**El Paso County Section 3 Compliance Plan**

**PURPOSE**

As a Community Development Block Grant (CDBG) entitlement community, El Paso County is required to comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968. This Compliance Plan provides a description of the requirements and outlined actions of compliance.

**BACKGROUND**

Section 3 of the Housing and Urban Development Act of 1968 requires certain projects funded by the Department of Housing and Urban Development (HUD) to meet, “to the greatest extent feasible,” specific goals for contracting, hiring, and training low income people required to work on these projects.

**DEFINITIONS**

*Contractor* is any entity with contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

*Covered Project* is the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), and other public construction which includes buildings or improvements (regardless of ownership) assisting with housing or community development assistance. Even if Section 3 covered assistance accounts for only a portion of a project’s costs, Section 3 requirements apply to the entire project.

*New hire* is a full-time employee for a new permanent, temporary or seasonal position that is generated from the expenditure of HUD funds covered by the Section 3 regulations.

*Recipient* El Paso County is the direct recipient of Section 3 covered assistance from the U.S. Department of Housing & Urban Development (HUD).

*Section 3 residents* are persons who live in the area where a HUD-assisted project is located and who have a household income that falls below HUD’s income limits (classified as low income or very low income). Low income is defined as 80% or below the area median income of the area. Very low income is defined as 50% or below the median income of the county.

*Section 3 covered project* includes the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), and other public construction which includes buildings or improvements (regardless of ownership) assisted with housing and community development assistance.

*Section 3 business concern* is a business/firm that is:

* Fifty-one percent (51%) or more owned and controlled by low or very-low-income persons; or
* Over 75% of the labor hours performed for the business over the prior 3-month period are performed by Section 3 workers; or
* Fifty-one percent (51%) or more owned and controlled by current residents of public housing or Section 8-assisted housing.

*Section 3 Worker* is any worker who currently fits, or when hired within the past 5 years fit, at least one of the following categories, as documented:

* A low or very low-income worker; or
* Employed by a Section 3 Business Concern; or
* A Youthbuild participant

*Target Section 3 worker* is:

* Employed by a Section 3 Business Concern; or
* 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 or the neighborhood of the project, as defined in 24 CRF 75.5
  + A Youthbuild Participant

*Subrecipient* is an organization receiving Section 3 funds from El Paso County (recipient) for a housing and community development related project.

*Subcontractor* is any entity (other than a person 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 work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

*Section 3 covered assistance*

* Public housing development assistance provided pursuant to Section 5 of the 1937 Act;
* Public housing operating assistance provided pursuant to Section 9 of the 1937 Act;
* Public housing modernization assistance provided pursuant to Section 14 of the 1937 Act;
* Assistance provided under any HUD housing or community development program that is expended for work arising in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement), construction, or other public construction project (which includes other buildings or improvements, regardless of ownership).

*Section 3 Clause* is the contract provision set forth in 25 CFR Part 75.

*Service area* is the geographical area in which the persons benefitting from the Section 3 covered project reside. The service area shall not extend beyond the County limits.

**APPLICABILITY**

Section 3 requirements apply to community development and housing assistance projects which are provided by El Paso County via Section 3 covered assistance. A section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards) housing construction, or other public construction such as street repair, sewage line repair or installation, updates to building facades, etc.

Section 3 requires that when employment or contracting opportunities are generated, because such projects or activities undertaken by a Subrecipient of covered HUD financial assistance necessitates the employment of additional personnel through individual hiring or awarding contracts, the Subrecipient must give preference to hiring low and very low income persons and/or businesses owned by these persons, or that substantially employ these persons within El Paso County.

**FUNDING THRESHOLD**

Funding thresholds are minimum dollar amounts that trigger Section 3 requirements. Section 3 requirements only apply when the following thresholds are reached:

* **Subrecipient threshold**: A Subrecipient that receives Community Development Block Grant (CDBG) or HOME assistance covered by Section 3 for which the amount of assistance exceeds $200,000.
* **Project Specific threshold**: Any project that receives more than $200,000 in federal funding subject to Section 3 must comply, even if each single federal award is less than $200,000.

Professional service contracts (e.g. architectural services) are covered under Section 3 provided that work to be performed by the professional is for work generated by the expenditure of Section 3 covered assistance or for work arising in connection with a Section 3 project (e.g. housing rehabilitation, housing construction, or other public construction projects).

Section 3 covered contracts do not include contracts issued for the purchase of materials, supplies, or equipment, unless installation “work” is involved.

**NUMERICAL GOALS**

*SAFE HARBOR COMPLIANCE*

El Paso County will be considered to have complied with the Section 3 requirements and met safe harbor, if they certify that they followed the required prioritization of effort and met or exceeded the Section 3 benchmarks, absent evidence of the contrary.

Prior to the beginning of work, contractors and subcontractors will be required to certify that they will follow the required prioritization of effort for Section 3 workers, Targeted Section 3 workers, and Section 3 business concerns as outlined below in section C. After completion of the project, on the Section 3 Reporting Forms, contractors and subcontractors will be required to certify that they followed the prioritization of effort requirements.

If the contractor and subcontractor does not meet the safe harbor requirements, they must provide evidence that they made qualitative efforts to assist low and very low-income persons with employment and training opportunities.

*SAFE HARBOR BENCHMARKS*

El Paso County has established employment and training goals that subrecipients, contractors, and subcontractors should meet in order to comply with Section 3 requirements outlined in [ 24 CFR Part 75.9 - for public housing financial assistance] or [24 CFR Part 75.19 - for housing and community development financial assistance]. The safe harbor benchmark goals are as follows:

**1)** Twenty-five percent (25%) or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

Section 3 Labor Hours/Total Labor Hours = 25%

**And**

**2)** Five percent (5%) or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.21.

Targeted Section 3 Labor Hours/Total Labor Hours = 5%

Professional Service Labor hours are excluded from the Section 3 Final Rule, but professional services with Section 3 Worker or Targeted Section 3 Workers may report the Section 3 labor hours without adding the total labor hours to the equation.

HUD establishes and updates Section 3 benchmarks for Section 3 workers and/or Targeted Section 3 workers through a document published in the Federal Register, not less frequently than once every three years. Given that the Section 3 benchmarks are subject to change every three years or sooner, El Paso County will review and update the Section 3 Plan every 12 months, as needed.

It is the responsibility of contractors to implement efforts to achieve Section 3 compliance. Any contractor that does not meet the Section 3 benchmarks must demonstrate why meeting the benchmarks were not feasible. All contractors submitting bids or proposals to the recipient are required to certify that they will comply with the requirements of Section 3.

*TRAINING AND EMPLOYMENT*

Under the El Paso County CDBG Program, contractors and subcontractors should make best efforts to provide employment and training opportunities to Section 3 workers in the priority order listed below:

1. Provide employment and training opportunities to Section 3 workers within the eligible jurisdiction in which the project is located in the priority order listed below:
   1. Section 3 workers residing within the service area or the neighborhood of the project, and
   2. Participants in YouthBuild programs.

Contractors and subcontractors will be required to certify that they will and have made best efforts to follow the prioritization of effort requirements prior to the beginning work and after work is completed.

*CONTRACTS*

Under the El Paso County CDBG Program’s Section 3 Program, contractors and subcontractors must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following order or priority:

1. Business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which assistance is located in the following order of priority (where feasible):
   1. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project; and
   2. YouthBuild programs.

Section 3 residents are not guaranteed employment and Section 3 business concerns are not guaranteed contracting opportunities. Section 3 residents must demonstrate that they meet the qualifications for new employment opportunities created as a result of the expenditure of covered assistance. Likewise, 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.

Contract awards will only be made to responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract. Preference to Section 3 business concerns means that a recipient’s or contractor’s procurement procedure includes methods to provide preference to Section 3 business concerns.

Contractors and subcontractors will be required to certify that they will and have made best efforts to follow the prioritization of effort requirements prior to the beginning work and after work is completed.

**SECTION 3 WORKER AND TARGETED SECTION 3 WORKER CERTIFICATION**

A Section 3 worker seeking certification shall submit self-certification documentation to the recipient contractor or subcontractor certifying that the person is a Section 3 worker or Targeted Section 3 worker as defined in 24 CFR Part 75. For the purposes of Section 3 worker eligibility, El Paso County will use individual income rather than family/household income to determine eligibility. The income limits will be determined annually using the guidelines published at https://www.huduser.org/portal/datasets/il.html. Persons seeking the Section 3 worker preference shall demonstrate that they meet one or more of the following criteria currently or when hired within the past five years, as documented:

1. A low or very low-income resident (the worker’s income for the previous or annualized calendar year is below the income limit established by HUD); or
2. Employed by a Section 3 business concern; or
3. A YouthBuild participant.

Persons seeking the Targeted Section 3 worker preference shall demonstrate that they meet one or more of the following criteria:

1. Employed by a Section 3 business concern or
2. Currently meets or when hired met at least one of the following categories as documented within the past five years:
   1. Living within the service area or the neighborhood of the project, as defined in 24 CFR Part 75.5; or
   2. A YouthBuild participant.

Section 3 workers and Targeted Section 3 workers who are seeking preference in training and employment must submit the Section 3 Worker and Targeted Section 3 Worker Certification Form. The certification procedure will consist of the following:

1. Prior to construction beginning, the contractor will review the Section 3 Packet provided by the El Paso County CDBG Program.
2. The contractor will fill out the forms required by the program, to include the following:
   1. Construction Activity Report (1 sheet, includes subcontractors)
   2. Section 3 Worker and Targeted Section 3 Worker Report Form (1 sheet per contractor, contractor is responsible for providing 1 additional sheet per subcontractor)
3. The contractor will provide the completed forms to El Paso County CDBG Program staff prior to construction completion.

**RESPONSIBILITIES**

*El Paso County*

The County shall assist the Subrecipient, contractors and subcontractors covered by Section 3 projects by performing the following activities;

* Notify all applicants for Section 3 covered projects of the Section 3 applicability.
* Section 3 Clause shall be included in all applicable bids and contracts.
* Provide clarification of the Section 3 requirements.
* Provide the appropriate guidelines and forms.
* Assist subrecipients, contractors and subcontractors with notifying the Section 3 residents and business concerns of new opportunities as outlined in “Good Faith Effort.”
* Monitor, verify and notify with regard to compliance.
* Collect all applicable forms and reports.
* Report all required data to HUD.

*Subrecipient*

1. A Subrecipient receiving funds in excess of $200,000 for a Section 3 covered project must comply with Section 3 requirements in its own operation which would include:

* Notify Section 3 residents and business concerns about jobs and contracts generated by the Section 3 covered projects.
* Notify potential contractors of Section 3 requirements.
* Include the Section 3 Clause in all applicable contracts.
* Complete and submit required reports to El Paso County.

1. Subrecipients have a responsibility to ensure compliance of their contractors and subcontractors who receive funding in excess of $100,000. This means that a sub recipient must:
   * Notify contractors of their responsibilities under Section 3 including, but not limited to, inclusion of the Section 3 Clause in all contract documents.
   * Refrain from contracting with subcontractors as to whom they have knowledge that the subcontractors have been found in violation of the requirements of 24 CFR 75.
   * Respond to Section 3 complaints.
   * Cooperate with El Paso County and HUD in obtaining compliance of contractors and subcontractors when allegations are made of non-compliance.
   * Complete and submit required reports to El Paso County.

*Contractors*

* Notify subcontractors of their responsibilities under Section 3 including, but not limited to, inclusion of the Section 3 Clause in subcontract documents.
* 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 75.
* Document actions taken to meet the numerical goals.
* Complete and submit required documentation.

**GOOD FAITH EFFORT**

If the Subrecipient, 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 to the greatest extent feasible.

The County shall monitor subrecipients, contractors and subcontractors to verify that a good faith effort to comply with Section 3 requirements was accomplished. Subrecipients, contractors and subcontractors shall be required to retain all records associated with all attempts to provide a good faith effort and provide the County and HUD with said records upon request. A six year record retention from project closeout is expected for all documentation.

Construction on a Section 3 covered project may not commence until the County has recognized that the Subrecipient, contractor and subcontractor have demonstrated a good faith effort to meet the numerical goal of Section 3.

**OUTREACH EFFORTS FOR EMPLOYMENT AND TRAINING**

In order to educate and inform workers and contractors, El Paso County’s CDBG Program will be prepared to provide training and technical assistance on a regular basis per program guidelines. When training opportunities are available, contractors and subcontractors should, to the greatest extent feasible:

* + 1. Notify the Section 3 Coordinator when training opportunities are available.
    2. Provide information/handouts about Section 3 training opportunities to potential Section 3 workers and Targeted Section 3 workers.
    3. Conduct an annual training for Section 3 workers and Section 3 businesses.

Contractors and subcontractors should employ several active strategies to notify Section 3 workers and Targeted Section 3 workers of Section 3 job opportunities, including:

* + 1. Clearly indicating Section 3 eligibility on all job postings with the following statement: “This job is a Section 3 eligible job opportunity. We encourage applications from individuals that are low income and/or live in Public Housing and/or receive a Section 8 voucher.”
    2. Including the Section 3 Worker and Targeted Section 3 Worker Self-Certification Form in all job postings.
    3. Working with the Section 3 Coordinator to connect Section 3 worker and Targeted Section 3 workers in the [recipient/grantees] database with opportunities and/or utilize the Section 3 Opportunity Portal to find qualified candidates.
    4. Establishing a current list of Section 3 eligible applicants.
    5. Contacting local community organizations and provide them with job postings for Section 3 eligible applicants.
    6. Coordinating a programmatic ad campaign, which results in widespread job posting across diverse ad networks.

**OUTREACH EFFORTS FOR CONTRACTING**

When contracting opportunities arise in connection with the El Paso County’s CDBG Program, the following strategies will be employed to notify Section 3 Business Concerns of Section 3 contracting opportunities, including but not limited to:

1. Adding Section 3 language to all RFPs, procurement documents, bid offerings and contracts.
2. Coordinating mandatory pre-bid meetings to inform Section 3 Business Concerns of upcoming contracting opportunities. The Section 3 Coordinator will participate in these meetings to explain and answer questions related to Section 3 policy.
3. Advertising contracting opportunities in local community papers and publishing notices that provide general information about the work to be contracted and where to obtain additional information.
4. Providing written notice of contracting opportunities to all known Section 3 Business Concerns. The written notice will be provided in sufficient time to enable business concerns the opportunity to respond to bid invitations.
5. Coordinating with the prime contractor to publicize contracting opportunities for small businesses.
6. Coordinating with the El Paso County’s Economic Development Department and all other business assistance agencies and contractor associations to inform them of contracting opportunities and request their assistance in identifying Section 3 business concerns. This includes the Pikes Peak Small Business Development Center (SBDC) and Colorado Procurement Technical Assistance Center (PTAC).
7. Connecting Section 3 business concerns with resources to support business development to assist in obtaining contracting opportunities (e.g., bonding and insurance assistance, etc.). Contractors will also be encouraged to collaborate with the El Paso County CDBG Program as subcontract opportunities arise in an effort to notify eligible Section 3 business concerns about the contracting opportunities.

**OUTREACH EFFORTS FOR QUALITATIVE REPORTING**

The El Paso County CDBG Program will undertake the following qualitative efforts to ensure the requirements of 24 CFR Part 75 are met within the program. These efforts include but are not limited to:

* Promote use of Section 3 business registry and HUD Opportunity Portal.
* Support employment training/apprenticeship opportunities through public service category funding as appropriate.
* Provide technical assistance to eligible contractors to register on sam.gov and Section 3 business registry.
* Engage in outreach through appropriate community events to increase awareness of Section 3 requirements.
* Engage in consultations with the Small Business Development Center and other local business support agencies to increase awareness of Section 3 business registry and HUD Opportunity Portal.
* Contact local Youthbuild organization (Mile High Youth Corps Southern Front Range Regional Office) regarding prospective contracting opportunities
* Conduct direct outreach to all Section 3 businesses registered on the Section 3 business registry within Colorado to alert them of Section 3 eligible contracting opportunities.

**COMPLAINT PROCEDURE**

A complaint of non-compliance shall be provided in writing and must contain the name and address of the complainant and a brief description of the alleged violation of Section 3. A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

The complaint must be filed with:

Assistant Secretary  
HUD Fair Housing and Equal Opportunity  
451 7th Street, SW  
Washington, DC 20410  
(202) 708-3633

Complaints must not be filed 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. If a complaint alleges noncompliance with Section 3 that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

Complainants may be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about complainant rights, please contact EEOC at: www.EEOC.gov.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: http://www.dol.gov/ofccp/.