

Chapter 5 - Procurement, MBE/WBE and Section 3 Requirements

Basic Federal Requirement

When procuring property or services to be paid for in whole or in part with Community Development Block Grant funds, all grant recipients must follow procurement policies and procedures that meet federal standards. Except for a new federal requirement for “micro-purchases”, following state procurement laws in Oregon will meet the federal standards. This chapter describes most of the requirements for procurement policies and procedures for units of general local government receiving CDBG funds.

Procurement methods are based on full and open competition, with very limited exceptions. Competitive methods of procurement (e.g., micro-purchases, informal quotes/proposals, and formally advertised sealed bids/competitive proposals) are specified in state procurement laws. Cost plus a percentage of cost and percentage of construction cost methods of contracting are prohibited by federal standards. Recipients are prohibited from using geographical preferences in evaluating bids or proposals. A recipient’s policies and procedures must include standards of conduct governing employees engaged in the award or administration of contracts. In their purchase orders and contracts, Recipients must include all clauses required by Federal statutes, executive orders and implementing regulations. The federal procurement

standards can be found in the new, so-called “supercircular” at 2 CFR §§200.318- 200.326.

“Federal Micro-purchase threshold. Federal procurement requirements allow an entity to procure non-construction goods and services up to \$3,000 without conducting competition. CDBG recipients must follow this federal requirement (which is lower than the small purchase threshold of \$10,000 in state procurement law).”

State Law

Recipients shall comply with state procurement law when purchasing goods and services. The provisions are included in the Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), and the Oregon Attorney General’s Model Public Contract Rules. Links to applicable codes and rules include:

ORS Chapter 279A – General Provisions:

https://www.oregonlegislature.gov/bills_laws/ors/ors279A.html

ORS Chapter 279B – Goods & Services:

https://www.oregonlegislature.gov/bills_laws/ors/ors279B.html

ORS Chapter 279B – Architects & Engineers, and Construction:

https://www.oregonlegislature.gov/bills_laws/ors/ors279C.html

Oregon Attorney General Model Rules:

Unless the recipient has properly opted out of the Model Rules and adopted its own rules of procedure for Public Contracting, pursuant to 279A.065, the recipient must follow the Oregon Attorney General Model Rules, found at:

Chapter 137, Division 046 – General Provisions Relating to Public Contracting
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_046.html

Chapter 137 Division 047 - Public Procurement for Goods and Services
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_047.html

Chapter 137 Division 048- Screening and Selection Procedures for the award of Architectural and Engineering Related Personal Service Contracts
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_048.html

Chapter 137, Division 049 - General Provisions Related To Public Contracts For Construction Services
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_049.html

Local Responsibility

Recipients are responsible for ensuring that purchases made with grant funds comply with state law and the federal micro-

purchase method threshold. Recipients can purchase a copy of the *Attorney General's Model Public Contract Rules Manual* by calling 503-378-2992 x 325 or writing the Department of Justice at Administrative Services, 550 Justice Building, Salem, OR 97310. That manual includes all referenced Oregon provisions and statutes identified in this chapter.

Legal Counsel Review

It is recommended that all contracts for goods and services to be paid for in whole or in part with Community Development Block Grant funds be reviewed by the recipient's attorney, prior to execution. **Questions about state procurement and contracting laws are to be handled by the recipient's attorney. State staff will not provide legal interpretations to recipients.** Appeals of contracting and purchase decisions must be resolved at the local level by the local contract review board or administratively under consultation of recipient's attorney. The information contained in this Grant Management Handbook is for guidance to achieve compliance, but the recipient shall rely on their legal counsel for determination of compliance with local and state and federal procurement requirements.

Environmental Compliance

A Recipient may not commit or expend funds on any activity in an Oregon Community Development Block Grant project before environmental review is complete and, when applicable, the approval of the Request for Release of Funds (RROF) by the state. Refer to Chapter 3 for more information.

Documentation of Compliance with Procurement Laws

To determine compliance with State law, the recipient must be able to provide, if requested, documentation from their legal counsel showing that each procurement met local, state and federal procurement requirements and the requirements of the grant contract.

The recipient must keep complete written records for each procurement, including but not limited to: solicitation procedures, copies of submitted quotes, bids and proposals, justification for selection and cost of award.

Competitive Bids

All public contracts funded in whole or in part with Community Development Block Grant funds must shall be based upon competitive bids or proposals except under the federal micro-purchase threshold, or according to exceptions allowed in ORS Chapters 279B and 279C. Competitive procurement principles and regulation do not apply to contracts or other agreements between units of local government or public agencies. Public agencies include Councils of Governments or other associations or consortia formed under state law, public housing authorities, and water and sewer districts. The following types of organizations are not public agencies: community development corporations, community action programs and certified development corporations.

Procurement for Goods or Services (Personal Services Contracts, except architectural/engineering/land surveying and related services)

Procurements for goods and services, including personal and professional services contracts (but not to include architectural, engineering and land surveying) must comply with the Model Rules for Public Contracting at OAR Chapter 137, Division 047, unless the recipient has properly adopted its own rules of procedure for public contracting. Local contracting agencies may designate certain classes of services as Contracts for Personal Services, and in such cases may adopt the division 47 rules to govern procurement of personal services, or elect to award personal services contracts under its own rules adopted pursuant to ORS 279A.070. Under ORS 279A.065(3), recipients are not permitted to opt out of the Model Rules for the procurement of Construction Manager/General Contractor Services.

The federal micro-purchase requirement and Oregon law allow the following types of procurements for goods and services:

- Micro-purchases – Contract price does not exceed \$3,000.
- Intermediate Procurements – Contract price exceeds \$3,000 but does not exceed \$150,000. Seek at least three informally solicited competitive quotes, bids or proposals.
- Formal Procurements – Contract price exceeds \$150,000. Formal advertising and

procedures for an Invitation to Bid or Request for Proposals.

- Sole Source Procurements – as allowed by ORS 279B.075
- Emergency - as allowed by ORS 279B.080
- Special Procurements – as allowed by ORS 297B.085

Local procurement records must provide justification for the contractor's selection and the basis for the cost if negotiated.

Accountants, Attorneys, and Grant Administrators

Procurement of accountants, attorneys and private grant administrators (not governmental such as Council of Governments) must comply with the provisions in OAR 137-047.

Architects, Engineers and Surveyors

Under the authority of ORS 279C, procurement of architects, engineers and surveyors shall comply with the provisions in OAR 137-048. Their services must be procured through a Qualifications Based Selection (QBS), rather than fee-based, selection process. “

OAR 137-048 allows the following types of procurements:

- Direct Appointment without competition – Emergency projects, contracts with a fee not to exceed \$100,000, or “Continuation of Project With Intermediate Estimated Fee” .
- Informal Procurement – Contract price not to exceed \$250,000. Must seek at least five responses to a somewhat informal RFP.

- Formal Procurement – Contract price will exceed \$250,000. Formal solicitation of a Request for Proposal/Qualifications.

Use of Engineer of Record or other prior Engineering Agreements

When a Recipient desires to use an existing engineer of record or any other previous engineering procurement to complete the services required for the newly funded CDBG grant, they must first provide a letter from their legal counsel stating that the prior procurement meets the requirements of current state law, the CDBG program requirements, and the recipient's procurement policies. A copy of the Recipient's legal counsel's letter must be submitted to OBDD for review and approval.

If the Recipient's legal counsel review indicates that the prior procurement meets the legal requirements referenced above, the following requirements must also be met:

- 1) Any engineer of record agreement must be amended to include the scope of work for the CDBG funded project, the not to exceed contract price, and the required federal clauses.
- 2) The draft engineering agreement amendment must be reviewed and approved by OBDD before it is executed.
- 3) The amendment cannot be executed until the proper environmental clearance has been completed and the grant contract between OBDD and the Recipient has been executed.

Public Construction Contracts

Procurement of public improvement construction projects must comply with the requirements of OAR 137-049 and ORS 279C, and include the following procurement methods:

- Emergency
- Federal micropurchase - A public improvement contract with a value that does not exceed \$3,000.
- Intermediate Procurement – Contract price does not exceed \$100,000. Receipt of informally solicited competitive quotes or bids.
- Formal Procurement – Contract price exceeds \$100,000. Formal solicitation of the Invitation to Bid with competitive sealed bidding.
- Exemptions and alternative contracting methods allowed under ORS 279C.

Construction awards over \$2,000 are subject to Davis-Bacon Act prevailing wage provisions and construction contracts over \$50,000 are subject to Oregon prevailing wage requirements. When both federal and state wage requirements apply, the recipient must follow whichever is higher. House Bill 2021 enacted during the 2007 Assembly of the Oregon Legislature makes a public agency liable for any wages, fringe benefits, and liquidated damages unpaid to workers as a result of the public agency failing to include information about prevailing wage rates in the specifications for public works contracts. This law is effective January 1, 2008. (See Chapter 6 – Labor Standards.)

Bid Opening Dates

Under the authority of OAR 137-049-0360 (2)(a) the bid closing shall be set on a Tuesday, Wednesday or Thursday and at a time between 2 p.m. and 5 p.m.

Procurement of Real Property

The purchase of real property, including easements (permanent or temporary), property donations and leases in excess of 50 years, are not covered by state procurement law. Federal rules apply to the acquisition of real property, easements (permanent or temporary), property donations and leases in excess of 50 years in projects funded in whole or in part with Community Development Block Grant funds. If property, easements or leases in excess of 50 years are acquired or donated without following the federal rules, the state must require that the process be redone – even when no Community Development Block Grant funds were used for the acquisition. **Always discuss property acquisition with a Regional Coordinator before negotiating with any property owner.** Chapter 8 contains more information about these requirements.

Contract Pricing

“Cost plus a percentage of cost” and “percentage of construction costs” methods of contracting are not allowed. For example, an engineer cannot be paid fifteen percent of the project construction costs. The contract must identify a firm fixed price or “not to exceed amount” that includes direct reimbursable expenses.

Conflict of Interest

Federal regulations at 24 CFR Part 570.489(h) apply to the procurement of supplies, equipment, construction and services. The regulations generally prohibit an employee, agent, consultant, officer or elected official or appointed official of the grant recipient from obtaining any financial interest or benefit from the project, or having any interest or obtaining a benefit from any contract, subcontract or agreement, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. Exceptions are possible with state and federal approval. **Exhibit 5A** includes the entire text of the applicable federal regulation.

Non-Collusion Requirement

If a grant recipient receives low bids that are equal in value, the grant recipient must have each bidder complete a non-collusion certification to comply with 24 CFR Part 85 and 24 CFR Part 570.489. The recipient's legal council will need to assist the recipient with the necessary language. The executed non-collusion certifications from the low bidders of equal value must be received before any final decisions are made by the grant recipient on awarding of the construction contract.

Standards of Conduct

The Oregon Government Standards and Practices laws in ORS Chapter 244 also apply to the procurement of supplies, equipment, construction and services, to be paid for in whole or in part with grant funds. Information about these laws is available from the Oregon Government Ethics

Commission at:

<http://www.oregon.gov/ogec/Pages/index.aspx>.

The Oregon Government Ethics Commission's Guide for Public Officials can be found at:

http://www.oregon.gov/OGEC/Pages/forms_publications.aspx. Forms and publications are available at

http://www.oregon.gov/OGEC/Pages/forms_publications.aspx or may be requested from commission staff at (503) 378-5105 or ogec.mail@oregon.gov.

Opportunities for Minority, Women and Emerging Small Business

HOUSING REHABILITATION PROJECTS –

Section 281 of the National Housing Act federal funding recipients to establish and oversee a minority outreach program. The program shall include minority and women-owned businesses in all contracting activities entered into by the recipient to facilitate the provision of affordable housing. Under Oregon's CDBG program the only two project types that facilitate affordable housing are the off-site infrastructure for new affordable housing and the housing rehabilitation program. These two project types must meet the minimum acceptable outreach efforts/**STANDARDS** to minority and women-owned businesses:

- A good faith, comprehensive and continuing endeavor:

- The Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department (COBID) maintains a list of certified firms and can answer questions. Search for certified DBE and MWESB firms on the web at:
<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- Supported by a statement of public policy and commitment published in the printed media of the widest local circulation;
- Supported by an office/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- Designed to utilize all available and appropriate public and private sector resources.

Under the minimum HUD standards cited above, the housing rehabilitation recipients are encouraged to use the following **GUIDELINES** in implementing outreach programs to ensure the inclusion to the maximum extent feasible, of entities owned by minorities and women:

- Develop a systematic method for identifying and maintaining an inventory of certified minority and women business enterprises (MBE/WBE), their capabilities, services, supplies and or other products;
- Utilize local media, electronic and print, to market and promote contract and business opportunities for MBE's and WBE's'
- Develop informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) an contract/subcontract opportunities for MBE's and WBE's;
- Develop procurement procedures that facilitate opportunities for MBE's and

- WBE's to participate as vendors and suppliers of goods and services;
- Sponsor business opportunity-related meetings, conferences, seminars, etc. with minority and women business organizations; and
- Maintain centralized records with statistical data on the utilization and participation of MBE's and WBE's as contractors/subcontractors in all HUD assisted program contracting activities.

Each affected recipient utilizing the standards and guidelines listed above, shall prescribe procedures and actions it will undertake in implementing a minority and women's business enterprise outreach program. The above items represent basic outreach-related activities are not all-inclusive actions a recipient may undertake.

ALL OTHER PROJECT TYPES

The state encourages recipients of ALL other CDBG grants to take affirmative steps to use small firms, minority-owned firms and women-owned firms in grant-funded projects. There are no minimum requirements. Specific activities are at the discretion of the recipient. Such activities may include, but are not limited to:

- The Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at:
<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

- Incorporating such businesses in solicitation lists whenever they are potential sources;
 - Ensuring that such businesses are solicited when identified as potential resources;
 - Dividing procurement requirements, when economically feasible, to permit maximum participation of such businesses; and
 - Requiring prime contractors, when subcontracts are let, to take affirmative steps to select such firms.
- Mailing Advertisements for Bid, Request for Qualifications etc. to:
Additional resources are provided by the Governor’s Policy Advisor for Economic and Business Equity. 155 Cottage Street NE – 2nd Floor Salem, OR 97301
Phone: (503)-378-3506 Fax: (503)-378-3139 TTY: (503)-378-4859

Before the final drawdown of grant funds will be released by the Department for each grant project, recipients are required to submit a “Minority, Women and Emerging Small Business Activity Report.” The state will use these reports to complete the annual Minority Business Enterprises Contract and Subcontract Activity report as required by Executive Orders 12432 and 11625. **Exhibit 5B** of this handbook contains a copy of the report to be used by the recipients. This form must be completed for all contracts and subcontract activities of \$10,000 or more.

Homeowners and owners of rental property who are using Community Development Block Grant funds loaned or granted to them for rehabilitation are not covered by the federal and state procurement requirements.

This does not mean that such contracts also are exempt from other federal and state rules.

Recipients are responsible for ensuring that these private contracts are only for eligible activities, that the costs are reasonable, and that the project approved by the state will be completed. A recipient may require private parties to include some public contracting procurement requirements such as performance bonding, in their construction contracts.

State Review of Procurement Documents and Contracts

All procurement documents, including any solicitations (Invitations to Bid, Requests for Qualifications (RFQ), Requests for Proposals (RFP)) for goods or services, construction, grant administration, engineering/architectural; or for intergovernmental agreements, subgrants, or amendments to any document, **must be submitted to the department for review at least (10) ten days before it is advertised, distributed or executed by the recipient.** This review is necessary to ensure that all these documents contain the required federal clauses and are consistent with the approved grant contract. The recipient’s attorney should review all procurement-related documents for compliance with state laws as well as any local procurement policies the recipient may have.

Contractor Eligibility Verification (SAM)

Federal regulations require verification of general (prime) contractor eligibility. To be

“eligible” a contractor must not be listed on the “List of Parties Excluded from Federal Procurement and Non-procurement Programs” published by the General Services Administration. The list was previously referred to as the “Excluded Parties List” or EPLS. Effective in 2012, the list has moved to the System Award Management (SAM) web site.

Prior to construction contract award, the recipient is responsible to check the debarment status of the contractors in the System Award Management (SAM) web site and document it in the project file and provide documentation (SAM printout) to Regional Coordinator at the Department. Recipients can view the List by using the following Internet address: www.sam.gov

SAM Check for Professional Services

The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, requires all persons hired to complete activities funded in whole or in part with Federal funds be checked for eligibility to perform work under a federally funded project. This requires the grant recipient to check the debarment status within SAM.gov for every professional service such as a grant administrator, engineer/architect, program manager, non-profit sub recipient etc. The grant recipient must retain evidence of this check in their project files and the check must be completed before any agreement is executed between the parties. Refer to the SAM web link above to access the List.

Note: a contractor does not have to be registered in SAM unless they have an exclusion, and then it's the responsibility of the federal contracting agency (government) to enter the contractor in SAM.

SECTION 3 REQUIREMENTS SECTION 3 REQUIREMENTS – Economic Opportunities for Low and Very Low Income Persons

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) (Section 3) requires grant recipients of \$200,000 or more of CDBG funds must enforce the section 3 requirements in all construction contracts of \$100,000 or more, 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, are 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.

OBDD's receipt of the annual non-entitlement CDBG allocation, which is in excess of \$200,000 triggers the Section 3 requirements for all city/county CDBG grant recipients, entering into contracts of \$100,000 or more for any construction activity, or any non-construction activity that leads to construction, such as engineering, architectural, program management work etc.

As such the Section 3 requirements apply to the following under OBDD-IFA's CDBG program:

- a. All public works planning, design and/or construction grants;
- b. All public/community facility design and construction grants;
- c. All economic development revolving loan fund grants, if the loan funds are anticipated to be used for construction activities that will exceed \$100,000 per loan or if any construction contractor which has an aggregate of \$100,000 of construction contracts funded with CDBG loan funds; and
- d. All housing rehabilitation revolving loan fund grants. Under the housing rehabilitation category, this will also apply to any construction contractor which has an aggregate of \$100,000 of individual housing rehabilitation construction contracts under the CDBG grant.

Annual HUD 60002 Form Submission & Section 3 Plan

To comply with the Section 3 requirements, with the exception of the microenterprise assistance grant recipients, all CDBG grant recipients are required to submit:

- 1) An annual HUD 60002 form by no later than January 31 of each year to OBDD-IFA. The reporting period is January 1 – December 31 of each year;
- 2) A final HUD 60002 form at the completion of the project covering any information that was not previously reported on the most recent annual submission; (A copy of the **HUD 60002 form** is included as **Exhibit 5C** of this handbook.) and

- 3) A Section 3 Plan prior to the first draw of non-construction funds.

Contractor shall complete the required Section 3 report **form 60002**, included as **Exhibit 5C** of the CDBG Grant Management Handbook and submit the completed form to the City/ County grant recipient with the final construction pay invoice for the project.

Completing the HUD 60002 Form

If HUD 60002 form being prepared for submission to OBDD includes any "0"s in Part I of Part II of the form, the grant recipient must document the Section 3 outreach efforts that were implemented and why those efforts failed to produce the desired results.

In Part III of the form, grant recipients must document all efforts to employ Section 3 residents and business concerns. These efforts must be beyond the grant recipient's normal advertising efforts.

Section 3 Annual Summary Reports are intended to measure each recipient's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations **AND** those of its covered contractors, subcontractors, and sub-recipients/sub-grantees, including non-construction contracts, if the funded activities will lead to a future construction project. Each submission of form HUD-60002 should indicate the following:

- The total dollar amount of HUD funding that was received by the recipient for covered projects/ activities during the specified reporting period.

- The total number of new employees that were hired by the recipient and/or its covered construction or non-construction contractors, subcontractors, and sub-recipients/sub-grantees, as a result of performing or completing covered project/activities.
- The number of new employees that were hired by the recipient (or its covered or non-construction contractors, subcontractors, and sub-recipients/sub-grantees), as a result of covered projects/activities, that met the definition of a Section 3 resident.
- The total number of man hours worked on covered projects (optional).
- The aggregate number of hours worked by Section 3 residents on covered projects (optional).
- The total number of Section 3 residents that participated in training opportunities that were made available by the recipient or its covered non-construction contractors, construction contractors, sub-recipients/sub-grantees, or other local community resource agencies.
- The total dollar amount of construction and/or non-construction contracts (or subcontracts) that were awarded with covered funding.
- The dollar amount of the recipient's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered contractors, subcontractors, sub-recipients, or other non-construction contractors) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

The Section 3 Plan

Grant Recipients must make a special effort to recruit, target and to direct economic opportunities to Section 3 residents and business concerns by advertising and soliciting procurement contracts and employment opportunities to Section 3 residents and business concerns. This advertising and soliciting effort must be beyond the normal advertisement conducted the city or county.

The regulation requires the state to meet the following numeric goals/requirements, which must be passed down from the state to the CDBG grant Recipients:

- a. 30% of the aggregate number of NEW hires shall be section 3 residents;
- b. 10% of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- c. 3% of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Note: A Section 3 resident must meet the minimum qualifications of the position to be filled and a Section 3 business concern must have the ability and capability to perform successfully under the terms and conditions of the proposed contract.

Exhibit 2G and **Exhibit 5H** contain an example Section 3 plan.

Section 3 Residents

- Residents of Public Housing and Indian Housing; or
- Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low-or very low-income households.

Section 3 Business Concerns

- Businesses that are 51 percent or more owned by Section 3 residents;
- Businesses 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 firm were Section 3 residents; or
- Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or sub-recipient/sub-grantee or other non-construction contractor (if requested) verifying that they meet the definitions provided above.

Recipients can use their discretion for determining the type of verification that is required by prospective Section 3 residents and business concerns. Some examples include: proof of residency in a public

housing authority; proof of federal subsidies for housing, food stamps, or unemployment benefits; and payroll data or other relevant business information.

The U.S. Department of Housing and Urban Development's Fair Housing and Equal Opportunity (FHEO) section has created an online Section 3 Business Registry, where Section 3 business can register, where recipients can find Section 3 businesses by locality and type of business, and where Section 3 residents can search for business that are hiring. HUD's Section 3 Business Registry web page:
<http://www.hud.gov/Sec3Biz> .

Recipient Responsibilities Regarding Section 3

Each recipient (and their covered (construction and non-construction) contractors, subcontractors, sub-recipients or sub-grantees) are required to comply with the requirements of Section 3 for **new** employment, training, or contracting opportunities resulting from the expenditure of covered funding. This responsibility includes:

1. Implementing procedures to notify Section 3 residents and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance;
2. Notifying potential contractors working on Section 3 covered projects of their responsibilities;
3. Incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];

4. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;
5. Assisting and actively cooperating with the Department in making contractors and subcontractors comply;
6. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
7. Documenting actions taken to comply with Section 3; and
8. Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90.
9. Adopting and implementing a Section 3 plan prior to the first draw of non-construction funds.

Section 3 Requirements Passed Through to Non-Profit Sub-recipient/Sub-grantees

In addition to the responsibilities described above, grant recipients that sub-grant CDBG funds to non-profit sub-recipients/sub-grantees must attempt to reach the minimum numerical goals set forth at 24 CFR Part 135.30, regardless of the number of sub-recipients that receive covered funding. Grant recipient must ensure that the non-profit sub-recipient/sub-grantees meet the grant recipients Section 3 Plan requirements. The grant recipient must:

- Inform sub-recipients/sub-grantees about the requirements of recipients Section 3 Plan;
- Assist sub-recipients/sub-grantees and their contractors with achieving compliance;

- Monitor sub-recipients/sub-grantees performance with respect to meeting the requirements of Section 3; and
- Report to OBDD on the cumulative Section 3 activities taking place within their jurisdiction on an annual basis.

Section 3 Clause - Refer to **Exhibit 5F** for the clause.

OTHER SECTION 3 GUIDANCE:

Exhibit 5G, contains the following examples:

- Efforts to Offer Training Employment Opportunities to Section 3 Residents
- Efforts to Award Construction Contracts to Section 3 Business Concerns
- Procurement Procedures that Provide for Preference to Section 3 Business Concerns

Exhibit 5H, contains an example Section 3 Plan

BASIC FEDERAL CONTRACT CLAUSES

The clauses required by the federal rules are determined by the dollar amount of the grant awarded to the recipient and the type of contract:

- Non-Construction Contract & grant award does not exceed \$100,000 – **Exhibit 5D**
- Non-Construction Contract & grant award exceeds \$100,000 – **Exhibit 5E**
- All construction contracts – **Exhibit 5F**

Quick Checklist for Procurement, MBE/WBE and Section 3 Requirements

	<p>1. State has reviewed to ensure programmatic requirements is complied with in all solicitations, contracts and agreements 10 days prior to advertisement or execution.</p> <ul style="list-style-type: none"> ----- Grant administration ----- Sub-grant Agreement ----- Program Management ----- Engineering/architectural ----- Appraisal Services ----- Construction ----- Other: <p>-----</p>
	<p>2. The scope of work for each Invitation to Bid, Request for Proposal, Contract or agreement is consistent with the grant contract.</p>
	<p>3. Recipient has received legal counsel review of all solicitations, contracts or agreements prior to advertisement or execution to assure compliance with State law and grant contract requirements.</p>
	<p>4. All contracts/agreements are a firm fixed price, with not to exceed language, including direct reimbursable. <i>(Note – Cost + a percentage of cost, or percentage of construction costs methods may not be used.)</i></p>
	<p>5. Solicitations, contracts or agreements contain all required federal clauses.</p> <ul style="list-style-type: none"> a.____ Invitation to Bid, Request for Proposal/Qualification or other solicitations <ul style="list-style-type: none"> ----- Source of Funds Clause b.____ Non-Construction Contracts – CDBG grant is less than \$100,000 <ul style="list-style-type: none"> ----- Source of Funds Clause ----- Conflict of Interest Clause ----- Minority, Women and Emerging Small Business <i>(Applies only if contract price exceeds \$10,000)</i> c.____ Non – Construction Contracts – CDBG grant exceeds \$100,000

	<ul style="list-style-type: none"> ----- Source of Funds Clause ----- Conflict of Interest Clause ----- Minority, Women and Emerging Small Business <i>(Applies only if contract price exceeds \$10,000)</i> ----- Lobbying Certification ----- Section 3 clause if the funded activity leads to construction d.____ Construction Contracts <ul style="list-style-type: none"> ----- Source of Funds Clause ----- Conflict of Interest Clause ----- Minority, Women and Emerging Small Business <i>(Applies only if contract price exceeds \$10,000)</i> ----- Lead-Based Paint Clause <i>(residential construction or rehabilitation)</i> ----- Section 3 Clause ----- Lobbying Certification <i>For contracts/subcontracts over \$2,000 (except residential)</i> ----- Federal Labor Standards Provisions HUD 4010 (Exhibit 6A) ----- Davis Bacon Wage Rates: OR_____ Mod No. _____ e.____ Plans and Specifications <ul style="list-style-type: none"> ----- Source of Funds Clause
	<p>6. 10 days prior to construction bid opening recipient called OBDD to “Lock-In” the applicable Davis Bacon Wage Modification applicable to the project.</p> <p style="text-align: center;">OR_____ Mod No_____ Date_____</p>
	<p>7. Recipient has checked the Excluded Parties List (EPLS) for every service to be procured prior to entering into any agreements using the System Award Management (SAM) web site.</p>
	<p>8. The recipient submitted an OBDD review Section 3 plan prior to the first draw for non-construction activities.</p>
	<p>10. Program income is not expended until reported to the State and it has been determined that it exceeds \$35,000 (Program Income) or less than \$35,000 (Miscellaneous Income)</p>