

## **10.2.2 Section 3 Requirements**

Section 3 of the Housing and Urban Development Act of 1968 requires that, to the greatest extent feasible, economic opportunity generated by CDBG funds and other HUD assistance, most importantly employment, is directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, as well as residents of the community in which the federal funds are spent.

HUD established benchmarks for Section 3 goals and expects the TxCDBG program to cumulatively report 25% of the total labor hours for grant-assisted projects each year as performed by Section 3 Workers; the HUD benchmark for Targeted Section 3 Workers is 5% of total labor hours worked. Failure to achieve these benchmarks requires additional justification by the state, which may necessitate additional information from Grant Recipients.

HUD's regulations for implementing Section 3 mandates can be found at 24 CFR Part 75. These administrative rules establish the requirements to be followed to ensure the objectives of Section 3 are met. Federal rules do not require Grant Recipients to contract or subcontract with a Section 3 business concern, nor do the rules require hiring of Section 3 workers. However, Grant Recipients must be able to demonstrate that, where possible, contracting, employment, and training opportunities were made available to workers and businesses meeting Section 3 designation criteria.

### **Applicability**

Section 3 requirements apply to all TxCDBG grants unless otherwise identified by this Implementation Manual or the Grant Agreement.

- The requirements apply to the entire project that is funded with Section 3 covered financial assistance, regardless of whether the Section 3 project is fully- or partially-funded with CDBG assistance.
- All construction and administrative services contracts must comply with the programmatic requirements below.
- All work performed by employees of the Grant Recipient and its partners, regardless of whether force account cost reimbursement is requested, must comply with the programmatic requirements below.
- Section 3 goals and data reporting requirements generally do not apply to contracts for materials, planning, and professional services. Professional services include non-construction services that require an advanced degree or professional licensing (e.g., engineering, architecture, land surveying, accounting).

### **Section 3 Compliance**

Grant Recipients must complete each of the following steps in order to be considered compliant with Section 3 programmatic requirements – key terms for these steps are described in the following sections:

Step 1: Identify the Section 3 Service Area. A map of this service area must be submitted to TDA, as described in Chapter 2, Group A requirements.

Step 2: Facilitate contracting opportunities for Section 3 Businesses. Prior to procuring or selecting any contract for construction services, the contracting opportunity must be reported to the resources below, in addition to any public advertisements required by Chapter 5 Procurement. The

opportunity may be reported to these resources by any interested party. Retain a screen shot of each resource demonstrating that the data was provided at least ten business days prior to the bid opening date for each opportunity unless otherwise directed by TDA staff:

- HUD's Section 3 Opportunity Portal:  
<https://hudapps.hud.gov/OpportunityPortal/search.action>–
  - Recipient Tax ID:746027560
  - Recipient Agency: Texas Department of Agriculture
  - Recipient Agency Location: Texas
  
- At least one organization providing access to and assistance with bid opportunities, particularly those that recognize small and disadvantaged businesses that are likely to include Section 3 Businesses, such as:
  - Public/non-profit organizations;
  - Private plan rooms; or
  - Local Workforce Solutions Offices (WIOA One Stop Shop), if applicable – see <https://www.twc.texas.gov/directory-workforce-solutions-offices->;
  
- TDA-GO! Materials and Services Record Pre-Selection Clearance data including bid opening date. This requirement is effective beginning 30 days after the launch of the TDA-GO Project Management module.

**NOTE:** TDA will ensure that Section 3 Businesses are included in the pre-qualified grant administrator application process, therefore this step is not required for administration services.

**Step 3: Facilitate general employment opportunity information for Section 3 Workers.** In an open meeting of the local governing body, the Grant Recipient must present the Section 3 goals of the CDBG program. This item must be reflected in the agenda and/or minutes of the meeting. TDA recommends completing this step at the meeting in which the first construction contract is awarded; however, in all cases it must be completed prior to requesting grant funds to reimburse construction costs - see Chapter 2, Group B requirements. The presentation must include:

- HUD's Section 3 Opportunity Portal -  
<https://hudapps.hud.gov/OpportunityPortal/search.action>
- Texas Workforce Solutions - WorkInTexas.com and
- other Section 3 information as described in the *Section 3 Sample Presentation to Local Community (Form A1024)*.

**Step 4: Facilitate specific employment opportunities for Section 3 Workers.** If new employees are needed OR if vacancies exist for work on the TxCDBG-assisted project, the Grant Recipient and/or contractor must access the following resources to identify potential Section 3 employees—a printout of the results of the portal search in the local files is acceptable documentation of this effort. Grant Recipients and contractors are not required to employ Section 3 workers, nor to modify the qualifications or requirements of the position, but must demonstrate an effort to identify potential employees as appropriate, including documentation for any applicants that are Section 3 Workers.

- HUD's Section 3 Opportunity Portal - <https://hudapps.hud.gov/OpportunityPortal/search.action;> .
- Texas Workforce Solutions - WorkInTexas.com; and
- Local Workforce Solutions Office (WIOA One Stop Shop), if applicable - <https://www.twc.texas.gov/directory-workforce-solutions-offices-services>.

**Step 5: Ensure Contractor compliance.**

- Include the required contract provision in all applicable contracting opportunities. See Appendices D and F.
- Collect records for all construction and administration service providers, including subcontractors, documenting the labor hours performed by each employee and the Section 3 status of each employee. Generally, this consists of payroll records and certification of status for each employee. A summary of this information must be reported to TDA as part of the Project Completion Report, and support documentation must be maintained in the local files.

**Step 6: Additional Efforts.** Record all additional efforts to ensure Section 3 Businesses have opportunity to compete for contracting opportunities, and that Section 3 Workers and Targeted Section 3 Workers have the opportunity to benefit from the TxCDBG assistance. These efforts support the state's explanation, should the program not meet the established benchmarks, and identify areas where the TxCDBG program could support Section 3 Business and Workers in the future.

Examples include:

- Outreach efforts
- Training or apprenticeship opportunities
- Technical assistance to Section 3 Workers (multiple types)
- Technical assistance to Section 3 Business concerns
- Job fairs
- Divide contracts into smaller jobs
- Bonding assistance
- Other Business registries

**Key Definitions**

In order to meet the Section 3 reporting requirements, all workers for the project must be classified as one of three worker categories – report the most restrictive category that is appropriate for an individual worker:



**Criteria for All Worker Designation**

All individuals performing applicable work (labor hours) for the TxCDBG-funded project that do not meet one of the Section 3 designations are reported only under the All Workers category.

### Criteria for Section 3 Worker Designation

To comply with Section 3 Reporting requirements, the Grant Recipient must determine whether each individual performing construction or administrative work on the project meets the criteria for a Section 3 Worker. A Section 3 Worker is any worker who currently, or when hired by the current employer within the past five years, fits at least one of the following categories:

- The worker's individual income for the previous or annualized calendar year is below the income limit for a family size of **one (1)** published on TDA's website for use in income surveys. *Income limits are based on the county in which the employee resides. NOTE: information regarding family size or income from other family members is not required.*
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

Each Section 3 Worker's status must be documented with one of the following:

- A worker's self-certification that their income is below the income limit using the TxCDBG Income Survey Questionnaire, clearly marked in the **place field** as "Section 3 Income Only";
- A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
- Certification from a public housing authority (PHA), or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
- *Section 3 Status Summary Certification Form (Form A1022)*, certifying that each listed worker's income from that employer is below the income limit. This certification is based on a calculation of what the worker's wage rate would translate to if annualized on a full-time basis;
- *Section 3 Status Summary Certification Form (Form A1022)*, if the employer is a Section 3 business, identifying all workers for the project; or
- *Employer-generated document that includes the worker name and assignment of Section 3 status based on the employer's review of the annualized income of the worker, and is signed by the employer.*

### Criteria for Targeted Section 3 Worker Designation

The Targeted Section 3 Worker reflects both statutory and policy priorities to direct employment and economic opportunities to low- and very low-income individuals.

For CDBG, the definition of a Targeted Section 3 Worker is a Section 3 worker that is

- employed by a Section 3 business (see Section 3 Business definition above); or
- a worker who 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 of the project; or
  - A YouthBuild participant.

*If reporting Targeted Section 3 Workers, mark the location of each Targeted Section 3 Worker's residence on the Service Area map. Employers must maintain the current address for each employee, and must provide this information upon request by TDA or other authorized agencies, while safeguarding as sensitive information.*

### **Section 3 Service Area**

To correctly identify Targeted Section 3 Workers, the Grant Recipient must first confirm the Section 3 Service Area. A Section 3 Service Area for a TxCDBG project is determined as follows:

- Identify the project site. For infrastructure projects, the project site is the area included in the Environmental Review project description. The center point of this project site is the basis for the Section 3 Service Area.
- Identify a circle with a one-mile radius, with the project site central point as the origin.
- Calculate the population that resides within the one-mile circle. If less than 5,000 people according to the most recent U.S. Census, then aggregate census block group geographies totaling a minimum of 5,000 persons that both
  - surrounds all components of a Project Site, AND
  - most closely approximates a circle shape.

The Service Area map must include:

- Grant Recipient name and contract number;
- the project center point;
- a circle around that center point that is 1 mile circumference;
- if the population within the 1 mile circle is less than 5,000 persons –
  - labeled block group areas surrounding the center point that are being claimed for the service area;
  - a table or other documentation showing the census population in each of the block groups on the map, and the sum of those populations;
- If the population within the 1 mile circle is greater than or equal to 5,000 persons –
  - statement describing how this population was determined;
  - if applicable – labeled block groups and population data used to inform the Grant Recipient's determination that the population exceed the threshold.

For examples, see *Sample Section 3 Service Area (Form A1021)*. TDA has discretion to determine whether the geographies identified by the subrecipient are the appropriate Service Area, and to require revision if necessary.

### **Criteria for Section 3 Business Designation**

One way to target grant funding to the workers that are described in HUD's Section 3 goals is to identify Section 3 Businesses. Section 3 Businesses must meet at least one of the following regulatory criteria, documented within the last six-month period:

- It is at least 51% owned and controlled by low- or very low-income persons;
- Over 75% of the labor hours performed for the business over the previous three-month period are performed by Section 3 Workers; or
- It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

To register as a Section 3 Business, provide the required information for the HUD Section 3 Business registry at: [HUD Section 3 Business Registry](#).

~~Documentation of Section 3 Business status can be met in one of two ways:~~

- ~~• Certification as Section 3 Business (Form A1023), or~~
- ~~• Inclusion on any list or database published by HUD reporting Section 3 status.~~

Section 3 Business status will be reported once for each contract for services. Once a business is determined to be a Section 3 Business, the designation will remain in effect for the life of the contract for services. Records supporting this status must be made available upon request to TDA, HUD, or other state or federal authorized officials. Please redact Personally Identifiable Information (PII) from payroll records prior to releasing any documentation under this requirement. For construction contractor certified payroll reports, HUD requires first payroll on which each employee appears to include the employee's name and an individually identifying number. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees.

**NOTE:** Section 3 Businesses may only be selected in accordance with the procurement standards of Chapter 5—including price, ability, and willingness to comply with program requirements, to be considered lowest responsible bidders on contracting opportunities being sought. However, Grant Recipients should make every effort to ensure that Section 3 Businesses are able to effectively participate in the opportunity. In turn, contractors and others should direct their efforts to award subcontracting opportunities generated from the expenditure of housing and community development financial assistance to Section 3 Businesses.

**Appendix D**  
**PART IV**  
**TERMS AND CONDITIONS**

19. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

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 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 part 75 regulations.

c. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, 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 75. 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 75.

d. 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. Minimum expectations of effort to direct employment opportunities to such workers are identified in the TxCDBG Project Implementation Manual.

**Appendix F**  
**GENERAL CONDITIONS - PART I**  
**FOR CONSTRUCTION**

45. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

- (a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) 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 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 part 75 regulations.
- (c) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, 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 75. 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 75.
- (d) 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. Minimum expectations of effort to direct employment opportunities to such workers are identified in the TxCDBG Project Implementation Manual.
- (f) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.



## CONTRACTOR CERTIFICATIONS

U.S. Department of Housing and Urban Development

### CERTIFICATION OF BIDDER REGARDING CIVIL RIGHTS LAWS AND REGULATIONS

#### INSTRUCTIONS

CERTIFICATION OF BIDDER REGARDING Executive Order 11246 and Federal Laws Requiring Federal Contractor to adopt and abide by equal employment opportunity and affirmative action in their hiring, firing, and promotion practices. This includes practices related to race, color, gender, religion, national origin, disability, and veterans' rights.

NAME AND ADDRESS OF BIDDER (include ZIP Code)

#### CERTIFICATION BY BIDDER

Bidder has participated in a previous contract or subcontract subject to Civil Rights Laws and Regulations.

Yes

No

The undersigned hereby certifies that:

The Provision of Local Training, Employment, and Business Opportunities clause (Section 3 provision) is included in the Contract.

The Equal Opportunity clause is included in the Contract (if bid equals or exceeds \$10,000).

Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?

Yes

No

NAME AND TITLE OF SIGNER (Please type)

SIGNATURE

DATE