

Section 3: It's Not as Complicated as You Might Think

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Presenter

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What will we accomplish during this presentation?

- **A renewed commitment to conduct all housing agency (HA) procurement and contract activities in an open, fair, reasonable and HUD-compliant manner.**
- **An ability to locate in the Handbooks and regulations what HUD wants and requires pertaining to Section 3.**
- **A clear understanding of what we want to accomplish, what we are allowed to do, what we must do, and the myths that seem to continue, each a pertains to Section 3.**
- **An ensuing improved relationships with our Board, our ED, our clients, and our contractors and suppliers.**
- **A better understanding of Gifford's Gospels.**

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Gifford's Gospels

- No. 1: "If it ain't written, it don't exist."**
- No. 2: "There are no coincidences in life—everything happens for a reason."**
- No. 3: "Whatever we do must be open, fair, reasonable and justified."**
- No. 4: "Contractors are not our friends—they are our partners."**
- No. 5: "Nothing is free—there is a price to pay for everything."**
- No. 6: "Be prepared—if something can go wrong, it will happen at the worst possible moment."**
- No. 7: "Luck is where preparation and opportunity meet."**
- No. 8: "He/she who writes the contract, the contract is in favor of."**

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- **What will we do today?**
 - **Briefly review Sections 15.1 and 15.2 of Chapter 15 of HUD Procurement Handbook 7460.8 REV 2.**
 - ✓ **This PPT and the highlighted copy of Chapter 15 can both be found within the Section 3 area of my web site, procurementassistance.org.**
 - **Briefly review §24 CFR 135, *Economic Opportunities for Low- and Very Low-income Persons*.**
 - ✓ **This PPT and the highlighted copy of 24 CFR 135 can both be found within the Section 3 area of my web site, procurementassistance.org.**
 - **PLEASE NOTE: The Section 3 forms and Policy referenced herein can be found within the Section 3 area of my web site, procurementassistance.org.**

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- **Herein we will make references to:**
 - **§24 CFR 135:**
 - ✓ Specific references herein within “{ }.”
 - **HUD Handbook 7460.8 REV 2:**
 - ✓ Specific references herein within “[].”
 - ❖ **<Sample Forms developed by HAPA and HUD are available at no charge on my no-charge web site, procurementassistance.org>**

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➤ Chapter 15: *Employment & Training Opportunities...*, Key Elements

- **“HUD strongly supports <PHA’ s> providing training and employment opportunities to residents and contracting with residents and resident-owned businesses . . . whenever possible” (Section 3). [HPH: 15.1]**
- ✓ **“Strongly supports”? Per §24 CFR 135, it is actually required!**
- **“The purpose of Section 3 is to ensure that, to the greatest extent feasible, employment, training, and business opportunities created by HUD financial assistance be directed to low and very-low income persons.” (NOTE: Underlining added by me.) [HPH: 15.2.A]**
- ✓ **Realistic Section 3 efforts need to stay keyed on “to the greatest extent feasible.”**

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- **Chapter 15: *Employment & Training Opportunities...*,
Key Elements (con' d)**
 - **Covered Programs.** [HPH: 15.2.B]
 - ✓ Development, operations, capital fund programs, many NOFA and grant agreements.
 - ✓ Not Section 8, though I believe that you should take the attitude that this refers to Section 8 landlords and not the expenditure of Section 8 funds in procurement.
 - **Covered Work** [HPH: 15.2.C]
 - ✓ “Does not apply to contracts for the purchase of supplies and materials.”
 - ✓ Does apply “if the contract includes installation of purchase equipment” or purchased supplies and materials.

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- **Chapter 15: *Employment & Training Opportunities...*,
Key Elements (con' d)**
 - **Mandatory Section 3 Contract Clause.** [HPH: 15.2.D]
 - ✓ **§24 CFR 135.38.**
 - ✓ **Is in the 5370 forms—however, I recommend including
in the body of the actual contract.**
 - **Annual Report** [HPH: 15.2.E]
 - ✓ **Per §24 CFR 135.90, form HUD-60002, *Economic
Opportunities for Low- and Very Low-Income Persons*,
must be completed and submitted annually.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (24 CFR 135)—Key Elements:**
 - **{§135.3(a)}: Section 3 is required to be applied “to the greatest extent feasible,” for all required awards.**
 - ✓ **There are procurements and contracts when enforcing Section 3 requirements is just not “feasible.”**
 - ✓ **Example: A trainer providing a 3-day seminar who has no need of additional hires or to subcontract any work.**
 - ✓ **Must be documented and must be reasonable (please see the Section 3 Requirements Sample “Not Feasible” Letter on my website).**

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- **Section 3 of the Housing and Urban Development Act of 1968 (24 CFR 135)—Key Elements (con'd)**
 - **{§135.3(a)(1)}: Section 3 covered assistance.**
 - ✓ **All programs are covered.**
 - ✓ **{§135.3(a)(b): “including section 8 assistance, and including other housing assistance not administered by” HUD. Seems to be in conflict with the aforementioned Section 15.2.B.1 of Handbook 7460.8 REV 2.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements (con'd)**
 - **{§135.3(a)(3)}: Thresholds.**
 - ✓ **{§135.3(3)(i)} says “No thresholds.”**
 - ✓ **{§135.3(3)(ii)} says exceeding \$200,000.**
 - ✓ **{§135.3(3)(B)} says \$200,000/\$100,000.**
 - ✓ **{§135.3(3)(C)} says \$200,000/\$100,000.**
 - ✓ **I say, whereas it is in our best interests to develop Section 3 opportunities wherever and whenever we can, and in the interests of remaining consistent in our practices, just implement Section 3, “to the greatest extent feasible,” for ALL contracts that involve work.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **{§135.5}: “Section 3 business concern” means:**
 - (1) 51% or more owned by a Section 3 resident;**
 - (2) At least 30% of current employees are Section 3 residents (or were Section 3 residents within 3 years of the date of first employment with the Section 3 firms; or**
 - (3) Provides evidence of a commitment to subcontract in excess of 25% of the award to Section 3 firms.**
 - §135.5: “Section 3 covered contract means” for work only—“supplies and materials” not covered unless installation included.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **{§135.11(a)}: Section 3 does not “prescribe specific methods of procurement” nor restrict open competition.**
 - **{§135.11(c)}: Section 3 does not restrict “adherence to wage rates” (e.g. Davis-Bacon or Maintenance Wage Rate Determinations).**
 - **{§135.11(d)}: “Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with” Section 3.**
 - **{§135.11(e)}: “In compliance with Executive Order 11246,” implementation of Section 3 must not result in discrimination “on the basis of race, color, religion, sex, or national origin.”**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **{§135.30(b)}: Numerical goals for meeting the greatest extent feasible requirement apply to new hires.**
 - **{§135.30(c)}: Pertaining to contracts, “contractors and subcontractors may demonstrate compliance with <Section 3> by committing to award to section 3 businesses concerns:” (NOTE: Underlining added)**
 - ✓ **At least 10% of the total dollar amount of the contract for maintenance, repair, modernization or development, or for building trades work; and**
 - ✓ **At least 3% of the total dollar amount of all other contracts.**
 - **{§135.30(d)(2)}: If these goals are not/cannot be met, the contractor has the “burden of demonstrating why it was not feasible” to do so.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **{§135.32}: Housing agency responsibilities:**
 - ✓ **{§135.32(a)}: Implement procedures to notify Section 3 residents about training and potential jobs and to notify Section 3 businesses about contracting opportunities.**
 - ✓ **{§135.32(b)}: Notifying potential contractors of his/her Section 3 requirements; “incorporating the Section 3 clause set forth in §135.38 in all solicitations and contracts.”**
 - ✓ **{§135.32(c)}: “Facilitating the training and employment of Section 3 residents and the award of contract to Section 3 business concerns by undertaking activities such as described in the Appendix.” Housing agencies, “at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in §135.30.”**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **{§135.32}: Housing agency responsibilities:**
 - ✓ **{§135.32(d)}: Ensure that contractor's (award recipients) and subcontractors comply with Section 3 and not doing business with any contractor and/or subcontractor known to the HA of being in violation of Section 3.**
 - ✓ **{§135.32(e)}: Documenting any "actions taken to comply with" Section 3, including "the results of actions taken and impediments, if any."**
 - **{§135.34(a)(1) (i-iv)}: Order of providing preference to Section 3 persons.**
 - ✓ **Categories 1-4.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **{§135.34(b)}: Eligibility for preference of Section 3 persons.**
 - ✓ **A person claiming a Section 3 preference (as detailed within §135.5) “shall certify or submit evidence” to the HA of such eligibility.**
 - **{§135.34(c)}: Eligibility for employment—to be hired, applicants must “meet the qualifications of the position to be filled.”**
 - **{§135.36(a)(1) (i-iv)}: Order of providing preference to Section 3 business concerns.**
 - ✓ **Categories 1-4.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **{§135.36(b)}: Eligibility for preference of Section 3 business concerns.**
 - ✓ **A person claiming a Section 3 preference (as detailed within §135.5) “shall certify or submit evidence” to the HA of such eligibility.**
 - **{§135.36(c)}: Ability to complete contract.**
 - ✓ **A Section 3 business concern must submit evidence to the HA (“evidence” that satisfies the HA) that the firm “has the ability to perform successfully” the contracted services. Such “ability” is a requirement of all contractors as detailed within §24 CFR 85.36(b)(8).**
 - **{§135.38}: Section 3 contract clause.**
 - ✓ **These clauses must be a part of every applicable contract the HA executes.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **{§135.40(b)}: Providing other economic opportunities. The HA may, if reasonable:**
 - ✓ **{§135.40(c)}: Hire Section 3 persons to fill part- or full-time vacant or trainee positions within the HA, including management and maintenance.**
 - ✓ **{§135.40(c)}: “Establish, stabilize or expand <existing> Section 3 business concerns, “ including assisting Section 3 business concerns in forming joint ventures.**
 - ✓ **{§135.40(c)}: Provide financial support directly to Section 3 business concerns.**
 - ✓ **{§135.40(c)}: As allowed by §24 CFR Part 963, purchase either supplies, materials, or work directly from PHA-owned business concerns.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **{§135.40(c)(2)}: A Section 3 Joint Venture must:**
 - ✓ **{§135.40(c)(2)(i)}: Clearly define what portion of the work the Section 3 concern is responsible for and what its management responsibilities is holds; and**
 - ✓ **{§135.40(c)(2)(ii)}: Perform at least 25% of the work and receive at least 25% of the compensation.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **Appendix I to §135: Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents.**
 - ✓ **Lists 20 “examples” (not requirements) of things that a HA and/or a contract recipient can or might implement to accomplish Section 3 resident hiring goals.**
 - ✓ **Many HA's have contractors sign an agreement to “do” these things. Not reasonable!! These are “examples,” not requirements, and are only implemented “if feasible” and reasonable. An additional concern: Many HA's have the contractor sign the agreement without even ascertaining if the requirements are reasonable and then do not even follow-up to ensure these things are actually done.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **Appendix II to §135: Examples of Efforts to Award Contracts to Section 3 Business Concerns**
 - ✓ **Lists 22 “examples” (not requirements) of things that a HA and/or a contract recipient can or might implement to accomplish Section 3 business award goals.**
 - ✓ **Many HA's have contractors sign an agreement to “do” these things. Not reasonable!! These are “examples,” not requirements, and are only implemented “if feasible” and reasonable. An additional concern: Many HA's have the contractor sign the agreement without even ascertaining if the requirements are reasonable and then do not even follow-up to ensure these things are actually done.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **Appendix III to §135: Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns**
 - ✓ For quotes (<\$100,000, or lower if set by State law), this section does not really say anything different than Chapter 5 of Handbook 7460.8 REV 2, except in Section (ii) it gives a 10% preference to a Section 3 business concern.
 - ✓ Within section (2)(B), preference chart for IFB's (% of \$ offer)
 - ✓ Within section (3)(ii), preference for RFP's (15-25% of available points)

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **MYTH No. 1! A careful reading of §24 CFR 135 shows that there is NO provision for a contractor to satisfying Section 3 requirements by making a donation to the HA Section 3 program.**
 - ✓ This method is simply a “pass through” in that the contractor simply, during the bidding or proposing phase, adds that cost to the contract—so the HA is actually paying for it!
 - **MYTH No. 2! Bidders and proposers are not required to, as a part of a bid or proposal submittal, claim a Section 3 preference or even submit a Section 3 plan.**
 - ✓ However, to receive a contract award, each successful bidder or proposer **MUST** agree to, to the greatest extent feasible, a Section 3 plan (which plan becomes a part of the ensuing contract).

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **MYTH No. 3! Women- and minority-owned firms automatically comply as Section 3 firms.**
 - ✓ **Not true! Section 3 is race and gender neutral.**
 - ✓ **Strongly recommend that HA's DO NOT mix Section 3 with WMBE issues. Example: WMBE/Section 3 preference points. Placing these separate issues together give the impression that the issues are one and the same.**

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- **Section 3 of the Housing and Urban Development Act of 1968 (§24 CFR 135)—Key Elements: (con'd)**
 - **Best Basic Practices:**
 - ✓ **Include a Section 3 clause in all solicitations that include work.**
 - ✓ **Require a awardee to have a Section 3 plan, especially for construction (greater opportunities).**
 - ✓ **Maintain a listing of HA residents that want to interview for work—require ALL contract award recipients to interview from your listing first (not required to hire if the resident does not qualify under the same standards as other interviewers).**
 - ✓ **Report results (especially positive results) to ED and the Board.**

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- **Available related documents available at no charge on procurementassistance.org :**
 - **Highlighted copy of Chapter 14 of HUD Procurement Handbook 7460.8 REV 2**
 - **Highlighted copy of §24 CFR Part 135**
 - **Sample Section 3 “Not Feasible” Letter**
 - **Sample Section 3 Explanation and Submittal Form (for IFB's and RFP's)**
 - **Sample Section 3 Policy**
 - **form HUD 60002 (6/2001), *Section 3 Summary Report***
 - **Sample Section 3 clauses per §24 CFR 135.38 in sample contracts**

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Thank you!

**I hope that you found
this information
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