

# **BOSTON HOUSING AUTHORITY**

## **SECTION 3 POLICY**

Economic Opportunities for BHA Residents and Other  
Low- and Very-Low Income Persons

**Adopted May 2012; Modified April 2021**

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**I. BHA's Section 3 Program**

The Boston Housing Authority (“BHA” or “Authority”) Section 3 Program is a key component of the Authority’s mission to establish and support communities and programs that are designed to transform BHA residents and their low and very low income neighbors and fellow Bostonians from aid dependency to economic self-sufficiency. To this end, BHA’s Section 3 Program documents the 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 meaningful and sustainable training, employment, business and economic opportunities for BHA residents, BHA leased housing participants, the low and very low income persons living in and around the City of Boston, and business entities that employ or are owned by BHA residents, BHA leased housing participants, and/or the low and very low income residents of the greater Boston area.

BHA’s Section 3 Program standards, procedures and practices described in this Policy, as well as in the various documents, forms and processes referenced in this Policy, represent BHA’s implementation of and compliance with Section 3 of the Housing and Urban Development Act of 1968 and related federal regulations (“Section 3”). In this regard, the provisions of Section 3 as well as BHA’s Section 3 Program forms and documents, as such may be amended over time, are incorporated in and made a part of this Policy.

The various programmatic and statutory requirements notwithstanding, the cornerstone of BHA’s Section 3 Program shall be always the “greatest extent feasible” efforts and commitments of the contractors and entities that participate in and are awarded economic opportunities pursuant to BHA’s federally funded procurement and contracting programs. In partnership with these contractors and entities, the BHA shall endeavor to ensure that the Program’s transformative purposes shall be pursued and achieved.

**II. Key Definitions**

**Recipient** is used throughout this document to refer to any entity that receives Section 3 covered funding from the BHA or is an entity that is subject to award of a BHA 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 BHA federal funded procurements and contracts. The BHA, as a recipient of federal housing funds subject to Section 3, also falls within the definition of recipient.

**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 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 the furnishing of labor, time, and/or effort relating to the installation of the supply and/or material. Additionally, Section 8 project-based assistance contracts are not covered under this policy. Nevertheless, former public housing developments that are being redeveloped or undergoing a subsidy conversion to Section 8 will continue to be subject to Section 3 either by law or BHA policy.

**Section 3 business concern means:**

- 1) A business concern meeting at least one of the following criteria, documented within the last six-month period:

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- a) It is at least 51 percent owned and controlled by low- or very low-income persons;
  - b) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
  - c) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
- 2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

**Labor hours** means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

**Section 3 worker** means:

Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

- 1) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
- 2) The worker is employed by a Section 3 business concern.
- 3) The worker is a YouthBuild participant.

**Targeted Section 3 Worker** means:

- 1) The worker is employed by a Section 3 business concern
- 2) Any person who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
  - a. A resident of public housing or Section 8 assisted housing
  - b. A resident of other public housing projects or Section 8 assisted housing managed by Boston Housing Authority, or
  - c. A YouthBuild participant

**III. Section 3 Compliance Requirements**

Recipients may demonstrate compliance with BHA's Section 3 Program by meeting the percentages set forth below for providing **training, employment, and contracting opportunities to Section 3 worker and Section 3 business concerns**. The percentages for hiring, training, and contracting represent minimum targets for a Section 3 covered contract. The percentages are not set-asides or quotas; rather, they constitute a "safe harbor" for recipients for Section 3 Program compliance. In the absence of evidence to the contrary, a recipient who meets the minimum percentages for hiring *and* contracting opportunities, to the greatest extent feasible, will be considered to have complied with Section 3 Program requirements.

The recipient is responsible for complying with the requirements of BHA's Section 3 Program in its own operations and for assuring compliance in the operations of its subcontractors, if any, as compliance is evaluated in the aggregate. Section 3 Program requirements apply to all BHA contractors and subcontractors and to all BHA federally funded contracts regardless of the contract dollar amount.

In evaluating compliance under BHA's Section 3 Program, a recipient that has not met the percentages described below has the burden of demonstrating why it was not feasible to meet the percentages. Such justification must include documented evidence of the actions taken to meet the Section 3 Program numeric percentages.

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To demonstrate compliance with BHA's Section 3 Program requirements, recipients are required, to the greatest extent feasible, to achieve the minimum numerical standards and percentages stated in this Policy and in the specific requirements contained in BHA's standard procurement and contract documents issued with respect to specific BHA administered public procurements and contract opportunities.

*Note: Labor Union and Section 3*

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 the 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 name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

**IV. Selection Priority and Procedures for Section 3 Worker and Section 3 Business Concerns; Description of Section 3 Database System and Training Fund**

This section contains additional information on BHA Section 3 Program requirements and describes BHA's Section 3 Database System and Training Fund.

**A. Section 3 Worker Hiring & Training**

The BHA hiring requirement for recipients is that, to the greatest extent feasible, at **least twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 Workers; and Five (5) percent or more are Targeted Section 3 Workers**. All training efforts must facilitate and promote the hiring and training percentages.

It is the responsibility of recipients to attain Section 3 Program compliance. Any recipient that does not meet the Section 3 Program numeric percentages must demonstrate why meeting the percentages was not feasible. For example, a recipient may provide evidence of employment advertisements posted on relevant internet websites, such as Indeed, or other outreach efforts used to recruit Section 3 Workers and Targeted Section 3 Workers.

When new hires are needed, recipients are required to, at a minimum: notify Section 3 Workers and Targeted Section 3 Workers about training and employment opportunities arising out of any Section 3 covered activity; encourage the application of Section 3 Workers and Targeted Section 3 Workers for training and employment opportunities arising out of any Section 3 covered activity; facilitate the employment of Section 3 Workers and Targeted Section 3 Workers; and document actions taken to comply with these requirements and the results of such actions and impediments encountered, if any.

In order to qualify for priority status, Section 3 Workers and Targeted Section 3 Workers must meet the minimum qualifications of the position to be filled. When hiring **Section 3 Workers** recipients will provide training and employment opportunities in the **order of priority** below:

1. Residents of the BHA development subject to the project, as documented within the past five years (category 1);

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2. Residents of other BHA development (category 2);
3. Participants in BHA's leased housing programs ("BHA leased housing participant") in the Boston metropolitan area (category 2);
4. Participants in HUD YouthBuild programs in the Boston metropolitan area (category 3);
5. Other low-income or very-low income residents of Boston metropolitan area (category 4).

When hiring **Targeted Section 3 Workers** recipients will provide training and employment opportunities in the **order of priority** below:

1. Worker employed by a Section 3 Business Concern (category 1);
2. Residents of other BHA developments, as documented within the past five years (category 2);
3. Participants in BHA's leased housing programs ("BHA leased housing participant") in the Boston metropolitan area, as documented within the past five years (category 3);
4. Participants in HUD YouthBuild programs in the Boston metropolitan area, as documented within the past five years (category 4);

Contractors are required to hire in the priority outline established above and must document instances where available higher category residents were not hired. Recipients will not be permitted to fulfill the hiring and training percentage by passing over available category 1-3 residents to hire category 4 residents.

Low-income and very-low income residents are defined by their household annual gross income and household size. For current fiscal year income limits, see HUD Program Income Limits at <http://www.huduser.org/portal/datasets/il.html>.

### **B. Section 3 Worker Training**

The BHA strongly encourages its recipients to participate in approved apprenticeship and trainee programs pursuant to and in accordance with applicable law. Specifically, recipients may use the apprenticeship program established by the Massachusetts Division of Apprenticeship, Office of Labor and Workforce Development. The division promotes and coordinates apprenticeship in the Commonwealth and is also charged with developing new programs both in the traditional building trades and non-building trade areas. Recipients may also access Building Pathways for recruiting opportunities for training cycles at <https://buildingpathwaysboston.org/about-us/> .

Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the Section 3 Program requirements.

### **C. Section 3 Business Concern Contracting**

The BHA Section 3 Program contracting percentages apply to all contracting and subcontracting needs generated by the Section 3 covered activities. For construction contracts, recipients must make their **best efforts** to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers.

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As with the hiring and training percentages, recipients shall be responsible to attain BHA Section 3 Program compliance. Any recipient that does not meet the Program's percentages must demonstrate why meeting the percentages was not feasible. A recipient may, for example, provide evidence outreach efforts used to identify and secure bids from Section 3 Business Concerns and records of pre-bid meetings to show that it attempted to comply with Section 3 Program requirements to the greatest extent feasible.

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, contractors will at a minimum:

1. Notify Section 3 business concerns about contracting opportunities arising out of any Section 3 covered contract;
2. Encourage Section 3 business concerns to submit proposals or bids on any Section 3 covered contracts;
3. Facilitate the award of contracts to Section 3 business concerns; and
4. Document actions taken to comply with these requirements and the results of such actions and impediments encountered, if any.

The recipient will, to **the greatest extent feasible**, give preference to Section 3 business concerns when entering into any contract in connection with a Section 3 covered activity. When contracting with Section 3 business concerns, recipients will follow the **order of priority** outlined below:

1. Section 3 business concerns that provide economic opportunities for residents of the BHA development subject to the project for which the assistance is provided (category 1);
2. Section 3 business concerns that provide economic opportunities for residents of other BHA developments or BHA's leased housing program (category 2);
3. HUD YouthBuild programs being carried out in the Boston metropolitan area (category 3);
4. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the Boston metropolitan area (category 4).

As with the Section 3 Worker and Targeted Section 3 Worker hiring preferences, recipients are required to contract in the priority outline established above and must document instances where available higher category business concerns were available but not used. Recipients will not be allowed to fulfill the contracting percentage by passing over, without appropriate documentation, responsible category 1-3 business concerns to contract with category 4 business concerns. A Section 3 business concern seeking a contract or subcontract must demonstrate to the party awarding the contract or subcontract that it is responsible and has the ability to perform successfully under the proposed terms and conditions.

#### **D. Section 3 Business Registry**

The Section 3 Business Registry is a listing of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business and are included in a searchable online database that can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of certain HUD-funded contracts.

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To search the database for self-certified Section 3 businesses, register your business for inclusion, or for more information on the Business Registry, please visit <http://www.hud.gov/Sec3Biz>.

**E. Section 3 Training Fund**

In accordance with its obligation to enforce the material terms of its public contracts, BHA, by operation of its Legal Department, reserves the right to impose monetary and other sanctions against recipients who fail or refuse to comply with contractual Section 3 requirements (Part IX, below, contains a description of possible sanctions). In this regard, the Section 3 Training Fund shall serve primarily as the designated depository for monetary sanctions recovered by the BHA in conjunction with its enforcement of Section 3 contractual requirements.

In addition, the Section 3 Training Fund will be permitted to accept donations from non-recipients only (i.e., individuals or entities that, at the time of the making of the donation, are not under consideration for award of a BHA state or federal funded contract or subcontract or a signatory to an active BHA state or federal funded contract or subcontract). In addition, a proportionate share of public records production fees and charges associated with any and all OCR (as defined below) - related public records requests (relating to federal funded matters only) shall be made available to OCR for deposit therein. The Section 3 Training Fund will be administered by OCR and BHA's Procurement Department with BHA's Fiscal Affairs Department assistance in the form of financial management oversight.

A three person committee ("the Section 3 Training Fund Committee") composed of one staff member each from OCR, the Resident Services Department (RSD), and the Procurement Departments shall meet as necessary to review funding priorities and make recommendations of Section 3 Training Fund uses and grant awards in accordance with and pursuant to BHA's Executive Committee contract and document review process. Individuals or entities seeking Section 3 Training Fund assistance will be required to submit a written Section 3 Training Fund Application, which will be reviewed by the Committee within thirty (30) calendar days of receipt. Application forms will be available on the BHA website and from OCR and RSD.

Allowable uses of the Section 3 Training Fund will include: financial assistance to BHA residents and BHA leased housing participants for training and work-related opportunities and expenses, such as transportation, clothing, equipment, and childcare, and education and training program costs; contributions with respect to grant arrangements with governmental and/or non-profit agencies that administer or provide federal funded training and employment programs; and reimbursement and fund allocations to support internal BHA Section 3 Program related implementation, monitoring, and enforcement efforts, costs and expenses.

Section 3 Training Funds disbursed in the form of financial assistance to BHA residents and/or Section 8 recipients or distributed or used for other than support of internal BHA Section 3 Program uses or purposes will be distributed only in accordance with standards and procedures to be established by OCR and approved by BHA's Executive Committee. The approved standards and procedures shall be appended to and incorporated within this Policy. Such standards and procedures shall, at a minimum, specify funding award and distribution practices that comply with applicable state and federal procurement laws and regulations or best practices relating to public funds award processes that provide for transparency and documented competitiveness. No portion of a Section 3 Training Fund deposit relating to a specific sanction recovery shall be disbursed and/or released and/or encumbered prior to the expiration of forty-five calendar days



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of the imposition of the specific sanction or prior to the final disposition of any claim or dispute relating to the imposition of the specific sanction.

**V. BHA Section 3 Tenant Coordinator Program**

In furtherance of its commitment to maximize Section 3 Program benefits for its resident population, the BHA Section 3 Program includes a component that anticipates and provides for training and employment opportunities that are primarily targeted to authorized and qualified residents of BHA federally funded developments. BHA's Section 3 Tenant Coordinator Program anticipates that recipients awarded a BHA federally funded public building or public works construction contract or related contract will hire tenant coordinators/liaison for the duration of the construction project. BHA also anticipates that any BHA Department that can utilize a tenant coordinator for a project will do so following the procedures listed below for BHA's Capital Construction Department ("CCD").

This component of the Program shall be administered in accordance with the following procedures:

1. On a project-by-project basis, CCD determines the number of Tenant Coordinators needed: Prior to issuance of a bid or proposal, CCD Project Manager/Project Architect ("Project Manager") in conjunction with the BHA Operations Property Manager determine whether a project will require tenant coordinators ("TC") and, if so, the minimum number of TC positions.
2. CCD Issues Project Notices: If one or more TC will be needed for a project, the CCD Project Manager provides the OCR Section 3 Coordinator with an email notice of the estimated number of TCs for the project. This notice shall also include the following information: (a) Job Title and Job Number; (b) the minimum number of TC positions for the job; and (c) the BHA Property Manager and Local Tenant Organization ("LTO") representative(s) name and contact information, if applicable.
3. OCR Distributes Project Notice: Upon receiving the Project Notice, the Section 3 Coordinator will email the Project Notice to the Resident Services Coordinator, and to the LTO representative(s), if applicable, with copy to BHA Property Manager. A "Section 3 Worker Application" in a form to be designed by OCR will be attached to this email. RSD and the LTO will be instructed to assist in publicizing the availability of the TC position(s) and encouraged to refer individual applicants and forward completed applications to the Section 3 Coordinator. OCR's email notice will indicate that LTO Board members and their family/household shall not be eligible to receive compensation as a tenant coordinator, unless such LTO Board members resign as a condition of obtaining employment or having a family/household member obtain employment.
4. OCR Conducts TC Recruitment: After receiving the form confirming TC hiring opportunities from a recipient, the Section 3 Coordinator, with input from CCD and the LTO, shall compile a list of TCs available to work on the project. The Section 3 Coordinator reviews TC applications and may conduct preliminary screening interviews of TC applicants. The purpose of a screening interview is to determine whether an applicant meets the minimum qualifications for the TC position. Upon request, CCD Staff and Operations Property Managers may participate in the screening interviews.

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5. OCR Forwards TC Applications to recipients: After compiling TC applications and conducting screening interviews, if applicable, the Section 3 Coordinator emails or faxes a list of qualified TC applicants and their applications to the recipient, with a copy to the Property Manager, CCD, and the LTO. The Section 3 Coordinator instructs the recipient on the appropriate hiring preference for the applicants listed.
6. The recipient Notifies OCR of TC Selection(s): The recipient makes its selection(s) for TC position(s) and notifies the individual applicants of its decision. The recipient then provides the Section 3 Coordinator with written notification of its selections for TC position(s). The Section 3 Coordinator may request information related to the recipient's TC selection process and the criteria used to make hiring decisions. However, in no event shall the Section 3 Coordinator interfere with or otherwise influence or hinder the recipient's decision and/or the recipient's right to hire the TC of its choice, provided such choice does not conflict with the terms of this Policy and/or of the applicable BHA procurement or contract documents.
7. OCR Notifies Property Manager and Others of TC Selection(s): The Section 3 Coordinator emails the Operations Property Manager and CCD Project Manager a notice of the recipient's TC selection(s). If requested, the Section 3 Coordinator will provide screening and selection information to the Property Manager, CCD, RSD, and the LTO.

**VII. BHA Departmental Responsibilities**

Although OCR is primarily responsible for implementation of BHA's Section 3 Program, the Program's successful operation is dependent on the services, assistance, and cooperation of various BHA departments. RSD, Procurement, Legal, Capital Construction, Real Estate Development, Leased Housing, and HR and other departments perform the following key functions in implementing BHA's Section 3 Program:

Office of Civil Rights ("OCR")

The Office of Civil Rights, monitors all BHA Section 3 Program activities, coordinates the Section 3 Program efforts of BHA departments, and works with recipients, residents, and business concerns to achieve Section 3 compliance. All BHA department Request for Proposals ("RFPs"), utilizing federal funds, must be reviewed by OCR during the proposal evaluation process for Section 3 compliance.

OCR activities shall include:

1. Monitor applicable Invitation for Bids or Requests for Proposal for inclusion of Section 3 Program notification and compliance language
2. Evaluate and score Section 3 Program compliance on proposal-based contracts
3. Review recipients' Section 3 Program forms, including the Section 3 Compliance Plan
4. Monitor recipients performance in meeting the percentages agreed upon in submitted Section 3 Compliance Plans

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5. Consult with and make recommendations to BHA's Legal Department with respect to Section 3 Program compliance-related issues, imposition of sanctions, and the processing of Program-related public records requests
6. Make and issue written determinations regarding BHA Section 3 Program compliance with respect to proposed contract awards.
7. Work with representatives of the construction industry to increase resident access to industry training programs
8. Provide Section 3 Program information and training to interested parties, including residents, businesses, contractors, and community agencies
9. Promote outreach and recruitment efforts to inform eligible and qualified BHA residents and participants of new positions available with contractors and others working for BHA
10. Manages BHA's Tenant Coordinator Employment Process
11. Serve as the liaison for the Section 3 Training Fund Committee
12. Investigate complaints from Section 3 Workers, Targeted Section 3 Workers, and Section 3 Business Concerns
13. Prepare and file annual Section 3 Summary Reports (HUD Form 60002)
14. Serve as primary custodian of records with respect to all BHA Section 3 Program information, documents, records and related written materials.

Procurement Department ("Procurement")

The Procurement Department ensures that all relevant procurement documents and documents submitted for consideration as bids and proposals meet BHA's Section 3 Program requirements. Procurement will work closely with OCR during the period of contract awarding to confirm that BHA Section 3 Program requirements are met. Procurement will collect description of general contractor's and subcontractor's past performance on Section 3 compliance or/and intended efforts to contract Section 3 Business Concerns and employ Section 3 Workers and Targeted Section 3 Workers. The Procurement Department, with consultation with the Legal Department, reserves the right to reject bid submissions and proposals that do not comply with applicable Section 3 Program requirements.

Additionally, Procurement administers the Procurement Policy, which incorporates BHA's commitment to comply with Section 3. The Procurement Department will post contract opportunities on the HUD Section 3 Opportunity Portal. A Procurement Department representative sits on the Section 3 Training Fund Committee.

Capital Construction Department ("CCD")

The Capital Construction Department is responsible for all aspects of BHA's developments and facilitates capital improvements program. BHA's capital improvements program design and construction contracts are administered by designated CCD Project Managers/Project Architects ("BHA Project Managers") pursuant to a delegation of authority emanating from BHA's

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Administrator. As such, BHA Project Managers, in conjunction with BHA's Contract Attorney, are the BHA employees with primary responsibility and authority to administer BHA's capital improvement contracts. In this capacity, CCD and designated BHA Project Managers are informed and advised by OCR with respect to all aspects of OCR's Section 3 Program services provided with respect to CCD administered procurements and contracts. To assist OCR in this regard, designated BHA Project Managers are required to: inform OCR of proposed and current federal funded design, construction and professional services projects and procurements and related contract start dates and projected completion dates; and refer all Section 3 Program related issues and complaints to OCR for action and resolution. CCD and designated Project Managers provide OCR with documentation and information OCR may require in furtherance of OCR's administration of the BHA's Section 3 Program and seeks OCR's involvement in planning and establishing BHA Section 3 Program requirements for CCD administered projects, procurements and contract opportunities. All CCD RFPs, utilizing federal funds, must be reviewed by OCR during the proposal evaluation process for Section 3 compliance.

Real Estate Development ("RED")

BHA's redevelopment and leveraged financing programs, including HOPE VI and mixed-financed development projects ("mixed-finance"), are administered by BHA's Real Estate Development Department. In addition, RED is responsible for strategic planning and policy functions within the BHA. BHA's mixed-finance procurements and contracts are administered by designated RED personnel pursuant to a delegation of authority emanating from BHA's Administrator. As such, designated RED personnel, in conjunction with BHA's Contract Attorney, are the BHA employees with primary responsibility and authority to administer BHA's mixed-finance contracts. In this capacity, RED is informed and advised by OCR with respect to all aspects of OCR's Section 3 Program services provided with respect to RED-administered procurements and contracts. To assist OCR in this regard, designated RED personnel are required to: inform OCR of proposed and current BHA mixed-finance design, construction projects and procurements and related contract start dates and projected completion dates; and refer all Section 3 Program related issues and complaints to OCR for action and resolution. RED and designated RED personnel provide OCR with documentation and information OCR may require in furtherance of OCR's administration of the BHA's Section 3 Program and seeks OCR's involvement in planning and establishing BHA Section 3 Program requirements for RED administered projects, procurements and contract opportunities. All RED RFPs, utilizing federal funds, must be reviewed by OCR during the proposal evaluation process for Section 3 compliance.

Operations Department ("Operations")

The Operations Department, primarily by and through its Property Managers, is responsible for the management and oversight of all BHA-owned developments and properties which includes the administration of site-based procurements. In this role, the Operations Department collaborates with OCR and the Procurement Department to ensure that all applicable site-based procurements are procured and administered in compliance with BHA's Section 3 Program requirements.

Designated Operations personnel administer BHA's maintenance related services and private management contracts pursuant to a delegation of authority emanating from BHA's Administrator. As such, designated Operations personnel, in conjunction with BHA's Contract Attorney, are the BHA employees with primary responsibility and authority to administer BHA's maintenance related and private management contracts. In this capacity, Operations and designated Operations personnel are informed and advised by OCR with respect to all aspects of OCR's

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Section 3 Program services provided with respect to Operations administered procurements and contracts. To assist OCR in this regard, designated Operations personnel are required to inform OCR of proposed and current federal funded projects and procurements and related contract start dates and projected completion dates and refer Section 3 Program related issues and complaints to OCR for action and resolution. Designated Operation personnel provide OCR with documentation and information OCR may require in furtherance of OCR's administration of the BHA's Section 3 Program and seeks OCR's involvement in planning and establishing BHA Section 3 Program requirements for Operations administered projects, procurements and contract opportunities.

In accordance with BHA's Tenant Coordinator Program, Operations site staff work with the local tenant organization and OCR to identify and recruit residents for employment as tenant coordinators or other employment opportunities.

Human Resources Department ("HR")

The Human Resources Department (HR) must encourage the application of Section 3 Workers and Targeted Section 3 Workers for training and employment opportunities; facilitate the employment of Section 3 Workers and Targeted Section 3 Workers; and document actions taken to comply with Section 3 requirements.

HR must notify Section 3 Workers and Targeted Section 3 Workers about training and employment opportunities at the BHA. HR will utilize the HUD Section 3 Opportunity Portal to post employment and contract opportunities. HR should inform Section 3 Workers and Targeted Section 3 Workers of the Section 3 Opportunity Portal and the user profile function. HR should also post-employment opportunities through Constant Contact and encourage Section 3 Workers and Targeted Section 3 Workers to sign up for BHA's mailing list. HR must also send job opportunities to relevant parties, such as RSD and Housing Property Managers, for posting at BHA developments and buildings. HR may advertise employment opportunities online and on BHA's social media platforms to show that it attempted to recruit Section 3 Workers and Targeted Section 3 Workers.

The Human Resources Department is responsible for collecting and entering employment data regarding all BHA Section 3 Workers and Targeted Section 3 Workers. BHA is expected to achieve a 25% Section 3 Worker and 5% Targeted Section 3 Worker hiring percentage or demonstrate best efforts attempted to meet the percentage.

Leased Housing Department ("Leased Housing")

The Leased Housing Department administers the BHA's federal Housing Choice Voucher Program (Section 8), as well as a number of other programs. Leased Housing works with RSD and OCR on Section 3 outreach. Leased Housing has the primary responsibility for ensuring that eligible leased housing participants are informed of and have access to Section 3-related hiring, training, and other economic opportunities. Additionally, Leased Housing has the lead role in identifying participants with experience in construction and other Section 3-related industries for the Section 3 Worker and Targeted Section 3 Worker database maintained by OCR.

Fiscal Affairs Department ("Fiscal")

The Fiscal Affairs Department has primary responsibility for the fiscal management and record-keeping relating to the Section 3 Training Fund and shall provide the Section 3 Training Fund

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Committee with directions and advice relating to operation of the Fund as warranted. Annually, the Payroll Department will provide OCR the total labor hours for Section 3 Workers, Targeted Section 3 Workers, and all workers employed by BHA.

Legal Department (“Legal”)

The Legal Department, primarily by and through its Contract Attorneys, is the BHA Administrator’s legal representative with respect to all aspects and phases of BHA’s various procurement and contracting programs. In this capacity, the Legal Department’s Attorneys are the only BHA employees delegated with the authority to bring, prosecute and defend sanctions, claims and legal actions relating to the enforcement of BHA’s Section 3 Program. To assist Legal in its role, OCR shall provide Legal with compliance-related recommendations and all documentation and information Legal may require in furtherance of its legal representation responsibilities relating to BHA’s Section 3 Program. No Section 3 related sanctions may be pursued without Legal’s review and recommendation. The BHA’s Administrator is the final authority regarding sanctions.

In addition, whereas Legal is the primary delegated responder to BHA’s public records requests, all departments shall refer and/or forward all such requests it may receive for documents, records and/or information relating to BHA’s Section 3 Program to BHA’s General Counsel and, further, OCR, in its capacity as the primary custodian of all Section 3 Program records, shall assist Legal with the identification, record compilation, and production of any such public records request response.

**VIII. Section 3 Coordinator and Civil Rights Investigator & Policy Advisor**

The BHA Section 3 Coordinator and Civil Rights Investigator & Policy Advisor shall be the BHA employees designated with the primary authority relating to monitoring and administrating of all aspects of BHA’s Section 3 Program. The Section 3 Coordinator and Civil Rights Investigator & Policy Advisor use forms developed by OCR and the Legal Department for use in BHA’s procurement and contract documents (“BHA Section 3 Program Forms”) and Compliance Plans drafted and submitted by recipients to evaluate recipients’ commitment to meeting the Section 3 requirements. The Section 3 Coordinator and Civil Rights Investigator & Policy Advisor monitor compliance throughout the duration of a Section 3 covered activity, and determine whether the BHA’s Section 3 Program requirements have been met as a condition of contract award, periodic contract payment, and disbursement of final payment.

In order to determine a recipient’s compliance with BHA’s Section 3 Program requirements, the Section 3 Coordinator and Civil Rights Investigator & Policy Advisor will determine whether a recipient has met the Program’s minimum percentages for hiring/training and contracting by recipients. In evaluating Section 3 Program compliance, a recipient that has not met the appropriate requirements has the burden of demonstrating why it was not feasible to do so. This includes documentation of all attempts made to notify, encourage, and facilitate job and contracting opportunities to Section 3 Workers, Targeted Section 3 Workers, and Section 3 Business Concerns.

Prior to the approval of any Section 3 covered contract, OCR 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 BHA’s Section 3 Program.

The Section 3 Coordinator and Civil Rights Investigator & Policy Advisor shall administer the BHA’s Section 3 Program in accordance with the terms of this Policy and pursuant to the specific

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terms and requirements of the BHA Section 3 Program Forms incorporated into BHA's standard procurement and contract documents. General administration of the Section 3 Program shall conform to the following matters:

BHA Section 3 Program Forms:

BHA Section 3 Program Forms require recipients to certify 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. On a monthly basis, recipients will provide their payroll documents highlighting the labor hours worked by Section 3 Workers and Section 3 Targeted Workers. Finally, at the completion of the contract, recipients submit a HUD 60002 form summarizing the Section 3 Program activities for the entire project. 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 Procurement Department as non-responsive. Failure to submit monthly Section 3 Program reports may result in the assessment of sanctions including the withholding of payment until the report is provided.

Section 3 Compliance Plan:

All recipients shall be required to submit a Section 3 Compliance Plan in accordance with standards established by OCR, Procurement and Legal as a condition of an award of a BHA administered federally funded contract estimated to exceed \$100,000. A recipient's approved Section 3 Compliance Plan shall constitute the specific and quantifiable methods by which the recipient shall undertake to satisfy BHA's Section 3 Program requirements. Drafting of the Section 3 Compliance Plan shall be the sole responsibility of the recipient and all such Compliance Plans should be the unique product of the nature of the project, the needs of the contractor and subcontractors, and the actual Section 3 related opportunities generated.

**IX. Sanctions**

In accordance with its obligation and commitment to enforce the terms of its contracts, the BHA reserves the right to issue and enforce sanctions for serious and/or repeated violations of its Section 3 Program requirements contained in its procurement and contract documents. Accordingly, Section 3 Program sanctions shall include: monetary sanctions; contract term or payment suspensions; for-cause contract terminations; and/or BHA-administered debarment from future BHA administered federally-funded contract opportunities.

In all cases, no sanctions will be taken or imposed against a recipient by any department without the prior approval of the BHA Administrator. The OCR, Legal and Procurement Departments will provide the Administrator with recommendations in writing regarding the imposition of sanctions. Thereafter, a recipient determined to be in noncompliance with BHA's Section 3 Program shall be notified in writing of the findings and of any sanctions BHA intends to impose. This written notice will give the recipient an opportunity to meet with the Section 3 Coordinator and Civil Rights Policy Manager, and BHA Contracting Officer and, if required by Legal, a BHA Legal Department attorney, to present information demonstrating compliance or mitigating factors relating to its failure to comply. Within ten (15) calendar days of the meeting, the Section 3 Coordinator and Civil Rights Policy Manager, in consultation with BHA's Legal Department, will make a written finding of compliance or non-compliance. Copies of all OCR correspondence will be provided to the Contracting Officer.

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After a finding of non-compliance, the BHA may impose on the recipient, due to its noncompliance or of that of its subcontractor, any one or more of the following sanctions:

1. Recovery of a percentage of the contract price one-tenth of one percent (0.1%) or \$2,500, whichever is greater, in the nature of liquidated damages, for each week that the contractor fails or refuses to comply.
2. Suspension of any payment due until the recipient is able to demonstrate compliance.
3. Termination or cancellation of the contract unless the recipient is able to demonstrate compliance within a specified time as determined by BHA.
4. Forfeiture of up to five percent (5%) of the contract price in connection with final acceptance and final payment.
5. Denial to the recipient of the right to participate in any future BHA contracts for up to three (3) years.

**X. Complaint Procedures**

In an effort to learn of complaints of non-compliance relating to its Section 3 Program, BHA encourages Section 3 Workers, Targeted Section 3 Workers, Section 3 Business Concerns, recipient, and private citizens to submit any such complaints to its Section 3 Coordinator and Civil Rights Policy Manager as follows:

Allegations of non-compliance or other complaints regarding BHA's Section 3 Program should be filed in writing and must contain the name of the complainant and a brief description of the alleged violation. Complaints should be addressed to:

Boston Housing Authority  
Office of Civil Rights  
Chief of Staff  
52 Chauncy Street  
Boston, MA 02111

with copy to:

Boston Housing Authority  
Legal Department  
ATTN: General Counsel  
52 Chauncy Street  
Boston, MA 02111

Complaints must be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation. The Section 3 Coordinator and Civil Rights Policy Manager will conduct an informal investigation affording all interested parties the opportunity to submit testimony and evidence pertinent to the complaint. The Section 3 Coordinator and Civil Rights Policy Manager, after consultation with the BHA's Legal Department, will issue a letter detailing the findings of the investigation no later than thirty (30) calendar days after the filing of the complaint.

A complaint may also be filed with HUD. The HUD complaint form (HUD Form 958) is available on the HUD Section 3 website and from OCR. Complaints are investigated by HUD, and, where appropriate, voluntary resolutions are sought. Complaints not resolved voluntarily may result in an administrative hearing. Complaints must be addressed to:



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U.S. Department of Housing and Urban Development  
New England Office  
Boston Regional Office  
10 Causeway Street  
Room 301  
Boston, MA 02222-1092

Complainants are responsible to file their complaints with HUD in accordance with applicable regulations which can be found at 24 CFR 135.76; complaints filed with OCR will not be forwarded to HUD as a matter of course nor will OCR file complaints for or on behalf of complainants.

END

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**XI. Glossary**

**Authority or BHA** means the Boston Housing Authority.

**BHA leased housing participant** means an individual or family that has been admitted to and is currently assisted by a housing program administered by the BHA 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.

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

**HUD YouthBuild programs** mean programs that receive applicable federal assistance and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

**Metropolitan area** means the Boston metropolitan statistical area (MSA), as established by the Office of Management and Budget. The Boston MSA consists of seven counties: Norfolk, Plymouth, Suffolk, Middlesex, Essex, Rockingham (NH), and Strafford (NH).

**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.

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

**Recipient** is used throughout this document to refer to any entity that receives Section 3 covered funding from the BHA or is an entity that is subject to award of a BHA 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 BHA federal funded procurements and contracts. The BHA, as a recipient of federal housing funds subject to Section 3, also falls within the definition of "recipient."

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

**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 activity** means any activity, procurement or contract funded by Section 3 covered HUD assistance including, but not limited to: all manner of procurements; 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 the furnishing of labor, time, and/or effort relating to the installation of the supply and/or material.

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Professional Service contracts for non-construction services that require an advanced degree or professional licensing are not covered and do not need to be reported.

**Section 3 covered contract** means a contract or a subcontract awarded by the Authority or by a Contractor for work on a Section 3 Covered Project and/or any Section 3 Covered Activity. Section 3 Covered Contracts do not include contracts for the purchase of supplies and materials, except where a contract for the purchase of materials includes installation.

**Section 3 project** means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs.

**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.

**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.

**XII. Section 3 Clause**

All Section 3 covered contracts and subcontracts shall include the following clause (referred to as the Section 3 Clause):

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

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

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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 name and location of the person(s) taking applications for each of the positions: 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 appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a 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 filled (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