

**CALHOUN COUNTY
BOARD OF COMMISSIONERS
POLICY STATEMENT**

SUBJECT: SECTION 3 HUD POLICY	DATE APPROVED: 11/5/2015	EFFECTIVE: Immediately	POLICY NO. 406
		REPLACES: NEW	

BACKGROUND: The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (herein "Section 3") is to ensure that employment and other economic opportunities generated by certain Housing and Urban Development ("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 individuals, especially recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very-low income individuals.

A business concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence that the business concern qualifies as a Section 3 business concern. The Section 3 business must also be able to demonstrate its ability to complete the 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, 24 CFR 85.36b(8).

Contractors who do not qualify as Section 3 business concerns, but who enter into contracts covered by Section with Calhoun County, must agree to comply with certain general conditions. All contractors and subcontractors, including Section 3 businesses, must comply with these general conditions. Included in these conditions is the requirement that each contractor and subcontractor submit with each pay request a report of Section 3 compliance. Failure to comply with these general conditions may lead to sanctions which can include termination of the contract for default and suspension or debarment from future HUD-assisted contracts.

POLICY STATEMENT: It is the policy of the Calhoun County to require its contractors to provide equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, age, weight, height, sex, national origin, genetic information, disability, or veteran status, and to take action to ensure that both job applicants and existing employees are given fair and equal treatment.

To the extent require by law, Calhoun County implements this Section 3 policy in part through the awarding of contracts to contractors, vendors, and suppliers, to create employment and business opportunities for Section 3 residents of the Calhoun County and other qualified low- and very low-income persons residing within the County limits.

The goal of this policy is to reach a reasonable level of success in the recruitment, employment, and utilization of Calhoun County residents and other eligible persons and businesses by contractors working on contracts partially or wholly funded by HUD. When required by law, Calhoun County shall examine and consider a contractor's or vendor's potential for success in providing employment and business opportunities to Section 3 residents prior to acting on any proposed contract award which is covered by this policy.

Section 3 requires Calhoun County to ensure that employment and other economic and business opportunities generated by the Department of Housing and Urban Development (HUD) financial assistance, to the greatest extent feasible, and consistent with existing federal, state, and local laws, be directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low- and very-low income persons.

APPLICABILITY: Applicability for Section 3 covered housing and community development assistance is as follows:

- A. **Recipient:** Calhoun County is required to follow Section 3 on housing and community development programs for all projects that receive HUD assistance.
- B. **Contractor and Subcontractor:** Section 3 is required by contractors and subcontractors performing work on all Section 3 covered programs.

PROCUREMENT REQUIREMENTS: Calhoun County will incorporate Section 3 requirements in the bidding documents for all procurements that include HUD funding. All responding bidders must certify their acknowledgement of the Section 3 contracting and employment provisions required by this Act. Bidders must complete an "*Affidavit of Contractor Concerning Section 3 Covered Contracts*" and include it in their bid packet. Failure to complete and include this form in their bid submittal may deem their bid non-responsive. The awarded contractor will be required to maintain all the required documentation to support their compliance with Section 3.

- A. **Numerical Goals for Meeting Section 3 Requirements:** Calhoun County does not directly engage in training or hiring in regards to Section 3 but, when required by law to do so, awards contracts to contractors that may be required to hire, train, and subcontract to Section 3 businesses. Calhoun County will ensure that, to the greatest extent feasible, contractors will provide training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns.

In accordance with 24 CFR 135.30 (c); the numerical goals set forth in this section apply to contracts awarded in connection with all Section 3 covered projects and Section 3 covered activities. Each recipient and contractor and subcontractor may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns the following:

1. At least 10 percent 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 for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and
2. At least three (3) percent of the total dollar amount of all other Section 3 covered contracts.

B. Contractor/Subcontractor Responsibilities: If a contractor/subcontractor needs to hire new persons to complete a 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. The following numerical goal applies to contractors and subcontractors:

1. At least 30 percent of new hires on the Section 3 covered contract shall be Section 3 residents.

Section 3 residents or business concerns are not guaranteed employment or contracting opportunities under Section 3. 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.

C. Definition of a Section 3 Business Concern: A Section 3 Business Concern is a business concern, is defined by the following:

1. A business that is fifty-one percent (51%) or more owned by Section 3 residents; or
2. A business whose permanent, full-time employees include persons, at least thirty percent (30%) of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
3. A business that provides evidence of a commitment to subcontract in excess of twenty-five percent (25%) of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in items (1) or (2) above.

D. Definition of a Section 3 Resident: For purposes of Calhoun County, a Section 3 resident is defined as one of the following:

1. A Battle Creek Housing Commission Resident; or
2. An individual who lives in Calhoun County and whose income falls within the guidelines for low- or very low income.

E. Section 3 Income Limits: Residents residing within the Calhoun County who meet the income limits set forth on the HUD income requirement table can qualify for Section 3 Status. The table is updated by HUD periodically.

Business Concerns Seeking Section 3 Preference in Bid Awards

Businesses that meet the requirements of a Section 3 business concern and wish to seek consideration for preference in bid awards must complete the "*Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability*" form in their bid submittal. All supporting documentation required must be included to be eligible for Section 3 preference.

Order of Providing Section 3 Preference in Bid Awards

When considering the award of contracts to business concerns, and more than one Section 3 business concern is being considered, priority consideration shall be given, where feasible to the following:

1. A Section 3 business concern that provides economic opportunities for Calhoun County Section 3 residents (category 1 businesses);
2. Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youth Build programs (category 2 businesses); or
3. Other Section business concerns.

Procurement Preference

This section provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the Section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

A. Small Purchase Procedures

For Section 3 covered contracts aggregating no more than \$100,000, the methods set forth in this paragraph (A) or the more formal procedures set forth in paragraphs (B) and (C) of this section may be utilized.

1. **Solicitation.** Quotes may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of the following:
 - a. the Section 3 covered contract to be awarded with sufficient specificity;
 - b. the time within which quotes must be submitted; and
 - c. the information that must be submitted with each quote.

If the method described in paragraph is utilized, there must be an attempt to obtain quotes from a minimum of three qualified sources to promote competition. Fewer than three quotes are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quote received in response to a solicitation provided the price is reasonable. In all cases, the

contracting party shall document the circumstances when it has been unable to obtain at least three quotes.

2. Award.

- 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 quote. If the Section 3 businesses' quote is not the lowest responsive quote, then the contract will be awarded to the next lowest responsive quote from a certified Section 3 business if it is not more than 5% higher than the lowest responsive quote.
- b. Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotes 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 quote. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 5 to 10 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 business concerns. The contract shall be awarded to the responsible firm whose quote is the most advantageous, considering price and all other factors specified in the rating system.

B. Sealed Bids: For procurement by sealed bids (Invitations for Bids), preference in the award of Section 3 covered contracts that are awarded under a sealed bid process may be provided as follows:

1. **Solicitation:** Bids shall be solicited from all businesses (Section 3 business concerns, and non-Section 3 business concerns).
2. **Award:** Shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid is within the following guideline:
 - a. The bid from the Section 3 business concern is not more than 5% higher than the total bid price of the lowest responsive bid from any responsible bidder.

If no responsive bid by a Section 3 business concern meets the requirements of paragraph of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

C. Competitive Proposals: Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).

1. **Solicitation:** For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (“RFP”) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.
2. **Evaluation & Award:** One of the evaluation factors shall address both the preference for Section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (Section 3 strategy), as disclosed in proposals submitted by all business concerns (Section 3 and non-Section 3 business concerns). This factor shall provide for a range of 5 to 15 percent of the total number of available points to be set aside for the evaluation of these two components.
 - a. The component of this evaluation factor designed to address the preference for Section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.
 - b. With respect to the second component (the acceptability of the Section 3 strategy), the RFP shall require the disclosure of the contractor's Section 3 strategy to comply with the Section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable Section 3 strategy. The contract award shall be made to the responsible firm (either Section 3 or non-Section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

Enforcement

To enforce the decision-making process pertaining to determining applicable percentages for resident hiring, enforcement strategies are set forth below.

- A. **Discussion of contract requirements:** During the pre-bid and/or pre-construction conference, the objective shall be to provide Section 3 information to the contractor prior to commencement of the work/project. The following contract requirements shall be discussed in detail:
 1. Davis-Bacon (Construction contracts only);
 2. Calhoun County Purchasing Policy; and
 3. Minority and Women Owned Business Participation.
- B. **Requirements for non-Section 3 contractors:** Calhoun County will, *to the greatest extent feasible and to the extent required by applicable law*, offer contracting opportunities to Section 3 business concerns. However, in the event no Section 3 business

bids on a contract, or bids but is not able to demonstrate to the satisfaction that it has the ability to perform successfully under the terms and conditions of the proposed contract, then that contract will be awarded to a non-Section 3 business concern that can meet the terms and conditions of the proposed contract through the competitive bidding process.

That business concern must meet, as all businesses must (including Section 3 businesses), the general conditions of compliance as described below:

1. Submitting a list of all positions necessary to complete contract, name of employees who will fill those positions, names of all other employees.
2. Posting notices of any vacant positions, including training and/or apprenticeship positions, qualifications for positions, place where applications will be received and starting date of employment.
3. To the greatest extent possible, making vacant positions available, including training and/or apprenticeship positions, to Section 3 residents (all categories) in order of priority.
4. As positions are vacated during the term of the contract, applying guidelines enumerated in numbers 2 and 3 above.
5. Submitting Compliance Reports as required.
6. If notified of non-compliance, correcting non-compliance within allowable time period.

C. Internal Section 3 Complaint Procedure: In an effort to resolve complaints generated due to non-compliance through an internal process, Calhoun County encourages submittal of such complaints to its Community Development Director:

1. Filing Requirements:
 - a. Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR 135.
 - b. Complaints must be filed within thirty (30) calendar days after the complainant become aware of the alleged violation.
2. Investigation Requirements:
 - a. An investigation will be conducted if complaint is found to be valid. Calhoun County Community Development Director will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.

- b. The Calhoun County Community Development Director will provide written documentation detailing the findings of the investigation of Calhoun County. Calhoun County will review the findings for accuracy and completeness before it is released to complainants. The findings will be made available no later than thirty (30) days after the filing of complaint.

If complainants wish to have their concerns considered outside of Calhoun County a complaint may be filed with:

Assistant Secretary for Fair Housing and Equal Opportunity
United States Department of Housing and 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 mission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

This Policy can be amended or terminated at any time by the Board of Commissioners. Forms required pursuant to this policy are available upon request from the Calhoun County Community Development Director.