



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Leslye Krutko

**SUBJECT:** SEE BELOW

**DATE:** September 12, 2006

Approved

Date

9/14/06

Council District: City-wide

**SUBJECT: FEDERAL REPORTING REQUIREMENTS AND ADOPTION OF POLICIES REGARDING SECTION 3, MINORITY-OWNED BUSINESS ENTERPRISES, AND WOMEN-OWNED BUSINESS ENTERPRISES.**

## RECOMMENDATION

It is recommended that the Mayor and City Council adopt the following policies in order to comply with the U.S. Department of Housing and Urban Development (HUD) requirements.

- 1) Adopt a policy related to Section 3, which is a federal requirement that all grantees, contractors, or subrecipients of federal HUD funds providing housing rehabilitation, housing construction, or other public construction projects, to outreach and hire, when appropriate, low-income individuals or subcontract with Section 3 businesses (those residing in low-income areas).
- 2) Adopt a policy related to Minority-Owned and Women-Owned Business Enterprises (MBE/WBE), which is a federal requirement that all grantees, contractors, or subrecipients of federal HUD funds over \$10,000 provide outreach to minority-owned and women-owned businesses when soliciting bids for subcontracts of services and/or construction projects.

## OUTCOME

By adopting the proposed policies outlined in this memorandum, the City will ensure that it is in compliance with the federal government's requirements for receipt of federal Housing and Urban Development (HUD) funds.

## EXECUTIVE SUMMARY

Section 3 and the Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) are federal compliance, reporting, and outreach requirements of the federal U.S. Department of Housing and Urban Development (HUD).

The purpose of this memorandum is to recommend two City-wide policies for adoption to ensure that the City complies with the federal government's Section 3 and MBE/WBE regulations. This will enable the City to remain in good standing for receipt of future federal entitlement grants under four federal programs: the Community Development Block Grant (CDBG); HOME Investment Partnerships (HOME); Emergency Shelter Grant (ESG); and Housing Opportunities for Persons with AIDS (HOPWA).

## **BACKGROUND**

Section 3 and MBE/WBE are federal compliance, reporting, and outreach requirements of the federal U.S. Department of Housing and Urban Development (HUD). These requirements stipulate that, when using HUD funds, the City or any of its contractors of HUD funding must affirmatively outreach and seek contracts from companies that employ low-income people and minority-owned and women-owned businesses.

The City ceased collecting information related to race and ethnicity in 1999 after the passage of State Proposition 209, which prohibits local and the State government agencies from discriminating or giving preferential treatment based on race, color, sex, ethnicity, or national origin. The Proposition provides a limited exception for federal funding eligibility requirements. Because the City receives federal funds, the City will have to commence collecting information on race and ethnicity if it wishes to continue to receive federal funds.

In October 2005, the City received a letter from HUD requesting that every jurisdiction receiving HUD funds submit its Section 3 and MBE/WBE reports for fiscal year 2004-2005. The City complied with this request, and has begun requesting that its contractors and subcontractors comply with these provisions. However, we have determined that we need to adopt formal policies and procedures for carrying out this federal requirement.

## **ANALYSIS**

### *Section 3*

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) stipulates that each jurisdiction receiving federal funds must ensure that its developers, contractors, subrecipients, and subcontractors "to the greatest extent feasible, and consistent with existing federal, State and local laws and regulations, be directed to employ low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low- income persons."

When the City receives HUD financial assistance and makes a grant to a developer, contractor and/or subrecipient in excess of \$200,000, or that contractor/subrecipient makes a grant to a subcontractor in excess of \$100,000, then the Section 3 requirements would be triggered on all housing rehabilitation, housing construction, and public construction projects.

Specifically, Section 3 requires the following three actions: 1) jurisdictions annually report whether developers, contractors, or subrecipients and subcontractors are Section 3 businesses (businesses owned by Section 3 residents) and for developers, contractors, and subrecipients and subcontractors to report the numbers of newly hired Section 3 employees, 2) that developers, contractors, and subrecipients and subcontractors make reasonable efforts to hire Section 3 residents (low and very-low income persons living in San Jose), and 3) developers, contractors, or subrecipients seek training and education opportunities for low-income employees and, when feasible, subcontract with Section 3 businesses. **Attachment A** is the formalized policy which would meet the City's Section 3 requirements.

Of the four federal programs (CDBG, HOME, HOPWA and ESG), only the CDBG and HOME programs make grants in excess of \$200,000 and meet the "construction" criteria outlined by federal regulations.

*Minority-Owned Business Enterprise and Women-Owned Business Enterprise (MBE/WBE)*

Section 281 of the National Affordable Housing Act requires the City to adopt procedures to establish and oversee a minority/woman outreach program. The program should include minority and women-owned businesses in all contracting activities entered into by the City and/or its contractors and requires that each jurisdiction and its contractors provide outreach to minority and women-owned businesses. In order to meet the MBE/WBE requirement, the City must do the following:

- Provide a good faith, comprehensive and continuing endeavor to outreach to MBE/WBE;
- Support its efforts by adopting a statement of public policy and commitment published in the print media of widest local circulation;
- Provide a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- Design an outreach approach to utilize all available and appropriate public and private sector local resources.

If a jurisdiction enters into a contract, or a developer, contractor, or subrecipients enters into a subcontract for activities in excess of \$10,000, then the provisions of MBE/WBE would apply. MBE/WBE requirements are triggered on both construction projects or service contracts with for-profit contractors, unless a nonprofit organization subcontracts with a for-profit agency. Therefore, these provisions would largely apply to the City's "Physical Improvement" projects funded by CDBG, the Housing Rehabilitation Program funded by CDBG, and the HOME program. **Attachment B** represents an affirmative statement and actions the City recommends to take to comply with MBE/WBE requirements under CDBG and HOME.

## ALTERNATIVES

The Council could choose to not adopt these policies, but the City would be in jeopardy of losing future federal funding. The Council could also direct staff to make changes to the policies and language contained within the memorandum. However, in many instances the policies outlined herein represent the minimum requirements required by HUD.

## PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ✓ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The Housing Department will provide outreach to each developer, contractor, and subrecipient meeting the reporting requirement threshold in order to inform them of these new policies and provide training opportunities. The information will also be posted on the Housing Department's website: [www.sjhousing.org](http://www.sjhousing.org).

Additional public outreach will need to be undertaken by the Housing Department, as outlined in the MBE/WBE policy, in soliciting bids to contractors and subcontractors. A list of San José companies meeting the MBE/WBE threshold has already been obtained through the State Department of Transportation and will be used for future solicitation of bids.

## COORDINATION

This memorandum was coordinated with the City Attorney's Office and the Department of Public Works/Office of Equality Assurance.

## COST IMPLICATIONS

There will be a slight additional cost related to staff and administrative time for implementing and monitoring for compliance. The additional training required by the policy can be scheduled to coincide with other planned training sessions. Therefore the costs to the programs should be minimal.

However, without an adopted policy for Section 3 and MBE/WBE, the City could be deemed by HUD to be out of compliance with federal regulations, thus potentially jeopardizing over \$17 million received annually for these four federal programs.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

Not a project.

  
LESLYE KRUTKO  
Director of Housing

For questions please contact Melissa Whatley, Policy and Planning Manager at (408) 975-4418

Attachments (2)

### SECTION 3 PLAN

Responsibilities and Procedures for Carrying Out the Requirements Under Section 3 of the Housing and Urban Development Act of 1968 Pertaining to Employment Opportunities for Lower-Income Persons.

#### ***Purpose:***

To ensure that, to the greatest extent feasible, projects financed by the United States Department of Housing and Urban Development (HUD) provide lower-income residents within the City the opportunity for employment and training. Additionally, the policy should ensure that awards are made to businesses located or owned by persons residing within the City.

#### ***Definitions:***

- **The City:** The primary grantee of federal housing and community development funds is the City of San Jose.
- **Developer/Contractor/Subrecipient:** The individual, company, corporation, partnership, business, or other entity that enters into a contract with the City of San Jose to carrying out the work, service, or project specified in connection with receiving a federal HUD grant.
- **Subcontractor:** Any entity which has agreed to undertake a portion of the developer/contractor/subrecipient general contract.
- **Section 3 Area:** Is the entirety of the area located within the incorporated boundaries of the City of San José.
- **Section 3 resident:** An individual who resides in the Section 3 area whose family income does not exceed 80% of the area median income (AMI), or is a resident of public housing, or is a person with disabilities.
- **Section 3 businesses:** Those individuals, companies, corporations, partnerships, businesses, or other entities that are 51% or more owned by persons residing within the Section 3 area.

#### ***Required Program Participants' Responsibility:***

- The City will ensure that when contracting with developers, contractors, or subrecipients, the City will use the outreach provisions described under "Outreach Criteria."
- The City will require its developers/contractors/subrecipient to carry out the provisions of MBE/WBE when soliciting bids of subcontractors.

#### ***Applicability:***

- The grant from the City to the developer, contractor, or subrecipient is for housing rehabilitation, housing construction, or other public construction projects; and
- When a developer, contractor, or subrecipient receives a federal HUD grant in excess of \$200,000 from the City; or
- A subcontractor receives a grant in excess of \$100,000.

***Steps to Meeting the Reporting Requirements:***

1. If applicable, each developer, contractor, or subrecipient, and each subcontractor must self-certify whether they are a Section 3 business, employs Section 3 residents, or subcontracts with business that provide opportunities to low and very low income persons. A form will be provided by the Housing Department to each eligible developer, contractor, or subrecipient, which will be requested to be completed annually.
2. Each developer, contractor, or subrecipient must attempt to recruit and hire Section 3 residents or subcontract with Section 3 businesses if it finds the need for additional staff to complete the project.
3. Developers, contractors and subrecipients, who receive HUD funding, shall seek to participate in a HUD program or other programs that promote training and education of Section 3 residents. A form will be provided by the Housing Department to each eligible developer, contractor, or subrecipient, which will be requested to be completed annually.

***Required Outreach Criteria:***

- When hiring, it is required of all developers, contractors, or subrecipients and subcontractors to attempt to recruit Section 3 residents through local media and advertisement; signs placed at the job site; and notifying community/public/private agencies that work with low income people, including the Bay Area Construction Opportunity Program, YouthBuild, State EDD, and South Bay Business Development.
- When developers, contractors, or subrecipients are subcontracting, they should seek to recruit Section 3 businesses.
- Developers, contractors, and subrecipients, who receive HUD funding, must seek to participate in a HUD program or other program that promotes training and education of Section 3 residents (i.e., YouthBuild).

***Goals:***

- The City will develop goals for the hiring, training, and recruiting of Section 3 businesses and residents, once implementation and data can be collected from current grantees. These goals will be incorporated into the City's Section 3 Plan.

**GUIDELINES FOR MINORITY-OWNED AND WOMEN-OWNED BUSINESS  
ENTERPRISES (MBE/WBE)**

Section 281 of the National Affordable Housing Act requires each contractor to prescribe procedures to establish and oversee a minority outreach program for the receipt of all federal housing and community development funds including CDBG, HOME, HOPWA, ESG, Section 108, and BEDI grants.

The program shall include minority and women-owned businesses in all contracting activities entered into by the contractor to facilitate the provision of affordable housing authorized under this Act or any other federal housing law applicable to such jurisdiction.

***Definitions:***

- **The City:** The primary grantee of federal housing and community development funds is the City of San José.
- **Developer/Contractor/Subrecipient:** The individual, company, corporation, partnership, business, or other entity that enters into a contract with the City of San Jose to carrying out the work, service, or project specified in connection with receiving a federal HUD grant.
- **Subcontractor:** Any entity which has agreed to undertake a portion of the developer/contractor/subrecipient general contract.
- **Minority-Owned Business Enterprise (MBE):** Business primarily (51%) owned, operated and controlled by one or more members of the following race/ethnicity: Pacific Islander, American Native, African American/Black, American Indian/Alaskan Native, Hawaiian/Pacific Islander, Asian, or Hispanic.
- **Women-Owned Business Enterprise (WBE):** Primarily owned (51%) by one or more females.

***Required Program Participants' Responsibility:***

- The City will ensure that when soliciting bids for service, construction, or maintaining "contractor lists" for developers/contractor/subrecipient, the City will use the outreach provisions described under "Outreach Criteria."
- The City will require its developers/contractors/subrecipient to carry out the provisions of MBE/WBE when soliciting bids of subcontractors.

***Applicability:***

- When the City makes a grant to a developer/contractor/subrecipient for services or construction.
- When a developer/contractor/subrecipient subcontracts for services or construction.
- When the grant received by the developer/contractor/subrecipient or subcontractor exceeds \$10,000.

- When the developer/contractor/subrecipient or subcontractor is a for-profit organization/business, or a nonprofit hires a for-profit subcontractor.

***Steps to Meeting the Reporting Requirements:***

1. If applicable, each developer/contractor/subrecipient will need to self-certify to the City whether it is an MBE/WBE. A form will be provided to each agency awarded funds and reported annually by the developer/contractor/subrecipient.
2. Each developer/contractor/subrecipient will ensure that every subcontractor also self-certifies whether it is a MBE/WBE and this information is reported annually.
3. The City will follow the guidelines for “Outreach” when soliciting bids for developer/contractor/subrecipient.
4. Each developer/contractor/subrecipient will follow the guidelines for “Outreach” when soliciting bids for subcontractors and will report these efforts annually to the Housing Department.

***Required Outreach Criteria:***

- The Housing Department will maintain a list of local MBE/WBE companies and addresses and distribute to all developers/contractors/subrecipients.
- The Housing Department Rehabilitation Division will ensure that its “Contractor List” includes MBE/WBEs for homeowners to use when selecting eligible contractors. The list will be updated annually and include outreach to MBE/WBEs.
- When developers/contractors/subrecipients are soliciting bids from subcontractors, they will include in any notice to local newspaper that “Women and Minority Owned Businesses are strongly encouraged to apply.” Developers/contractors/subrecipients, when feasible, are strongly encouraged to consider posting in Spanish and Vietnamese newspapers.
- When the Housing Department announces Notices of Funding Availability or Community Development Block Grants application availability, efforts will be made, to include in local newspaper posting that “Women and Minority Owned Businesses are strongly encouraged to apply” and printed, when feasible, in Spanish and Vietnamese newspapers.