



**PORTSMOUTH HOUSING AUTHORITY
SECTION 3 POLICY**

**Economic Opportunities for PHA Residents and Other
Low- and Very-Low Income Persons**

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1. **PHA's Section 3 Program**

The Portsmouth Housing Authority's (PHA or Authority) Section 3 Program outlines Authority's commitment to leverage, to the greatest extent feasible, the federal housing funds it receives and awards in the form of service contracts into training, employment and business opportunities for PHA residents, PHA leased housing participants, the low and very low income persons living in and around the City of Portsmouth, and business entities that employ or are owned by PHA residents, PHA leased housing participants, and/or the low and very low income residents of the greater Portsmouth area.

PHA's Section 3 Program standards, procedures and practices described in this Policy, as well as in the forms and processes referenced in this Policy, represent PHA's implementation of and compliance with Section 3 of the Housing and Urban Development Act of 1968 as well as PHA's Section 3 Program forms and documents, as such may be amended over time, are incorporated in and made a part of this Policy.

2. **Key Definitions**

Recipient is used throughout this document to refer to any entity that receives Section 3 covered funding from the PHA or is an entity that is subject to award of a PHA administered federally funded contract. Depending on context, the term may refer to bidders, sub-bidders, contractors, sub-contractors, business entities, developers, suppliers, vendors, service providers, and public or private organizations and/or respondents to and involved with PHA federal funded procurements and contracts. The PHA, as a recipient of federal housing funds subject to Section 3, also falls within the definition of recipient.

Any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any state unit of local government, PHA, or other public body, public or private nonprofit organization, private agency or institution, mortgager, developer, limited divided sponsor, builder, property managers, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

Section 3 covered activity means: any activity, procurement or contract funded by Section 3 covered HUD assistance including, but not limited to: all manner of procurements; and professional and construction service contracts and subcontracts. Section 3 covered activities do not include procurements or contracts for the purchase of supplies and materials that do not require furnishing of labor, time, and/or effort relating to the installation of the supply/or material.

Section 3 business concern means: a business entity organized in accordance with applicable state law and licensed in New Hampshire to conduct business for which it was formed; and (1) that is 51% or more owned by Section 3 residents; or (2) whose permanent full-time employees include persons, at least 30 percent 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) that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (1) or (2) above.

When contracting with Section 3 business concerns recipients will consider the following:

1. Section 3 business concerns 51% or more owned by residents of the subject PHA development or whose full-time, permanent workforce includes 30% of these persons as employees (category 1).
2. Section 3 business concerns 51% or more owned by residents of other PHA developments or whose full-time, permanent workforce includes 30% of these persons as employees (category 2);
3. Business concerns that are 51% or more owned by Section 3 residents, or whose permanent, full-time workforce includes no less than 30% Section 3 residents, or that subcontract in excess of 25% of the total amount of subcontracts to business concerns (category 4).

A Section 3 business concern seeking a contract or subcontract must be able to demonstrate to the party awarding the contract or subcontract that it has the ability to perform successfully under the proposed contract terms and conditions.

Section 3 resident means: an individual who (1) is at least 18 years of age and lawfully resides at any of the public housing developments owned, operated, or funded in whole or in part by the PHA or (2) is a low- or very-low income resident of PHA-subsidized or non-PHA property in the Portsmouth area.

(1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) *A low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that

such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(ii) *A very low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

3. Section 3 Compliance Requirements

The Portsmouth Housing Authority may demonstrate compliance with PHA's Section 3 Program by providing training, employment, contracting, and other economic opportunities to Section 3 residents and Section 3 business concerns and meeting the numerical goals set forth below. The goals represent minimum targets for a Section 3 covered contract.

The PHA hiring and training goal is that at least **thirty percent (30%)** of new hires and **thirty percent (30%)** of trainees in any fiscal year constitute Section 3 residents. This requirement applies to all new hiring and training opportunities generated from the Section 3 covered activity. A "new hire" is an employee for a permanent, temporary, or seasonal employment opportunity. An employee returning to the payroll after a period of unemployment is generally considered a new hire for Section 3 purposes.

The PHA Section 3 contracting goal is for 10% of the total dollar amount of all covered construction contracts and 3% of the total dollar amount of all covered non-construction contracts to be awarded to Section 3 business concerns.

Section 3 Program requirements apply to all PHA contractors and subcontractors and to all PHA federally funded contracts regardless of the contract dollar amount.

If no new hires are needed for a PHA project, the PHA will not be required to create positions solely for the sake of Section 3 Program compliance.

In years the PHA has not met the goals, PHA shall document why it was not feasible to meet the goals. Such justification must include documented evidence of the actions taken to meet the Section 3 Program numeric goals.

4. Selection Priority and Procedures

Section 3 Resident Hiring and Training Procedures

When new hires are needed, PHA will:

1. Notify and Encourage Section 3 residents about training and employment opportunities arising out of any Section 3 covered activity, and provide a preference to hiring Section 3 resident or business. The PHA will do this by:
 - a. Posting job or training advertisements in all PHA offices and common areas where notices are posted.
 - b. Sending via electronic mail to all tenant email addresses the advertisement and instructions on how to apply for any training and employment opportunity.
 - c. Sending via US Mail or hand deliver a paper copy of such advertisement of the opportunity to all certified Section 3 residents.
 - d. Posting copies of any notice of employment or training opportunity in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice.
 - e. Sending the employment notice to local area agencies that serve low income people including but not limited to:
 - i. City of Portsmouth Welfare Office
 - ii. Operation Blessing
 - iii. The Salvation Army
 - iv. Families First
 - v. New Hampshire Employment Security
 - vi. Rockingham County Community Action Program
2. Preferences. Whenever reasonable, the PHA will award contracts to eligible Section 3 businesses.
3. Document actions taken to comply with these requirements, the results of such actions and impediments encountered, if any. The PHA will do this by:

- a. The PHA shall keep a current file of local newspaper advertisements of employment opportunities and copies of flyers posted at PHA developments to show that has attempted to recruit Section 3 residents.

A. Section 3 Business Concern Contracting

The PHA's contracting goals apply to all contracting and subcontracting needs generated by the Section 3 covered activities. For construction contracts, PHA's goal is to award at least ten percent (10%) of the total dollar amount of contracts for building trades work for maintenance, repair, rehabilitation, modernization, construction and to award at least three percent (3%) of the total dollar amount of all other PHA contracts to qualifying Section 3 business concerns.

If a Section 3 covered activity does not generate contracting opportunities, the recipient is not required to create contracts simply to fulfill the Section 3 Program requirements (e.g., so-called single-trade construction projects may not require sub-contracts or additional contracting).

When Section 3 covered activity is generated, recipients will at a minimum:

1. Notify and encourage Section 3 business concerns about contracting opportunities arising out of any Section 3 covered contract. The PHA will do this by:
 - a. Posting information regarding Section 3 and how to register a business on our website at www.porthousing.org.
 - b. Including the Section 3 clause in all bid packages.
 - c. Inviting businesses to register as a Section 3 business.
 - d. Sending contracting opportunities to the New Hampshire Small Business Development Center.
2. Document actions taken to comply with these requirements and the results of such actions and impediments encountered, if any. The PHA will do this by:
 - a. PHA shall keep a current file of advertisements for any contracting opportunities.
 - b. PHA shall submit a memo to the Section 3 file when our staff has the opportunity to encourage a business to register as a Section 3 business.

Bids or proposals that fail to submit the required forms and/or fail to adequately incorporate Section 3 Program requirements shall be rejected by the PHA as non-responsive.

B. Section 3 Database System

The PHA shall build and maintain a list of eligible Section 3 residents and self-certified Section 3 business concerns. The Section 3 Resident Database system is incorporated into the PHA's enterprise wide software system (Ten Mast) which contains all PHA residents and PHA leased housing participants, and which will also track which residents have completed a Section 3 Resident Application available on the PHA website (porthousing.org) or from the PHA central office.

PHA residents will be informed of Section 3 upon lease up and annually upon recertification, and be encouraged to register as a Section 3 resident by using the Section 3 Affidavit form, available on the PHA website, verifying proof of residency and income, if applicable.

All contractors and businesses seeking Section 3 business concern status must complete the Section 3 self-certification process. Such self-certification will be completed on the PHA Section 3 Business Self-Certification form.

The PHA will advertise in local media on an annual basis to encourage residents and businesses to register as a Section 3 resident or business.

The PHA will assess the effectiveness of our Section 3 outreach annually as a part of the Annual Plan process in October of each year and include any recommended changes to our annual goals and objectives.

D. Section 3 Coordination

PHAs Section 3 Coordinator will administer the PHA's Section 3 Program. The PHA will monitor compliance throughout the duration of a Section 3 covered activity, and determine whether the PHA's Section 3 Program requirements have been met as a condition of contract award, periodic contract payment, and disbursement of final payment. Included on the PHA Section 3 team is the Architect/Engineer of the specific contract under review.

Prior to the approval of any Section 3 covered contract, the PHA Executive Director and/or Architect/Engineer must issue a Section 3 Compliance Memorandum indicating that the bidder or proposer has followed all required pre-contract award Section 3 Program requirements and is otherwise in compliance with the PHA's Section 3 Program.

E. PHA Section 3 Forms

PHA Section 3 Program Forms are to assist contractors in certifying that they will comply with all applicable Section 3 Program requirements, will not attempt to circumvent Section 3 employment opportunities by hiring prior to contract execution, and will be responsible for enforcing the Section 3 Program compliance of its subcontractors. The forms also require recipients to forecast a project's Section 3 Program, hiring,

training, and contracting opportunities. For residents and businesses wishing to be certified as Section 3, these forms are as follows:

1. Section 3 Resident Affidavit.
2. Section 3 Resident Application
3. Section 3 Business Concern Self-Certification Application

For Section 3 business concerns that have been awarded a Section 3 covered contract, shall submit:

4. Section 3 numbers with their certified payroll documents on a monthly basis.
5. HUD 60002 form will be submitted at the completion of the contact the contractor will submit a summarizing the Section 3 Program activities for the entire project.

4. Complaint Procedure

In an effort to learn of complaints of non-compliance relating to its Section 3 Program, PHA encourages Section 3 residents, Section 3 business concerns, recipient and private citizens to submit any such complaints to the PHA Executive Director or Legal Counsel as follows:

Allegations of non-compliance or other complaints regarding PHA's Section 3 Program may be filed orally or in writing. A PHA staff member will help to commit the complaint to writing. Complaints must contain the name of the complainant and a brief description of the alleged violation. Complaints should be addressed to:

Portsmouth Housing Authority
Executive Director
245 Middle Street
Portsmouth, New Hampshire 03801

Complaints must be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation. The Executive Director and PHA Legal Counsel will conduct an informal investigation affording all interested parties the opportunity to submit testimony and evidence pertinent to the complaint. The Executive Director and the PHA Legal Counsel will issue a letter detailing the findings of the investigation no later than thirty (30) calendar days after the filing of the complaint.

Glossary

PHA means Portsmouth Housing Authority

PHA Leased Housing means an individual or family that has been admitted to and is currently assisted by a housing program administered by the PHA Leased Housing Department.

Contractor means any entity which contracts to perform work in connection with a Section 3 Covered Project.

Employment opportunities means, with respect to Section 3 covered housing assistance, all employment opportunities arising in connection with Section 3 covered projects including management and administrative jobs. Management and administrative jobs may include architectural engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, for example, construction manager, relocation specialist, payroll clerk, etc.

HUD means the United States Department of Housing and Urban Development.

Neighborhood means a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances or other local documents as a neighborhood.

New hire means a full-time employee hired for permanent, temporary or seasonal employment. An employee returning to the payroll after a period of unemployment is generally considered a new hire for Section 3 purposes.

Project development means the public housing development or developments for which the recipient is performing work under a Section 3 Covered Contract.

Recipient means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means a business entity organized in accordance with applicable state law and licensed in New Hampshire to conduct the business for which it was formed; and (1) that is 51% or more owned by Section 3 residents; or (2) whose permanent, full-time employees include persons, at least 30 percent 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) that provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in (1) or (2) above.

Section 3 Compliance Plan means the plan submitted by a recipient detailing how it intends to comply with the requirements of this Plan.

Section 3 Covered Contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered projects. “Section 3 covered contracts” do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). “Section 3 covered contracts” also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 Joint Venture means an association of business concerns formed by a written joint venture agreement to engage in and carry out a specific business venture, where one of the business concerns qualifies as a Section 3 business concern and:

1. Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
2. Performs at least 25% of the work and is contractually entitled to compensation proportionate to its work.

Section 3 resident means an individual who (1) is at least 18 years of age and lawfully resides at any of the public housing development owned, operated or funded in whole or in part by the PHA or (2) is a low- or very low-income resident of PHA-subsidized or non-PHA property in the Portsmouth area.

Subcontractor means any entity (other than an individual who is an employee of the Contractor) which has a contract with a Contractor to undertake a portion of the Contractor's obligation for the performance of the work.

The PHA expresses its gratitude to both the Boston Housing Authority and the U.S. Department of HUD for their guidance and assistance in the development of this Section 3 Policy.

**SECTION 3 CLAUSE OF THE HOUSING AND
URBAN DEVELOPMENT ACT OF 1968**

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 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 the appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon 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 filed (1) after the contractor is selected but before the contract is

- executed, and (2) 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 and opportunities for training and employment shall be given to Indians, and (ii) 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).

END OF SECTION 3 CLAUSE