

General Contractor	
Project Name	
Period Covered	
Date Submitted	

Job Category	Total Estimated Positions Needed for Project	Number of Positions Occupied by Permanent Employees	Number of Positions Not Occupied	Number of Positions to be Filled with Section 3 Residents
	_			_
	_			_
	_			_
	_			_
	_			
			·	

Reason for n	o available job op _l	nortunities:		
		portunities.	 	

NEW HIRES (GENERAL CONTRACTOR)

General Contractor	
Project Name	
Period Covered	
Date Submitted	

Employee Name Position		Length of Employment by Dates		Length of Employment in Hours		Section 3 New Hire	Non- Section 3 New
		Start	End	Proposed	Actual		Hire

If you have new hires, but none are Section 3 residents, please explain.			

NEW HIRES (SUBCONTRACTOR)

Subcontractor Name	
Project Name	
Period Covered	
Date Submitted	

Start End Proposed Actual Hire	Employee Name Position		Length of Employment by Dates		Length of Employment in Hours		Section 3 New Hire	Non- Section 3 New
			Start	End	Proposed	Actual		Hire
			1					

If you have new hires, but none are Section 3 residents, please explain.			

	PROFES	SIONAL (CONTRAC	JIS HIMES	SHEET		
Name							
Address							
City							
State		Zip					
		•		1			
Period	from			to			
Draw #					•		
		•					
Job Category	Hours Worked by Existing Staff	Number of Non- Section 3 New Hires	Hours Worked by Non- Section 3 New Hires	Number of New Hires that are Section 3 Residents	Hours Worked by New Hire Section 3 Residents	Number of Section 3 Trainees	Hours Worked by Section 3 Trainees
Professionals							
Laborers							
Office / Clerical							
Subcontractors (list):							
other:							
other:							
Submitted by Signature							
Print Name					Date		

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Section 3 Acknowledgement

I	_, hereby acknowledge that I have received a copy of the KNHS
Section 3 Handbook and under	stand the obligations set forth by the handbook in regards to
Section 3 Contract compliance.	
Signature	
Print Name	
Date	