

# 2018

## HOME/LIHTC Developments Implementation Manual

### **SC HOUSING**

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1/15/2019

# Table of Contents

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<b>Getting Started</b> .....	<b>3</b>
Implementation Schedule.....	3
Staff Contact Information .....	3
Choice-Limiting Actions Pending Environmental Clearance .....	3
Award Revisions .....	4
Public Disclosure Requirements .....	4
Financial Commitments .....	4
Loan Closing Requirements .....	4
Financial Management & Audit Requirements.....	5
Financial Accountability .....	5
Financial Records .....	5
OMB A-133 Audit Requirements .....	6
Annual Project Audit Requirements .....	7
Conflict of Interest Requirements.....	7
Record Keeping Requirements .....	8
Section 3 Project Applicability .....	9
<b>Pre-Construction Requirements</b> .....	<b>10</b>
Independent Cost Analysis, Final Plans & Specifications.....	10
Procurement Requirements .....	10
General Information .....	10
Contractor Credential Requirements.....	11
Types of Procurement Methods .....	12
Submitting Procurement Documentation .....	17
Identity of Interest Relationships .....	18
Awarding Contracts.....	18
Contract Approval.....	18
HOME Contract Provisions.....	18
Bonding & Insurance Requirements .....	18

Change Orders .....	19
<b>Post Construction Requirements .....</b>	<b>20</b>
Final Inspection Requirements .....	20
Requesting Disbursement of HOME Funds.....	20
<b>Additional Federal &amp; State Requirements .....</b>	<b>21</b>
Federal Debarment Certification .....	21
Fair Labor Standards Act.....	21
Byrd Anti-Lobbying Certification.....	21
SC Illegal Immigration Reform Act .....	21
Section 3 Regulations.....	23
Applicability of Section 3 to HOME Developments .....	23
Section 3 Annual Reporting Requirements.....	25
Additional Section 3 Guidance.....	26
Section 3 Clause .....	27
Small & Minority Business Involvement .....	28
Violence Against Women Act (VAWA).....	28
<b>Federal Reporting Requirements for HOME Developments .....</b>	<b>30</b>
MBE/WBE Annual Report (HUD 2516).....	30
Section 3 Annual Report (HUD 60002) .....	30
<b>Award Close-Out Requirements .....</b>	<b>31</b>
Award Close-Out Manual.....	31
Project Completion Report .....	31
Restrictive Covenant Amendment.....	31
<b>HOME Compliance Period .....</b>	<b>32</b>
Monitoring Reviews .....	32
Annual Financial Oversight .....	32
HOME Rental Compliance Manual.....	32
<b>Other Information.....</b>	<b>33</b>
<b>Forms Index.....</b>	<b>34</b>

# Getting Started

## IMPLEMENTATION SCHEDULE

The project Implementation Schedule is provided as **Attachment A** to the HOME Funding Agreement. The schedule is intended to coincide with the **2018 Tax Credit Program's Awarded Development Timeline** that is posted on the Authority's website. If the HOME Implementation schedule conflicts with any LIHTC Program requirements, unless otherwise instructed, the requirements identified in the LIHTC Timeline shall take precedence. The only exception is the deadline to begin construction. **HOME developments must begin construction within 12 months of executing the HOME award agreement.**

## STAFF CONTACT INFORMATION

Contact information for the **Development Division Staff** is listed below.

Staff Name:	Phone:	Fax:	Email:
<b>Tracey Easton</b> Interim Development Director	803-896-8771	803-551-4878	tracey.easton@schousing.com
<b>Jennifer Cogan</b> Development Program Manager	803-896-9824	803-551-5991	jennifer.cogan@schousing.com
<b>Chris McMillian</b> Multi-family Underwriter	803-896-9196	803-551-4890	chris.mcmillian@schousing.com
<b>Leanne Johnson</b> Multi-family Underwriter	803-896-9384	803-726-8519	leanne.johnson@schousing.com
<b>Jessica Donald</b> Audit Manager	803-896-8669	803-726-8502	jessica.donald@schousing.com
<b>Demian Carpenter</b> Program Coordinator	803-896-8741	803-551-4887	demian.carpenter@schousing.com
<b>Jeff Lauffer</b> Program Coordinator	803-896-9345	803-551-4976	jeffrey.lauffer@schousing.com
<b>Kelli Lawing</b> Program Coordinator	803-896-9843	803-551-4994	kelli.lawing@schousing.com
<b>Courtney Davis</b> Loan Closing Coordinator	803-896-9254	803-551-4931	courtney.davis@schousing.com

## CHOICE-LIMITING ACTIONS PENDING ENVIRONMENTAL CLEARANCE

In accordance with 24 CFR Part 58, the Recipient acknowledges and agrees that **NO funds, HUD or non-HUD, may be committed to physical or choice-limiting actions and no physical or choice-limiting actions may be undertaken with respect to the development, including, but not limited to, the following:**

1. Property acquisition;
2. Demolition;
3. Notice of Award;
4. Execution of Construction Contract; and/or
5. Rehabilitation/Construction

Violation of this provision before the environmental review process has been completed and the Authority has received HUD form 7015.16, "Authority to Use Award Funds," may result in the automatic termination of the conditional commitment of HOME funds. If questions arise on what actions are or are not choice-limiting, call Authority Development staff for guidance.

## **AWARD REVISIONS**

The Authority must approve any changes or amendments to the HOME application addendum that result in changes to project funding or structure. All requests for award revisions must be submitted in writing to your assigned program coordinator.

## **PUBLIC DISCLOSURE REQUIREMENTS**

HOME program regulations require that award recipients disclose publically receipt of their federal funding and any opportunities that may result from the funding. Sample language is provided in the **M-4 Notice of Award**. The notice must be published in a newspaper that is circulated in the project area for at least one day. A copy of the published notice must be submitted to the Authority not later than the date identified in the Implementation Schedule. The purpose of publishing this notice is to ensure the community and potential beneficiaries are informed that opportunities may exist arising from the federal HOME funds awarded in their area. The notice must include the Equal Housing Opportunity Logo and encourage the participation of women and minority businesses. Projects subject to Section 3 requirements must also encourage the participation of Section 3 businesses and residents.

## **FINANCIAL COMMITMENTS**

Final financial commitments are required as part of the application review process. If the terms and conditions of financial commitments are revised for any reason, as approved by Authority underwriting staff during the application review process; Development staff must be notified promptly. Changes to the financial structure of a development may require a subsequent evaluation to determine if the financial structure still meets the Authority's underwriting criteria. Regardless of the stage of project completion, Recipients must notify their Program Coordinator immediately of any changes to the project's financial structure.

## **LOAN CLOSING REQUIREMENTS**

All HOME and/or HTF funds are awarded in the form of a loan. Upon the receipt of a completed **M-13 HOME Loan Matrix Form** the Authority will prepare a loan closing package which will be sent to your chosen attorney for closing. The loan closing package will include instructions for executing the promissory note, mortgage, truth in lending disclosure, and the HOME Loan Agreement. Before the HOME loan documents can be prepared and sent to your attorney, the **M-13 HOME Loan Matrix Form** must be completed by your attorney and submitted to the Authority. A copy of the deed, legal description, tax map number and numbered street address of the subject property must be submitted. The mortgage must be insured by a policy of mortgage title insurance on the subject property. The Authority requires that a Commitment for Title Insurance be provided for review prior to loan closing. The closing cannot be scheduled until the Authority's staff has reviewed and approved the Commitment for Title Insurance. The HOME Loan Agreement will address Federal HOME regulations, along with other

terms and conditions which consist of guidelines, laws, and requirements under which the loan is to be administered. ***To begin the loan closing process you must submit all necessary documentation to your Program Coordinator at least two weeks prior to the day in which you anticipate closing the HOME loan.***

If there are any questions concerning the loan closing procedures, contact Courtney Davis at (803) 896-9254 or [courtney.davis@schousing.com](mailto:courtney.davis@schousing.com).

## **FINANCIAL MANAGEMENT & AUDIT REQUIREMENTS**

### **FINANCIAL ACCOUNTABILITY**

Financial Management requirements must be provided to the appropriate finance staff of the HOME Recipient. Recipients must maintain complete and accurate financial records for all transactions performed under the HOME agreement. Audited financial statements must be annually and throughout the duration of the affordability period. Financial statements must be compiled, reviewed or audited by an independent CPA licensed by the State of South Carolina Board of Accountancy. Financial Statements must include an Income Statement and Balance Sheet.

Each HOME recipient's financial management systems must have a budget control system that makes it possible to compare actual expenditures with budgeted amounts for the development. Recipients must have a cash management procedure in place that minimizes the elapsed time between receipt and expenditure of HOME funds. Recipients must monitor the cash management to ensure that systems are in compliance. Financial management systems must also have sound internal control procedures that cover cash, real property, and other assets. The internal control system must safe guard all HOME funded property and ensure that such property is used solely for authorized purposes.

### **FINANCIAL RECORDS**

Separate accounting records must be maintained for HOME funds. The co-mingling of funds is not permitted. HOME funds must be kept in a non-interest bearing account. Not only will separate records serve to meet required recordkeeping requirements, but it will also eliminate potential conflicts with the Recipient's usual recordkeeping systems, which may reflect a different local fiscal year or accounting functions by department rather than by property and activity. In addition, separation of accounts reduces conflicts with other funds. All records and correspondence pertaining to HOME must reflect the award number. At the time of a financial review, whether it is during the oversight period of the program or during the affordability period, the ledger and journals listed below must be available for review. The ledger and journals should be able to demonstrate that a budget control system exists in the accounting record system.

Financial records must be fully supported with source documentation. Examples of source documentation include: contracts, canceled checks, wire transfers, paid bills, invoices, draw request documents, deposit slips or other original documents supporting income or expenditures. This documentation must be on hand at the time disbursements are made and must be kept in one central location.

Recipients are required to establish procedures for recording HOME-related transactions and establishing the appropriate checks and balances for accounting transparency:

**a. General Ledger**

This ledger must be maintained to summarize cash receipts and disbursements on property basis. Entries to the General Ledger must be made from the Cash Receipts and Cash Disbursements Journal and must be kept separately for each activity.

**b. Cash Receipts Journal**

This journal must be maintained to record the receipt of all funds (local, state and federal) used for program activities. The journal must include the date funds were received, the amount of funds received, the source of funds and the properties for which the funds were received.

**c. Cash Disbursements Journal**

This journal must be maintained to record checks issued for payment of program costs. It must include the date of payment, the payee, check number, amount and the property for which the disbursement was made against.

**d. Development Summary Journal**

This journal is required for HOME developments which have multiple activities. This journal contains entries for each receipt and disbursement related to a particular activity or development. It also contains reference numbers to the Cash Receipts and Disbursements Journals. A cash balance column is used to keep a running balance of the difference between receipts and disbursements.

**e. General Journal**

This journal may be maintained to enter all non-cash transactions. These entries must include a long-line statement to explain the origin or reason for the amount. The amount is then entered into the General Ledger.

**Questions related to financial management should be directed to Jessica Donald, Development Auditor at 803-896-9253 or [jessica.donald@schousing.com](mailto:jessica.donald@schousing.com).**

***OMB A-133 AUDIT REQUIREMENTS***

Audit Requirements for non-profits and governmental entities are annual requirements that remain in effect from award inception until the affordability period of the project has expired. Each year at end of the entity's fiscal year, a determination must be made as to whether or not the entity is exempt for the fiscal year or if audit requirements have been triggered and an audit will need to be submitted. ***Non-Profit and government entities are required to submit an M-5A Audit Requirements Certification Form annually no later than 30 days from the end of their fiscal year.***

HOME award Recipients that are non-profits and governmental entities that **expend \$750,00.00 or more in total federal financial assistance** within any one fiscal year are required to obtain an independent audit in accordance with OMB Circular A-133 as referenced at **2 CRF Part 200, Subpart F**. The computation of the total of such assistance includes **all federal funds expended by the entity** and not just the amount of HOME and NHTF dollars. For purposes of determining the amount of federal assistance expended, all federal assistance shall be considered, including that which is received directly from federal agency, passed through a state or local government, passed through a non-profit organization or any combination thereof.

For those required to submit an audit, the annual due date is no later than nine months from the end of the entity's fiscal year that triggered the audit. Award Recipients that expended less than \$750,000.00

during their fiscal year, in federal financial assistance, are exempt from federal audit requirements. However, the Recipient must still have financial records available for review by the Authority. The costs incurred to complete audits cannot be paid for with HOME project funds. In addition, non-federal entities cannot charge the following to a federal award:

- The cost of any audit completed under the Single Audit Act Amendments of 1996, not conducted in accordance with 2 CRF Part 200, Subpart F.
- The costs of auditing non-federal entities which are exempt from 2 CRF Part 200, Subpart F.

### **ANNUAL PROJECT AUDIT REQUIREMENTS**

Recipients are required to submit annual audits performed on each project assisted with HOME funds that has 10 or more HOME-assisted units. Project audits are to be submitted beginning the first year following initial lease-up and are to continue during the entire duration of the affordability period with the final annual audit occurring the last year of the affordability period.

**For questions regarding audit requirements, contact Jessica Donald, Development Auditor at (803) 896-9253 or [jessica.donald@schousing.com](mailto:jessica.donald@schousing.com).**

### **CONFLICT OF INTEREST REQUIREMENTS**

Recipients must maintain in their procurement and beneficiary selection procedures a written code of conduct to govern the performance of its officers, employees or agents in contracting with and expending HOME funds. HOME recipients are required to comply with the conflict of interest regulations found at **2 CFR Part 200 Subpart B and 200.112 Subpart B** in all cases not governed by 200.112 and 200.318 the provisions of 24 CFR Part 92.356 will apply. Written procurement and selection procedures should contain the following regarding conflicts of interest:

1. **Applicability:** In the procurement of property and services by the Recipient the provisions of this section apply.
2. **Conflicts prohibited:** No persons described in this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
3. **Persons covered:** The conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official, owner, developer or sponsor of a development assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit, may not occupy a HOME-assisted affordable housing unit in a development of the participating jurisdiction, which are receiving HOME funds.
4. **Exceptions:** Upon the written request of the Authority, an exception may be awarded from HUD with regard to the provisions of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Program and the effective and efficient administration of the Authority's program or development. An exception may be considered only after the recipient has provided the following:

- a) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - b) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.
5. **Factors to be considered for exceptions:** In determining whether to award a requested exception after the recipient has satisfactorily met the requirements the Authority will consider the following:
- a) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or development which would otherwise not be available;
  - b) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - c) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
  - d) Whether the interest or benefit was present before the affected person was in a position as described in number (3) of this Section;
  - e) Whether undue hardship will result either to the Recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
  - f) Any other relevant considerations.
6. **Owners and Developers:** No owner, developer or sponsor of a development assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer, or sponsor) whether private, for profit or non-profit may occupy a HOME-assisted housing unit in a development. This provision does not apply to an employee or agent of the owner or developer of a rental housing development who occupies a housing unit as the property manager or maintenance worker.

Recipients must include the ***M-58 Conflict of Interest Certification*** Form in all bid packages. Each contractor or firm awarded a contract to be paid for with HOME funds, must complete the certification form. Recipients must notify the Authority when a conflict of interest arises. Recipients that choose to request an exception from HUD must contact their Awards Management Program Coordinator for the specific requirements for submitting an exception application package.

## **RECORD KEEPING REQUIREMENTS**

HOME Recipients must establish and maintain sufficient records that clearly and satisfactorily demonstrate that program requirements are being met. All records must be retained for the period as described in the Funding Agreement. Recipients must provide records with respect to any questioned costs, audit disallowances, litigation or dispute between the Recipient and SC Housing shall be maintained for the time needed for the resolution of said question and that in the event of early termination of the funding agreement, or if for any reason SC Housing shall require a review of the records related to HOME, recipients shall, at their own cost and expense, segregate all such records related to HOME from its other records of operation.

Recipients must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality. SC Housing, U.S. Department of Housing and Urban Development, the Inspector General, and any of their representatives, will have the right of access to any pertinent books, documents, papers or other records of the Recipients, in order to make audits, examinations, excerpts and transcripts. Period of retention for HOME rental developments is five years after development completion for development related records. The records of individual tenant income verifications, development rents, and inspections must be retained for the most recent five year period, until five years after the termination of the affordability period. Retention periods for other federal requirements are provided in the Funding Agreement.

### **SECTION 3 PROJECT APPLICABILITY**

A ***M-11B Section 3 Applicability Form*** must be submitted not later than the date identified in the Program Implementation Schedule. This form is used to determine whether or not your development will have to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] which is HUD's legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded developments. Additional information about the requirements of Section 3 is found on **Page 22**.

# Pre-Construction Requirements

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## **COST ANALYSIS, FINAL PLANS & SPECIFICATIONS**

Final plans, specifications, and cost estimates are to be submitted to the Authority's LIHTC staff no later than the date specified in the **Tax Credit Awarded Development Timeline**. The Authority's consultant will review these items for both HOME and Tax Credit requirements. Submitting an additional copy of these items to your HOME program coordinator is **NOT** required. The Authority must approve cost estimates, plans and specifications prior to commencing procurement or executing a construction contract. Cost estimates are part of the application process. Providing updated costs is not required until the Placed in Service Application is submitted.

ALL HOME funded projects are required to submit a **M-7B Lead-Based Paint Applicability Form**. HUD requires that this form is completed and maintained in the file for all projects regardless of construction type. Projects claiming exemption due to LBP inspection results or previous reduction activity that have received clearance must provide a copy of the LBP inspection or clearance report with the **M-7B**. An **M-7B Lead-Based Paint Applicability Form** must be submitted by the deadline identified in the Implementation Schedule.

## **PROCUREMENT REQUIREMENTS**

### **General Information**

Contracts for professional and construction services awarded after the HOME conditional commitment has been issued must be procured. Recipients must follow procurement procedures that are in compliance with 2 CFR Part 200, and all applicable state and local laws and regulations. This section describes the policies and procedures that must be followed when entering into contractual agreements with other entities when HOME funds are being used. Such entities may include governmental agencies, professional services firms, consultants, construction contractors, providers of goods and services, and others. The primary purpose of these requirements is to assure free and open competition is achieved. Any exception to the Authority's procurement requirements must be approved in writing by the Authority.

Procurement policies or bid selection procedures must comply with the regulations of Section 3, MBE/WBE outreach requirements, and federal labor standards when applicable. Developments subject to Section 3 regulations must include the **M-11E Certification of a Section 3 Business Form** and the **M-11D Section 3 Guidance for Contractors** in all bid packages when applicable.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Recipient shall be alert to prohibited conflicts of interest, as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid to be evaluated by the Recipient. Bidders must be informed of all the federal requirements the project will be subject to. Contracts shall be entered into only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of

the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

Examples of what is considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Non-competitive practices between firms
- Conflicts of interest
- Unnecessary experience and bonding requirements

A minimum of three bids is preferred. The bids shall be from general contractors or residential builders who are licensed in the State of South Carolina. All bids shall be submitted with line item costs. The acceptable bid for a general contractor shall be no more than 10% higher or lower than the independent cost analysis or the work write-up approved by the Authority. **Any exception to the above items must be approved by the Authority.** If there are no bids received that fall within the 10% limitation, contact your Program Coordinator for guidance.

### ***Contractor Credential Requirements***

Selected general contractors must meet the following minimum requirements to be awarded HOME construction contracts. Documentation that the contractor meets these requirements must be included in the bid package and submitted proposals.

1. Construction companies must have been in business for a minimum of five years and have permanent full-time employees.
  - Documentation must be provided that demonstrates the construction company been in business for at least five years of continuous operation, operating under the same business name.
  - Documentation that the company is in good standing with the SC Secretary of State
  - Copy of most current license issued by SC Department of Licensing, Labor and Regulations
  - Completed W-9
2. Provide a list of similar projects the construction company has successfully completed during the last five years. Include the following information for each project:
  - Project Name
  - Project Owner
  - Project Address
  - # of Units and Type (affordable, market rate)
  - Construction Start/End dates
  - Project Type (New Construction, Rehab, Adaptive Re-Use, Conversion) - Description of Funding Sources
  - Color Photo of Completed Projects
3. Provide the construction company's organizational chart (including employee names and titles) and employee roster. The construction company must have full-time permanent employees, including full-time on-site job superintendents/project managers. Provide the following information for each employee:
  - Employee Name
  - Job Title

- Resumes of all key staff members and principals
- Description of responsibilities and job duties
- Type (i.e. full-time/part-time)

### ***Types of Procurement Methods***

The appropriate procurement method to use is dependent upon the value of the good/service and the type of service being solicited. The current Simplified Acquisition Threshold is \$150,000.

#### **PROCUREMENT METHOD TYPE 1: COMPETITIVE SEALED BIDS**

The competitive sealed bid method is required when procuring for **ALL construction contracts and for all goods and services costing more than \$150,000**. The only exceptions to this rule are single family housing rehabilitation developments where the total cost does not exceed \$150,000, which may be conducted under the Small Purchases Method.

During the competitive sealed bid process, bids are publicly solicited and a firm, fixed-price contract is awarded to the most responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. In order for sealed bidding to be feasible, the following conditions should be present:

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. The procurement lends itself to a firm, fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

When sealed bids are used, the following requirements apply:

1. Publication Period: The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
2. Federal Funding Advertised: The advertisement should indicate that the project is being funded with HOME and NHTF funds and that federal requirements will apply to the contracts;
3. Clear Definition: The invitation of bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
4. Itemized Costs: Bids must show the quantity and cost of each line item. Lump sum bids and/or bid items that are not specifically identified or are generally grouped as miscellaneous or contingency are not allowed;
5. Public Opening: All bids will be publicly opened at the time and place prescribed in the invitation for bids;
6. Selection and Contracting: A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder; and
7. Rejection of Bids: Any or all bids may be rejected if there is a sound documented reason.

**Negotiations after Unsuccessful Competitive Sealed Bidding:** Recipients must notify the Authority upon realization that the bid procedure was unsuccessful. Bid processes are deemed unsuccessful when an insufficient number of proposals are submitted or proposals received are not within 10% of the cost estimate approved by the Authority. The Authority, at its discretion, based on the circumstances, may allow a bid to be awarded, permit negotiations or require the project be re-bid.

### **Preparing a Bid Package for Construction Services**

#### ***Step 1: What should be included?***

An architect or engineer will typically prepare the technical bid specifications for new construction and Recipients will typically prepare the necessary work write-up for rehabilitation. The information concerning both of these types of activities should provide a complete and accurate description of the work to be completed, specifications for materials, products, and services to be provided or performed. In addition, Recipients must ensure that the bid package includes HOME mandatory design criteria, design and amenity criteria included for points, required federal and State provisions and clauses, such as compliance with minimum standards for accessibility by the physically handicapped (Section 504), Davis-Bacon, Section 3, and Lead-Based Paint regulations when applicable.

#### **Bid and contract documents should include, but are not limited to the following:**

- Technical specifications
- Local, State and Federal requirements
- Equal opportunity requirements including Section 3 Clause
- Labor standards requirements (if applicable)
- General contract terms and conditions such as termination clauses, access to and retention of records, etc.
- Timeframe for contract completion
- General industry conditions
- Itemized cost and pricing information by line item
- All bids for any project shall include costs of permits, licenses and fees applicable to work. All bids for material and/or equipment shall include all transportation and freight cost to the job
- If required for fabrication, installation or if required by General contractor, all subcontractors and suppliers will be required to furnish shop drawings, certificates, tests and/or samples for approval
- Each bidder performing work on any project will be required to remove completely from the job site his own construction debris, trash, etc. and to leave his work in a neat and workmanlike manner
- Method of payment and amount of contract
- Advertisement for Bid
- A request that all bidders return bids even if they are not going to bid. Have them mark the bid "No Bid." A "No Bid" is considered a bid.

#### ***Step 2: Reviewing the bid package prior to soliciting bids:***

Prior to bidding the project, Recipients should review the bid documents to ensure that the scope of work is consistent with the approved HOME project.

#### ***Step 3: What method to use when soliciting bids:***

Construction bids must be publicly solicited using sealed bids.

**Step 4: Handling corrections to bid package:**

If any amendments are made to the bid documents, they must be sent to all bidders who were sent or who obtained bid documents. A log should be maintained of all bidders who were sent or obtained bid documents. All bids received during the bidding period should be logged with the name and address of the bidder and the date and time of receipt.

**Step 5: Confirm Davis-Bacon Wage Decision (if applicable)**

Wage decision must be confirmed no later than ten days prior to bid opening.

**Step 6: Conduct a public bid opening**

All bids should be read aloud during this meeting and minutes kept.

**Step 7: Review Bids**

- Determine if bids are legally and technically responsive and fall within 10% of the approved cost estimate.
- Check with the State's Licensing Board for General Contractors to verify contractor's business license number and type, and the types of work the contractor is permitted to bid on or perform.
- Evaluate the contractor's capacity.
- Check to make sure the contractor has not been debarred from participating in federally funded developments (SAM.gov).
- Notify the Authority if an insufficient amount of bids are received.
- Submit contractor credentials, documentation of procurement and a draft of the contract to SC Housing for review.
- Prepare and mail a notice of intent to award to the selected bidder after procurement and contract credentials have been approved by SC Housing.

**PROCUREMENT METHOD TYPE 2: COMPETITIVE SEALED PROPOSALS**

Competitive sealed proposals are used in two instances: (1) the acquisition of any engineering or architectural services or (2) the purchase of other professional services where the total cost will exceed \$150,000. Under this procurement method, the Recipient must publish a written request for submissions and then review these submissions based on established selection criteria. This method of procurement differs from the small purchases method in that the solicitation must be published and cannot be restricted to a smaller or limited number of bidders. Under this approach, there are two possible methods of soliciting proposals. A **Request for Proposals** asks that bidders to submit both qualifications and cost information. A **Request for Qualifications** only asks for information on the bidders expertise and experience and not on cost. When acquiring any service that is not architecture or engineering, the full RFP process must be used. For example, if a Recipient were to hire a for-profit consultant and that contract exceeded \$150,000, an RFP would be required. When acquiring architectural or engineering services, either a RFP or a RFQ may be used. The Authority recommends the use of an RFP process when feasible or practical, since it provides the Recipient additional information. Note that if an architectural or an engineering firm is being hired to provide a non-architectural/engineering service, that service may be procured using either the small purchases process or a RFP. For example, some engineering firms also provide construction and awards management services. In that situation, a RFQ cannot be used and either the Small Purchase Method (if cost is less than \$150,000) or a RFP must be used.

**Request for Proposals (RFP):** When a RFP process is required, the Recipient must develop a written document outlining the scope of the services and the selection criteria. The scope must be sufficiently detailed so that potential bidders are able to develop effective pricing proposals and submit appropriate qualifications. The RFP process is as follows:

- An advertisement is published and proposals are solicited. The RFP must include a summary of the scope of work and the type and relative weights of the evaluative criteria. The RFP should also include a request for technical and cost information (except for architectural and engineering services). Cost information should be provided as a fixed price, depending upon the Recipient's project.
- RFPs should be published at least fifteen days before the proposals are due.
- Evaluative criteria may include, but is not be limited to qualifications, education, previous developments completed, location of firm relative to the project, experience with CDBG, HOME, or other similar programs, and/or experience with the existing locality's system. If the scope of work allows room for differing types of approaches, the Recipient may wish to award points for the most appropriate or effective approach. For example, if hiring an architect to design a project, the Recipient may award points for the most creative or energy efficient design.
- In addition, cost shall be one of the selection factors for an RFP (except for architectural and engineering services). The Recipient may determine how many points will be awarded for the cost factor.
- A qualified review committee rates and ranks the proposals using the published selection criteria. The Recipient must document this review and the selection process. The review committee must consist of an uneven number of members, to avoid ties in the ranking process, and should include a minimum of three people. This committee is required to evaluate proposals based on the exact criteria and weights published in the bid solicitation and information to bidders.
- For architectural and engineering services, negotiations are entered into with the top ranked firm to determine price since it was not an initial factor of consideration in the proposal.
- The Recipient awards the contract to the bidder that scores highest in its assessment of how the proposal met the selection criteria. Under this procurement method, this contract need not be awarded to the lowest bidder so long as the final price is reasonable and the selection is made following the stated criteria. For some bids, cost is used as the "tie breaker" between equally qualified firms.

**Request for Qualifications (RFQ):** The RFQ process may only be used in two instances: (1) for complicated architectural or engineering services, or (2) when the RFQ is used to narrow a pool of potential bidders and a formal RFP will follow. In any other competitive proposal instance, the RFP must be used. The RFQ process does not request cost information at the time of solicitation. However, Recipients must still ensure that all services are cost reasonable. The process for undertaking an RFQ is as follows:

- The RFQ is publicly advertised and qualifications are solicited.
- RFQs should be published at least fifteen days before the qualifications are due.
- The solicitation must include the criteria and weights to be used in reviewing qualifications.
- Qualifications should be listed in order of importance and may include, but are not limited to, resume, previous developments completed, specific personnel to work on the project and/or specific expertise of the firm in general. As noted above, cost is not a factor in the qualification process.

- The qualifications are reviewed by a qualified committee and ranked. The review committee must consist of an uneven number, to avoid ties in the ranking process, and should include a minimum of three people. This committee is required to evaluate qualifications based on the criteria and weights published in the solicitation.
- The procuring agency may either begin to negotiate with the highest ranked firm, or proposals are solicited from the highest rated firms that submitted qualifications and are ranked.
- Negotiations are then initiated with the top ranked firm.

When either RFPs or RFQs are used, the following requirements apply:

1. **Publication Period:** Proposals must be solicited from two or more qualified sources and an advertisement must be published. RFPs/RFQs should be published at least fifteen days before they are due.
2. **Clear Definition:** The RFP/RFQ must identify the general scope of work and all significant factors of evaluation, including price where appropriate, and their relative importance.
3. **Technical Evaluation:** Recipients must have a method for conducting technical evaluations of the proposals received and for selecting awardees.
4. **Awards:** Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

### **PROCUREMENT METHOD TYPE 3: SMALL PURCHASE PROCEDURES**

The Small Purchase Procedures Method allows Recipients to acquire goods and services totaling no more than **\$150,000** without publishing a formal request for proposals or invitation for bids. This method of procurement is typically used to purchase commodities, such as equipment or other materials. In the highly unlikely event that a Recipient is purchasing materials that will exceed \$150,000, they must use the Sealed Competitive Bid Method.

The Small Purchases Method can also be used to acquire eligible types of services, such as professional consulting, environmental review or planning. This method cannot be used if the services contract will exceed \$150,000 in value. If the services contract will exceed \$150,000, the Recipient must issue an RFP under the competitive proposals approach. **Engineering, architectural and construction services cannot be procured using the small purchase method and must always be acquired using the competitive proposal approach. These acquisitions must occur under the competitive sealed bid method.** In general, the small purchase procedure should not be used to acquire construction contractors. The only exception to this is when Recipients are contracting for single family rehabilitation, where the total cost of the rehabilitation will not exceed \$150,000.

Under the Small Purchases Method, Recipients send a written request for quotes to potential vendors with a detailed description of the goods or services needed. In return, they receive competitive written quotations from an adequate number of qualified sources. Since this process does not require a public advertisement, written quotes must be received in response to written solicitations from a minimum of three qualified sources. Each quote must include pricing information that allows the Recipient to compare costs across bidders and ensure cost reasonableness. Documentation of the quotes shall be attached to the purchase requisition and maintained in the Recipient's files. The award shall be made to the lowest responsive and responsible source.

#### **PROCUREMENT METHOD TYPE 4: NONCOMPETITIVE PROPOSALS**

Procurement by noncompetitive proposals is procurement through solicitations of a proposal from only one source, or if, after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals **and** one of the following circumstances applies:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
3. After solicitation of a number of sources, competition is determined inadequate.

#### **BEST PRACTICES TO FOLLOW WHEN PROCURING**

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. This description must not, in the case of competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, set forth minimum essential characteristics and standards to which it must conform to be satisfactory. Clearly set forth all requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals.
- Awards shall be made only to responsive and responsible contractors who possess the ability or have access to resources to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- Proposed procurement actions must be reviewed by the Recipient to avoid purchasing unnecessary or duplicative items.
- The Cost Plus a Percentage of Cost Method of contracting shall not be used.
- Contracts with other public agencies will only allow actual costs to be paid. No profit is allowable when contracting with other public agencies.
- Recipients must maintain sufficient records detailing the significant history of the procurement. These records must include, but are not necessarily limited to:
  1. Information pertinent to the rationale for the method of procurement
  2. Selection of contract type
  3. Contractor selection or rejection
  4. The basis for the cost or price
  5. Copy of the advertisement for bids
  6. Copy of the bid package that was provided to bidders
  7. Bid tabulation of all bids received
  8. Copies of all bids received, including “no bids”
- Recipients must maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions and specifications of their contract.

#### ***Submitting Procurement Documentation***

HOME Recipients may not award contracts until documentation of procurement and the contractor’s credentials have been approved by SC Housing. The following documentation must be submitted for review:

1. **M-57 Contract Submittal Form** with required contractor documents and documentation of credential requirements;
2. Copy of the Bid Advertisement
3. Copy of the Bid Package provided to bidders
4. Copy of all bids received, including “no bids”
5. Bid Tabulation that identifies which contractor the Recipient would prefer to select
6. Draft of Contract

### ***Identity of Interest Relationships***

In circumstances where the HOME award recipient is also the owner, and wishes to have a related entity perform the general contracting services, the recipient must request approval by submitting a completed **M-8A Request for Identity of Interest and an M-8 Identity of Interest Certification Form**. Recipients with an identity of interest relationship must still adhere to all applicable procurement requirements when awarding subcontracts.

## **AWARDING CONTRACTS**

### ***Contract Approval***

HOME Recipients must award contracts that address the federal regulations provided in this section. Failure to include all applicable provisions will result in the return of the contract and cause delay of contract approval. **Contracts must be approved by the Authority prior to execution.** Executed contracts must be accompanied by a completed **M-57 Contract Submittal Form** when submitted.

### ***HOME Contract Provisions***

All contracts are required to contain federal and state provisions pertaining to equal opportunity, labor standards, and general terms and conditions. The Authority has provided a standard set of these provisions, provided as **M-55 HOME Contract Provisions** for use in construction contracts and must be incorporated within construction contracts as an addendum, exhibit, or line item under the table of articles.

### ***Bonding & Insurance Requirements***

**Contracts Less than \$150,000:** Contracts less than \$150,000 are not subject to federal bonding requirements. HOME recipients are required to follow local procedures relating to bonding and insurance. Recipients should consult their engineers to protect their interests.

**Construction Contracts Over \$150,000:** For construction contracts over \$150,000, the minimum bonding and insurance requirements are as follows:

- A bid guarantee from each bidder equal to 5% of the bid price. The bid guarantee shall consist of a bid bond, certified check, or other negotiable instrument accompanying the bid.
- A payment and performance bond or Letter of Credit from contractors for 100% of the contract shall be executed in connection with each contract if the HOME Recipient elects to draw down funds during construction. Irrevocable Direct Pay Letters of Credit are acceptable in place of payment and performance bonds, but must be payable directly to the SC State Housing Finance & Development Authority in the amount equal to the contract amount to ensure payment in full for all completed work in place. All Letters of Credit will be reviewed to limit the Authority’s liability.

- HOME Recipients must require adequate insurance from contractors (hazard/liability, automobile, workers' compensation).

### ***Change Orders***

Change order requests only need to be submitted for review and approval to HOME Staff if the change order will result in a change in cost or scope of work that will affect the approved HOME budget and/or any lead-based paint exemption status or calculated level of assistance.

# Post Construction Requirements

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## FINAL INSPECTION REQUIREMENTS

Recipients must receive a notification from the Authority that the development has passed a final inspection prior to allowing tenants to occupy units. HOME/LIHTC developments must follow the inspection requirements and processes as described in the **Construction Inspection Form** located on the Authority's Tax Credit site at: <http://www.schousing.com/Home/HousingTaxCredits>

## REQUESTING DISBURSEMENT OF HOME FUNDS

HOME funds are requested at project completion. Once the Authority receives a correct **M-15A Request for Payment** and **M-15F Draw Summary Form** that includes all the appropriate documentation a check can be expected to be received within 21 days. Recipients should do everything feasible to disburse funds within three business days of deposit. In situations where payment takes longer than three business days, written justification should be maintained in the file as to the reason for the delay of disbursement. In general, Recipients must meet the below requirements before the final request for payment can be submitted. This list is not inclusive of all requirements.

- All cost estimates, plans, specifications, and contracts must be approved.
- The development must have passed a final inspection conducted by the Authority
- The HOME loan documents must be closed and the executed/recorded documents submitted to the Development Division's loan closing coordinator.
- Projects must be compliant with Davis-Bacon requirements.

Recipients must submit a complete **M-15A Request for Payment Forms** and **M-15F Draw Summary Form** that contain the correct activity number, award number, etc. Submitting incomplete draw paper work will delay payment. Any request for payment that is not completed properly or accompanied by the appropriate documentation will be returned to the Recipient without being processed. Common reasons a request for payment may be returned include the following:

- Funds requested exceed approved budget amount
- Recipient's name is not written on form exactly as it is recognized by the IRS (*\*must match name exactly as it appears on your W-9*)
- The Federal Tax Identification # provided does not match your organization
- There is a reason to stop payment on the award (see below)

The Authority at its discretion reserves the right to withhold payments for any issues related to compliance with federal or state requirements. The Authority may elect to stop payment of HOME funds for the below reasons. This list is not inclusive of all instances in which payments may be held.

- Required reports are not received
- Audit reports not received
- Recipient is not in compliance with Davis-Bacon regulations, or other HOME requirements

d.

# Additional Federal & State Requirements

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HOME funded projects are subject to several federal regulations. Recipients are responsible for understanding which of those federal requirements their projects are subject to comply with. This section discusses those various regulations and their applicability.

## **FEDERAL DEBARMENT CERTIFICATION**

HOME funded projects may not employ any contractors and/or subcontractors that have been debarred or suspended from participating in federally funded programs. A listing of debarred contractors can be found on the **System for Award Management (SAM)** website at [sam.gov](http://sam.gov). HOME Recipients are responsible for checking the website to verify a contractor's status prior to executing contracts. All contractors and subcontractors awarded contracts \$100,000 or greater must sign the **M-9 Debarment Certification Form** certifying that they are not included on the Excluded Parties Listing System and are eligible to participate in federally assisted programs. An **M-9 Debarment Certification Form** must be submitted along with each contract awarded with a copy of the search results from [sam.gov](http://sam.gov). Separate searches must be conducted on [sam.gov](http://sam.gov) for the firm name and owner name(s).

## **FAIR LABOR STANDARDS ACT**

The Fair Labor Standards Act (FLSA) contains Federal minimum wage rates and overtime (O/T) and child labor requirements. These requirements generally apply to any labor performed and may be pre-empted by other Federal standards such as the Davis Bacon and Related Act prevailing wage requirements and Contract Work Hours and Safety Standards Act O/T provisions. Only the DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.

## **BYRD ANTI-LOBBYING CERTIFICATION**

Contractors who apply or bid for awards in excess of \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization influencing or attempting to influence an officer employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier should disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient. An **M-59 Byrd-Anti Lobbying Certification** form must be completed by the Recipient and each contractor awarded a contract in excess of \$100,000.

## **SC ILLEGAL IMMIGRATION REFORM ACT**

Effective July 1, 2009, South Carolina businesses that employ 100 or more workers must verify the legal status of new employees and remove from their payrolls any worker who is not legally in the United

States and authorized to work . The requirements are a part of the South Carolina Illegal Immigration Reform Act that became effective on June 2, 2008.

Beginning July 1, 2009, all businesses in South Carolina are imputed a South Carolina employment license which permits an employer to hire employees. The imputed employment license remains in effect as long as the business abides by the law. Employers who employ less than 100 workers have until July 1, 2010 to fully comply with the law. The South Carolina Department of Labor, Licensing and Regulation will investigate complaints and conduct audits of employers to assure compliance with the law.

An ***M-56 SC Illegal Immigration Reform Act Certification Form*** must be submitted along with each contract awarded. If project is subject to Davis-Bacon requirements; an ***M-56 SC Illegal Immigration Reform Act Certification Form*** must be submitted for each sub-contractor.

**Verification Requirements:**

In addition to completing and maintaining the federal employment eligibility verification form, more commonly known as the Form I-9, all South Carolina employers must within five days after employing a new employee:

1. Verify the employee’s work authorization through the E-Verify federal work authorization program administered by the U.S. Department of Homeland Security; or
2. Verify that the employee possesses a valid South Carolina driver’s license or identification card issued by the South Carolina Department of Motor Vehicles; is eligible to obtain a South Carolina driver’s license or identification card; or possesses a valid driver’s license or identification card from another state whose qualification requirements are as strict as those of the state of South Carolina.

The South Carolina Department of Motor Vehicles has determined that drivers’ licenses or identification cards issued by the following states are acceptable: AK, AZ, CT, FL, GA, ID, IN, KS, KY, ME (credentials issued after 11/15/08), MA, MI, MO, MT, NH, NJ, NC, PA, RI, TX, VA, WV and WI. For the most current list, visit the DMV web site at: [www.scdmvonline.com](http://www.scdmvonline.com).

For information on E-Verify, and to register for the program, go to the **E-Verify** web site at:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD>

**Compliance Dates:**

Compliance with verification requirements began on July 1, 2009 for private employers who employ 100 or more employees. For private employers who employ less than 100 employees, the compliance date is July 1, 2010.

**Enforcement and Penalties:**

The South Carolina Department of Labor, Licensing and Regulation is responsible for:

- Notifying the United States Immigration and Customs Enforcement of suspected unauthorized aliens employed by a private employer;

- Notifying state and local law enforcement agencies responsible for enforcing state immigration laws, and;
- Assessing penalties for violations of the Act.

For violations of the procedures for verifying worker eligibility, a private employer can be assessed a civil penalty of not less than \$100 and not more than \$1,000 for each violation. Upon the first violation, the employer can avoid assessment of a penalty if, within 72 hours of notification of a violation, the employer complies with the verification provisions. An employer who knowingly or intentionally hires an unauthorized alien faces suspension or revocation of the employer’s imputed license. During the time that the license is suspended or revoked, the employer cannot employ any employees.

## SECTION 3 REGULATIONS

Each year the U.S. Department of Housing and Urban Development invests billions of federal dollars into distressed communities for developments designed to build and rehabilitate housing, improve roads, develop community centers and otherwise assist families to achieve the American Dream. The Section 3 regulation recognizes that HUD funding typically results in developments/activities that generate new employment, training and contracting opportunities. These economic opportunities not only provide “bricks and mortar”, but can also positively impact the lives of local residents who live in the neighborhoods being redeveloped.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD’s legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded developments. Further, as a condition of receiving HUD Community Planning and Development assistance, Recipients certify that they will comply with the requirements of Section 3 annually pursuant to 24 CFR 570.607(b). Accordingly, HUD has the legal responsibility to monitor Recipients for compliance and can impose penalties upon those that fail to meet these obligations.

### *Applicability of Section 3 to HOME Developments*

The requirements of Section 3 apply to Recipients of HUD HOME funding exceeding **\$200,000**. Section 3 covered developments are those in which a combined (or aggregate) amount of covered funding exceeding \$200,000 is invested into activities involving housing construction, demolition, rehabilitation, or other public construction—i.e., roads, sewers, apartment complexes, etc. [Example: Section 3 applies to the combined investment of more than \$200,000 into multiple single-family housing rehabilitation developments during a program year]. Contractors or subcontractors that receive contracts in excess of **\$100,000** for Section 3 covered developments/activities are required to comply with the Section 3 regulations in the same manner as direct Recipients. If the Recipient receives Section 3 covered funding and invests these funds into covered developments/activities, but no individual contract exceeds \$100,000, responsibility for complying with Section 3 only applies to the Recipient.

Accordingly, the Recipient must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by:

- Awarding 10% of the total dollar amount of all covered construction contracts to Section 3 businesses; and,

- Offering 30% percent of new employment opportunities to Section 3 businesses.

### **Section 3 Covered Community Planning and Development Funding:**

The following federal programs are subject to the requirements of Section 3:

- Community Development Block Awards (CDBG)
- Home Investment Partnership Assistance (HOME)
- Housing Opportunities for Persons with Aids (HOPWA)
- Economic Development Initiative (EDI)
- Brownfield Economic Development Initiative (BEDI)
- Emergency Shelter Awards (ESG)
- Homeless Assistance
- University Partnership Awards
- Neighborhood Stabilization Program (NSP)
- Certain Awards Awarded Under HUD Notices of Funding Availability (NOFAs)
- National Housing Trust Fund (HTF)

The requirements of Section 3 only apply to the portion(s) of covered funding that is used for development activities involving housing construction, rehabilitation, demolition, or other public construction. Section 3 applies to the entire covered development or activity regardless of whether the activity was fully or partially funded with covered assistance.

### **Triggering the Requirements of Section 3:**

Section 3 is triggered when the normal completion of construction and rehabilitation developments creates the need for new employment, contracting, or training opportunities. The Section 3 regulations should not be construed to mean that Recipients are required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered developments/activities. If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, each Recipient must still submit Section 3 annual reports indicating this information. Please refer to the brochure found at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/section3/section3brochure](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3brochure)

### **Recipient Responsibilities Pursuant to Section 3:**

Each Recipient (and their covered contractors) is 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:

- Implementing procedures to notify Section 3 residents and business concerns about training, employment and contracting opportunities generated by Section 3 covered assistance;
- Notifying potential contractors working on Section 3 covered developments of their responsibilities by providing them the ***M-11D Section 3 Guidance for Contractors*** brochure;
- Incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];
- Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;

- Assisting and actively cooperating with the Authority in making contractors and subcontractors comply;
- Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
- Documenting actions taken to comply with Section 3; and
- Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90.

### **Section 3 Residents and Business Concerns:**

#### **Section 3 Residents Are:**

- Residents of Public 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 does not exceed the local HUD income limits set forth for low- or very low-income households.

#### **Section 3 Business Concerns Are One of the Following:**

- Businesses that are at least 51 percent 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 award at least 25 percent of the dollar amount of all subcontracts 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 HOME award Recipient verifying that they meet the definitions provided above. An ***M-11E Certification of Section 3 Business Form*** must be included in the bid package and completed by all contractors/firms bidding on developments subject to Section 3. 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.

### ***Section 3 Annual Reporting Requirements***

Recipients of HOME and NHTF awards that have developments that are subject to comply with Section 3 are required to submit the ***M-11C Section 3 Annual Report (HUD-60002)*** to the Authority each year **not later than April 15<sup>th</sup>**.

### **Determining What Should Be Reported on Form HUD-60002:**

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 and subcontractors. 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 developments/ activities during the specified reporting period;
- The total number of new employees that were hired by the Recipient and/or its covered contractors, subcontractors, as a result of performing or completing covered development/activities;

- The number of new employees that were hired by the Recipient (or its covered contractors or subcontractors), as a result of covered developments/activities, that met the definition of a Section 3 resident;
- The total number of man hours worked on covered developments (optional);
- The aggregate number of hours worked by Section 3 residents on covered developments (optional).
- The total number of Section 3 residents that participated in training opportunities that were made available by the Recipient agency, its contractors, 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; and
- Detailed narrative descriptions of the specific actions that were taken by the Recipient (or its covered contractors, subcontractors, or others) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

#### **Important Notes for Submitting Form HUD-60002:**

Recipients must submit a separate Form HUD-60002 for each type of covered development. If the Recipient (or its covered contractors) did not hire any new employees during the reporting period, and/or if no covered construction or non-construction contracts were awarded, the Recipient must indicate this in Part III of form HUD-60002 and certify that this information is true and accurate by penalty of law.

#### **Section 3 Reporting and Compliance Determinations:**

Absent evidence to the contrary, HUD considers Recipients of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30. Specifically:

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

**Recipients that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so.** Such justifications should describe the efforts that were taken, barriers encountered and other relevant information that will enable HUD to make a compliance determination. Recipients that submit Section 3 reports containing **all zeros**, without a sufficient explanation to justify their submission, are in **noncompliance** with the requirements of Section 3.

Failure to comply with the requirements of Section 3 may result in sanctions, including debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 24. Recipients that are subject to annual A-133 Audits may also receive an audit finding for failure to submit form HUD-60002 as required.

#### ***Additional Section 3 Guidance***

HUD's Economic Opportunity Division is committed to providing Recipients guidance and technical assistance for compliance with the requirements of Section 3 and has several resources and materials

posted online. For additional information, please visit the Section 3 website at: [www.hud.gov/section3](http://www.hud.gov/section3). This webpage provides the following tools and information:

- Section 3 Statute—12 U.S.C. 1701u
- Section 3 Regulation—24 CFR Part 135
- Frequently Asked Questions
- Section 3 Model Programs
- Guidance on Section 3 and Economic Stimulus Funding
- Guidance on Section 3 and the Neighborhood Stimulus Program (NSP)
- Sample Section 3 Certification Forms (residents and business concerns)
- Link to HUD’s Local Income Eligibility Calculator
- Link to Section 3 Annual Reporting System(form HUD-60002)
- Downloadable Forms

### **Section 3 Clause**

In accordance with 24 CFR Part 135.38, all Section 3 covered contracts shall include the following clause **VERBATIM** (referred to as the Section 3 clause):

#### **Section 3 Clause**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low- income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the contractor’s commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of
- D. 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.
- E. 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.
- F. 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) with 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.
- G. 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.
- H. 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 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).

**Anyone with questions about Section 3 requirements should Jennifer Cogan at (803) 896-9824 or email at [jennifer.cogan@schousing.com](mailto:jennifer.cogan@schousing.com).**

## SMALL & MINORITY BUSINESS INVOLVEMENT

When procuring goods and services, HUD requires that Recipients encourage and support the involvement of small, minority and female-owned business firms in HOME funded developments. HUD has placed the following requirements with regard to the HOME and NHTF programs to ensure the following minimum affirmative steps are taken to afford MBE/WBE owned businesses every opportunity to participate in HOME generated contracts:

- Placing minorities and women on solicitation lists;
- Assuring that MBE and WBE firms are solicited whenever they are potential sources;
- Dividing the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business enterprises and women business enterprises;
- Where the requirement permits, establishing delivery schedules that encourage participation by small and minority business enterprises, and women business enterprises;
- Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontractors are to be let, to take all the same affirmative steps listed here.

Additional guidance can be found at

<https://www.hudexchange.info/resource/248/guidance-on-minority-business-enterprise-and-womens-business-enterprise-outreach/>.

The **South Carolina Minority Business Directory** is a valuable resource for attracting services from minority owned businesses located in South Carolina. A link to download the directory can be accessed at <http://www.govoepp.state.sc.us/osmba/directory.html>.

If a contractor cannot demonstrate an ability to comply with federal requirements, such as Section 3 and minority outreach requirements, it should not be selected to perform work in connection with any HOME funded developments. It is important to effectively communicate up front all applicable HOME requirements related to HUD generated economic opportunities by clearly stating what is required in all contract solicitations. All HOME Recipients are required to submit the **M-11A MBE/WBE Annual Report (HUD 2516)**, not later than **September 30<sup>th</sup>** of each year.

**Anyone with questions about MBE/WBE requirements should contact Jennifer Cogan at (803) 896-9824 or email at [jennifer.cogan@schousng.com](mailto:jennifer.cogan@schousng.com).**

## VIOLENCE AGAINST WOMEN ACT (VAWA)

HOME and NHTF funds are subject to the Violence Against Women Act (VAWA) Final Rule issued by HUD, in an effort to support victims of crimes covered by VAWA. The final rule went into effect on December 16, 2016, and the regulations can be found at 24 CFR Part 5. The rule states that applicants and tenants may not be denied assistance or have assistance terminated on the basis, or as a direct result of having been a victim of domestic violence, dating violence, sexual assault, or stalking and allows Recipients to establish a preference for tenants who have been victims of those crimes, and provides guidance on protecting victims from further crimes by establishing emergency transfer

plans. The final rule also establishes confidentiality measures put in place to further protect victims, and lease bifurcation regulations in order to protect members of a household when another household member has presented as an actual and imminent threat to them. VAWA Protections are not limited to women and are available to all, without regard to sex, gender identity, or sexual orientation.

# Federal Reporting Requirements

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Federal Reports are due annually until development is 100% completed, all funds have been drawn, the **M-20 Project Completion Report** is submitted and the HOME Recipient has received their Award close out letter.

## **M-11A MBE/WBE Annual Report (HUD 2516)**

Recipients are required to submit a **2516 report** annually to the Authority **no later than September 30th**. This annual report collects data on contracts awarded in conjunction with your HOME development. The report must include **all contracts** executed during the report period of October 1 – September 30 that are for \$10,000 or more. The Authority will email HOME Recipients a reminder annually to submit their 2516 report by the required deadline.

## **M-11C Section 3 Annual Report (HUD 60002)**

Recipients are required annually to submit a **60002 Report** annually to the Authority **no later than April 15th**. This annual report collects data on contracts awarded and persons hired in conjunction with your HOME development. The Authority will email HOME Recipients an annual reminder to submit their Section 3 report by the required deadline. The report must include **all contracts** awarded for amounts of \$100,000 or greater that were executed during the report period of April 1 – March 31.

**Anyone with questions about the reporting requirements should contact Jennifer Cogan at (803) 896-9824 or email at [jennifer.cogan@schousing.com](mailto:jennifer.cogan@schousing.com).**

# Award Close-Out Requirements

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**NOTE:** LIHTC developments funded with HOME funds must comply with the Tax Credit **Place in Service Application** process.

## AWARD CLOSE-OUT MANUAL

Within approximately two weeks of receiving your final payment for your HOME award, the Authority will provide you with an **Award Close-Out Packet**. This packet provides a deadline to submit your **M-20 Rental Project Completion Report** and contains information on the requirements that you must comply with throughout the affordability periods, along with what you need to know to be prepared for your initial monitoring visit from our Compliance Monitoring staff.

## PROJECT COMPLETION REPORT

**M-20 Rental Project Completion Report** must be submitted within 60 days of receiving the final payment for your HOME award. This report is necessary for Authority staff to input close-out data in HUD's IDIS system for HOME reporting requirements. The date the project completion data is entered into the IDIS system is the date that officially begins the affordability period identified in the HOME restrictive covenants.

HUD requires that all initial occupancy data be entered into the IDIS system. If your development has vacant units at the time the project completion report is submitted, the Authority will follow up with you to provide the occupancy data for vacant units until the information for all units is collected. The Authority will email a **Vacant Unit Status Memo** to collect the tenant data until data for each HOME unit has been provided. All initial tenant data for HOME units must be entered into the IDIS system within eighteen months of the date of project completion. If a HOME unit has not yet been leased to an income eligible tenant within eighteen months, HUD requires that the Recipient repay the HOME funds invested in the unoccupied unit.

## RESTRICTIVE COVENANT AMENDMENT

HOME affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership and are imposed by restrictive covenants that run with the land as required by HUD. To ensure that HOME assisted units meet affordability requirements for the duration of the affordability periods, the Authority requires that restrictive covenants are recorded and returned to the Authority within 60 days of receipt. The Authority will prepare and send out amendments to the HOME restrictive covenants upon receipt of the **M-20 Project Completion Report**. The amendments are issued to identify the starting and ending dates of the HOME affordability period. HUD requires that the affordability periods begin on the date the project completion data is entered in the HUD IDIS system.

# HOME Compliance Period

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## MONITORING REVIEWS

### Types of Reviews

HUD requires that the Authority address the below components when monitoring its HOME Recipients. To meet these requirements, the Authority conducts reviews that are undertaken by different divisions of the Authority.

- Programmatic Reviews – *conducted by Development Program Management Staff*
- Rental Project On-Site Compliance Reviews – *conducted by Compliance Monitoring Staff*
- Financial Management Reviews – *conducted by the Development Auditor*

## ANNUAL FINANCIAL OVERSIGHT

A requirement imposed by the 2013 HOME Final Rule requires that the Authority annually examine the financial condition of rental projects with ten (10) or more HOME-assisted units to determine the continued financial viability of the project. The annual review is required throughout the duration of the project's affordability period. Each year within 120 days of the end of the project owner's fiscal year, the projects financial statements must be submitted to the Development Auditor, Jessica Donald for review.

**For questions regarding audit requirements, contact Jessica Donald, Development Auditor at (803) 896-9253 or [jessica.donald@schousing.com](mailto:jessica.donald@schousing.com).**

## HOME RENTAL PROJECT COMPLIANCE MANUAL

The **HOME Rental Project Compliance Manual** can be accessed on the Authority's website [at http://www.schousing.com/Home/DevelopmentCompliance](http://www.schousing.com/Home/DevelopmentCompliance). This Manual is prepared by the Authority's Compliance Monitoring staff and contains information needed to prepare for On-Site Compliance Reviews which are conducted throughout the affordability period for rental projects. These reviews focus primarily on occupancy requirements, property standards, and reserve requirements. Contact Laura Tanner at (803) 896-8762 or [laura.tanner@schousing.com](mailto:laura.tanner@schousing.com) with questions.

The Authority will notify Recipients in advance of planned visits to allow for preparation.

# Other Information

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The information provided in this manual is intended to be a basic guideline for the Recipient to follow and should not be construed as inclusive of every conceivable action that should be taken. Furthermore, this guide should not be used as a substitute for the federal guidance governing the HOME Program as set forth in 24 CFR Part 92. Please read your regulations carefully. Recipients that have questions concerning compliance with HOME regulations, should contact their assigned Program Coordinator immediately.

The Authority reserves the right to revise directives and policies as needed. Recipients will be notified of any changes to program policies and procedures as they are implemented.

# Forms Index

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Notice of Award .....M-4

HOME Loan Matrix Form .....M-13

Audit Requirements Certification Form.....M-5

Conflict of Interest Certification Form .....M-58

Section 3 Applicability Form ..... M-11B

Lead Safe Housing Rule Applicability Form..... M-7B

Certification of Section 3 Business.....M-11E

Section 3 Guidance for Contractors..... M-11D

Contract Submittal Form.....M-57

Identity of Interest Certification Form.....M-8

Request for Identity of Interest Form ..... M-8A

HOME Contract Provisions.....M-55

Request for Payment ..... M-15A

Draw Summary Form .....M-15F

Debarment Certification Form.....M-9

Byrd Anti-Lobbying Certification Form .....M-59

SC Illegal Immigration Reform Act Certification Form.....M-56

Section 3 Annual Report (HUD 60002) ..... M-11C

MBE/WBE Annual Report (HUD 2516)..... M-11A

HOME Rental Project Completion Report.....M-20

All of the forms referred to in this manual are available on the Authority’s website, located at the link below. Contact your assigned program coordinator if you have any questions or issues with the forms.

<https://www.schousing.com/Home/HOMEInvestmentProgram>