

Davis Bacon and Section 3 Policy

Labor Standards

Overview

Subrecipients are responsible for compliance with labor laws on construction work funded with CDBG-DR funds. The labor laws that may apply to CDBG-DR funded construction work include the following:

- The Davis-Bacon Act is triggered when construction work over \$2,000 is financed in whole or in part with CDBG-DR funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same area.
- The Copeland Anti-Kickback Act requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors maintain and submit weekly payrolls.
- The Contract Work Hours and Safety Standards Act applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$31 per day per violation).
- Section 3 of the Housing and Urban Development Act of 1968 requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons. Please see Section 10 of this Subrecipient Manual.

Exceptions

There are certain exceptions to the Davis-Bacon and Copeland Anti-Kickback Acts. These acts do not apply to:

- Construction contracts at or below \$2,000. Note that arbitrarily separating a project into contracts below \$2,000 in order to circumvent the requirements is not permitted.
- Rehabilitation of residential property containing less than eight units. However, "property" is not limited to a specific building and is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project.
- Contracts solely for demolition, when no further construction is anticipated on the site.
- Force Account work.
- Housing projects that involve fewer than 8 units funded with CDBG-DR dollars.
- Equipment and Installation:

- When CDBG funds are utilized in whole or in part to finance equipment, the applicability of wage rates to the installation must be determined. The general rule is that installation work performed in conjunction with an equipment supply contract is subject to labor standards where it involves more than an incidental amount of construction activity. Factors requiring consideration include: nature of the prime contract work; type of work performed by employees installing the equipment; extent to which structural modifications to buildings are needed to accommodate the equipment; the cost of the installation work both in terms of absolute amounts as well as in terms of the proportion of the total equipment and project cost.
- An equipment analysis must be completed in which all items of equipment are included with an explanation of related installation/modification costs and submitted to Lee County to make a proper determination.
- Non-construction related activities will not cause Davis-Bacon to apply to the whole project. These are activities such as real property acquisition, procurement of furnishings, architectural and engineering fees, and certain pieces of equipment that would not become permanently affixed to the real property. Exempt equipment purchases would be those that are incidental to the project that require minimal installation costs. Please contact Lee County for equipment installations to determine whether the labor requirements will apply.

Pre-Bidding Requirements

Subrecipients must ensure that all bid documents, contracts, and subcontracts contain the applicable Davis-Bacon wage decision and Federal labor standards provisions. This requires the writing of the technical bid specification, usually by an architect or engineer, on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. Subrecipients must submit bid documents for review prior to advertising for bids. Please refer to Lee County's Procurement Manual for more guidance on bidding.

Sample procurement documents and guidance for adhering to procurement guidelines can be found at: <https://cdbg-dr-leegis.hub.arcgis.com/pages/references>

File Name	Lee County Procurement Ordinance
File Location/Link	https://www.leegov.com/bocc/Ordinances/23-21.pdf

NOTE: The environmental review must be completed and, if applicable, release of funds obtained prior to publishing the bid advertisement. Please refer to Lee County's Environmental Review Manual for more information.

Bidding and Contracting Requirements

Preparing Bid Packages

Once it is determined that a construction project is subject to federal and/or state labor standards provisions, the following steps must be taken to ensure compliance.

➤ Request Applicable Federal Wage Rate Decision

The subrecipient may access federal wage rate decisions through the Internet at <https://sam.gov/content/wage-determinations>

However, in order to ensure accuracy, the subrecipient must request the applicable federal wage rate decision from Lee County. Subrecipient should verify that no wage decision updates were made prior to bid opening and contact Lee County for further assistance in the event that updates were made as these must become part of a bid package addendum issued to all bidders.

Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. In determining which type of wage decision to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

- Building construction generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.
- Residential projects involve the construction, alteration or repair of single- family houses or apartment buildings one to four stories tall.
- Highway projects include construction, alteration or repair of roads.
- Heavy construction is considered for all construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy construction.

Lee County should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary.

NOTE: Contractors and subcontractors must also adhere to state wage requirements. Effective September 30, 2022, the Florida minimum wage will be \$11.00 per hour. On November 3, 2020, Florida voters approved a constitutional amendment to gradually increase the state's minimum wage each year until reaching \$15.00 per hour in September 2026. On September 30, 2022, Florida's minimum wage will increase to \$11.00 per hour. Resuming in 2027, the minimum wage will be adjusted annually for inflation.

➤ Add Labor Conditions to the Bid Package

The wage rate decision must be a physical part of the bid package. The bid package must contain the labor standards requirements below.

- Davis-Bacon provisions;
- Contract Work Hours and Safety Standards clause;
- Copeland Anti-Kickback clause;
- Employment of Apprentices/Trainee clause; and
- Applicable wage rate determination(s).

NOTE: If the subrecipient fails to include the correct wage rate determination(s), the subrecipient may have to rebid the project.

➤ Equal Opportunity Requirements

Lee County will review all draft bid and contract documents to ensure compliance with equal opportunity requirements and establish procedures for monitoring compliance during project execution. The following equal opportunity provisions and signed contractor and subcontractor certifications must be included in all bid and contract documents:

- Certification of Bidder regarding Section 3;
- Certification of Bidder regarding Equal Employment Opportunity;
- Contractor Section 3 Plan Format (if project exceeds \$200,000 or \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs);
- Certification by Proposed Subcontractor regarding Equal Employment Opportunity;
- Three-paragraph Equal Opportunity Clause for Activities and Contracts not subject to Executive Order 11246 (if contract is less than \$10,000);
- Executive Order 11246 clause (if contract is \$10,000 or above);
- Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (if contract over \$10,000);
- Standard CDG-DR assisted Equal Employment Opportunity Construction Contract Specification (if contract over \$10,000);
- Certification of Non-segregated Facilities clause (if contract over \$10,000);
- Title VI Clause, Civil Rights Act of 1964;
- Section 109 clause, Housing and Community Development Act of 1974;
- Rehabilitation Act of 1973, Section 503 clause (to all employers who have a contract or subcontract that exceeds \$10,000);
- Section 402 Veterans of the Vietnam Era clause (if contract over \$100,000); and
- Age Discrimination Act of 1975 clause.

➤ Female and Minority Participation Goals

The nationwide goal for female participation is 6.9 percent.

The minority participation goal applicable to Lee County is 15.3 percent.

File Name	Department of Labor Participation Goals
File Location/Link	ParticipationGoals.pdf (dol.gov)

• Other Bidding and Contracting Requirements

a. The bid package must also include all CDBG-DR-related provisions and Lee County’s terms and conditions. The following provisions for CDBG- DR -assisted projects must be included, as applicable:

- Bonding and Insurance Requirements Clause;
- Conflict of Interest;
- Certification of Compliance with Air and Water Acts (if over \$100,000);
- Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead-based Paint Prohibition);
- Energy Efficiency; and
- Access to Records/Maintenance of Records.

b. Cost and Pricing Format

The bid package must include cost and pricing formats. Generally, bid specifications should delineate each type of item, estimating quantity, unit price, and estimated total cost. All bid packages should indicate that the subrecipient can reject any and all bids received. The subrecipient must comply with applicable Florida procurement code or federal CDBG/CDBG-DR regulations, whichever is more stringent.

Once the bid document is prepared, it is time to advertise for construction bids. Refer to Lee County’s Procurement Manual for specific instructions on how to proceed with the bidding process.

• Pre-Bid Conference

The subrecipient should make reasonable efforts to ensure that responding parties fully understand the nature and requirements of the project being bid as well as any applicable regulatory requirements. It is recommended that a pre- bid conference be held, either on-site or virtually, to address any general or project-specific questions and concerns. A sign-in sheet should be utilized to document which parties are present.

Pre-Construction Requirements

Pre-Construction Conference

Before any work is performed by a contractor, Lee County encourages that the subrecipient, the grant administrator, the engineer or architect, and any other technical advisors to the subrecipient conduct a pre-construction conference with the contractor and property owner or representative to explain contractual requirements and performance schedules. Though no longer required in order to comply with federal labor standards, this conference reduces the likelihood of later conflicts caused by assumptions and misunderstandings between the contractor and the subrecipient.

The subrecipient should work with Lee County to prepare an agenda, and plan to utilize and distribute a pre-construction checklist as a guide to ensure that all areas are properly addressed. The subrecipient should clearly present the federal statutory compliance requirements as well as performance expectations. A copy of the minutes should be signed by all parties to the contract and placed in the files.

Items that should be covered at the pre-construction conference include, but are not limited to:

- Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
 - this time, the subrecipient should correct any outstanding deficiencies, such as securing signed Section 3 Plans and Certifications of Compliance.
 - Obtain the contractor's Federal Identification Number. This must be a Data Universal Numbering System (DUNS) number that is registered in the System for Award Management (SAM).
- Explain that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors.
- Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact Lee County immediately.
- Explain that employee interviews will be conducted during the project.
- Emphasize that both a copy of the wage rate decision and the wage rate poster must be posted at the job site.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the State Bureau of Apprenticeship and Training. If apprentices or trainees are to be used, the contractor must provide the subrecipient with a copy of the state certification of their program.

- If the contract amount is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law.
- Indicate that failure to pay workers at least time and a half overtime violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) and makes the contractor liable for not only restitution but also liquidated damages of \$27 per day for every day each worker that exceeded 40 hours a week without being paid time and a half. Subrecipients should contact their Lee County Contract Manager for assistance if a violation occurs
- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee. (An unidentified payroll deduction is a method used by unethical contractors to get their workers to “kickback” a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.
- Explain debarment proceedings relative to violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities
- Provide contractor with posters for the site, such as “Davis Bacon Act,” “Notice to All Employees Working on Federal or Federally Financed Construction Projects,” “Safety and Health Protection on the Job,” and “Equal Employment Opportunity is the Law.” These posters are located below in Additional Forms.
- Provide the contractor with a copy of Davis-Bacon and Labor Standards: Agency/Contractor Guide and Contractor Addendum which can be downloaded here:<https://www.hudexchange.info/resource/6717/davis-bacon-and-labor-standards-agency-contractor-guide-and-contractor-addendum/>
- Provide handouts explaining everything covered and obtain the contractor’s signature to document receipt.
- Explain that compliance and monitoring will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved.

Notice to Proceed

Following execution of the contract documents and completion of the pre-construction conference, issue a Notice to Proceed to each prime contractor to begin performance of the work. The Notice to Proceed must establish the construction start date, the scheduled completion date, and provide the basis for assessing liquidated damages. The Notice to Proceed must include the name of the contractor and the amount of the contract. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents.

Contract File Review

A review for each contract file will be conducted to make sure documentation is complete at the time of contract award. The following list of Construction Contract file requirements identifies the items that should already be located in the contract file.

- Preliminary design and cost estimates;
- Final design documents and cost estimates;
- Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids;
- Bid documents;
- Approval of bid documents by authorities having jurisdiction over the project, as appropriate;
- Tear sheet or affidavit documenting the advertisement for bids;
- Pre-bid conference signature sheet;
- Addenda, if any, and evidence of timely distribution to plan holders;
- Signed minutes of public bid opening;
- Certified tabulation of bids;
- Recommendation for Award;
- Notice of Contract Award/Council or Fiscal Court Approval;
- Recommended pre-construction conference report;
- Executed contract and subcontract documents;
- Certification of Insurance/Bonding; and
- Notice to Proceed.

Payroll Review Requirements

Once construction is underway, the prime contractor must obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. The payrolls must be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. The prime contractor is responsible for the full compliance of all subcontractors on the project and

will be held accountable for any wage restitution that may be found. This includes underpayments and any potential liquidated damages that may be assessed for violations.

Copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance) must be obtained and reviewed to ensure that there are no discrepancies or underpayments in accordance with HUD guidelines.

Certified payroll reports must be submitted by the contractor to the subrecipient within seven working days of the end of the payroll period. A Payroll Form and Statement of Compliance is provided in additional forms. Note that an employee's full social security number and address are not to be included on these certified payroll reports. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations and a Statement of Compliance, that is included on the WH-347, must accompany each payroll submission.

Payroll reports must be reviewed upon receipt and against all employee interviews so that any necessary corrective action can be initiated before the problem multiplies. Payroll forms must be initialed by the reviewer to indicate that they have been reviewed.

It is recommended that any contractors expected to perform no work for the following period note this in their most recent payroll submission. Weeks where there is no work performed must still be accounted for. Contractors must submit a "No Work" payroll for that week.

In addition to the falsification indicators described in the HUD guidance, items to be spot-checked should include:

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
- Review of deductions for any non-permissible deductions; and
- The Statement of Compliance (has been completed and signed by the owner or an officer of the firm.

Any discrepancies and/or falsification indicators must be reported, along with the steps being taken to resolve the discrepancies. Where underpayments of wages have occurred, the Lee County and its subrecipients are responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

Construction Management Requirements

During construction, Lee County or its subrecipients are responsible for monitoring the labor standards and equal opportunity requirements described in this Chapter. In addition to payroll reviews and interviews, proper construction management must be ensured. This role may be fulfilled by the architect/engineer and, if so, should be included in the scope of services for that professional services contract. Construction management must include on-site inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications, as well as quantity and quality control.

Note that written inspection reports must accompany any contractor's request for partial payment. It is also strongly recommended that monthly progress meetings be held to allow the subrecipient, engineer, grant administrator, and funding agencies to review the status of the project, resolve problems, and review requests for payment.

On-Site Interviews

Construction management requirements include conducting job site interviews with workers using the Record of Employee Interview Form located below.

Lee County or its subrecipients must conduct interviews using the representative sampling technique and the interviews should include a sufficient sample of job classifications represented on the job, as well as workers from multiple vendors, to allow for a reasonable judgment as to compliance. At least 10 percent of the workers on-site, and a least one in each job classification working at the site, should be interviewed.

The following actions must be performed:

- Interviews are conducted at least once during the course of each phase of construction on each project.
- Payrolls should be used to verify data obtained during on-site interviews. Check to see that employees are being paid the amounts specified in the wage decision, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor.
- Identification and correction of any discrepancies between on-site interviews, payrolls, and wage rates.
- A fully completed and signed Record of Employee Interview form is maintained in the contract file.

Interview Protocols

The following guidelines should be observed by persons conducting job site interviews:

1. The interview should take place on the job site if it can be conducted properly and privately (this is a one-on-one process).
2. The interviewer should see that the wage determination and other required posters are properly displayed.
3. The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime and sub-contractors should be interviewed. Administrators may choose to complete the Project Wage Rate Sheet found in Attachment 6-7d. This should be posted adjacent to the wage determination and other required posters on the job site at a location readily accessible to workers.
4. To initiate the interview, the authorized person shall:
 - a. Properly identify themselves;
 - b. Clearly state the purpose of interview; and
 - c. Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
5. When conducting employee interviews, the interviewer should pay particular attention to:
 - a. The employee's full name.
 - b. The employee's permanent mailing address.
 - c. The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
 - d. The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
6. The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
7. If it appears the individual may be underpaid, the interviewer should closely question the worker:
 - a. Ask for any records.
 - b. Arrange to re-interview the employee.
 - c. Enter the worker's statement of their classification.
 - d. Observe duties and tools used:
 - i. If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.
 - ii. If there are discrepancies, detailed statements are necessary.

NOTE: If an employee performs duties belonging to another classification, they must be paid accordingly for the time they are performing in the other classification. EXAMPLE: An employee who is classified as a Laborer operating machinery should be paid for that time as an Operator and the rest of the time as a Laborer.

- e. Enter any comments necessary.
- f. Enter date interview took place.
8. If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731) located below.
9. The payroll examiner must compare information on the Record of Employee Interview form with the certified payroll submission:
 - a. If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form.
 - b. If discrepancies do appear, appropriate action should be initiated.
 - c. When necessary action has been completed, the results must be noted on the interview form.

Wage Restitution

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project including wage restitution, must be reported on a certified payroll report.

Notification to the Prime Contractor

Lee County or the subrecipient will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. If wage violations are not corrected within 30 days after notification to the prime contractor, the recipient may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the subrecipient for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

Computing Wage Restitution

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

Correction Payrolls

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #3, or payrolls for a specified beginning date through a specified ending date). The correction payroll will list:

- Each employee to whom restitution is due and their work classification,
- The total number of work hours,
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid),
- The gross amount of restitution due,
- Deductions, and
- The net amount to be paid.
- A properly signed Statement of Compliance must be attached to the correction certified payroll.

Generally, the contractor is not required to obtain the signature of the employee on the correction payroll to evidence receipt of the restitution payment or to submit copies of restitution checks (certified, cashiers, canceled or other, or employee-signed receipts or waivers) in order to document the payment, however it is recommended. This is to ensure that the subrecipient can adequately enforce the unfound workers requirements.

Review of Corrected Certified Payroll

The contractor administrator will review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.

Subrecipients who are unfamiliar with the Davis-Bacon and CDBG Labor Standards should contact Lee County staff and the Program Management and Implementation vendor for technical assistance and training.

Progress Payments

Upon work completed, a contractor may submit requests for partial or progress payments. Written inspection reports must accompany the contractor's requests for partial payment. Inspection reports, copies of field measurement notes, photos, and test results used to verify contractor's periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.

Upon receipt of certificates for partial payment and necessary documentation, the subrecipient must check equal opportunity and labor standards compliance files to ensure that:

- All weekly payrolls and Statements of Compliance have been received, reviewed, and any discrepancies resolved; and
- Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.

Retainage from Progress Payments

Although retainage is not a requirement, it is helpful to maintain 10 percent retainage from partial payment until completion. The retainage is withheld until after final inspection and receipt of any/all documentation required to be submitted in case of any unresolved problems. See below for information on how retainage is addressed in the Final Payment.

Change Orders

Change orders must be prepared by the construction inspector and/or architect/engineer. Change orders may be considered on a case-by-case basis and must be deemed cost reasonable and necessary by Lee County. A cost analysis is required for all change orders if they will result in either an increase or a decrease to the contract amount.

Each change order must be accompanied by a supporting statement that describes why the change is necessary, additional time requested to perform the work, itemized cost estimates (credit, debit, or no change), and any needed plans, specifications, or supporting imagery. The subrecipient must verify that the change order is reasonable and approve and authorize change orders before they are given to the contractor. Change orders should be kept to an absolute minimum and cannot be issued after final payment.

Change orders must be submitted to Lee County for evaluation and may be approved in an amount equal to the rehabilitation/construction contingency budget line item. The subrecipient/developer is responsible for all construction costs exceeding the contingency budget amount unless Lee County approves a revised construction budget and reviews and approves a change order for the additional scope of work and costs in excess of the total construction budget.

Final Payment

When construction work has been completed, the contractor must certify completion of work and submit a final request for payment. The subrecipient or the architect/engineer should make the final inspection and prepare a written report of the inspection prior to the issuance of a final certificate of payment. Before making final payment (less retainage), Lee County or the subrecipient must ensure that:

- All weekly payrolls and Statements of Compliance have been received, reviewed, and discrepancies have been resolved;
- DOL has approved any requests for additional wage classifications;
- Any underpayments of wages and/or liquidated damages have been appropriately handled and documented;
- All discrepancies identified through job site interviews have been resolved;
- All other required equal opportunity and labor standards provisions have been satisfied;
- All Section 3 reports have been submitted;
- All contract submissions have been received;
- All claims and disputes involving the contractor have been resolved;
- All files are complete; and
- As-built plans have been filed.

If the inspection is satisfactory, the subrecipient can then issue acceptance of work and final payment, less retainage.

Retainage from Final Payment

Within 30 days from the receipt of all documents, filing of the acceptance of the work, and upon submission of a certification of completion by the contractor, the retainage that has been withheld will be released from each progress and final payment to the contractor.

Record Keeping

In order to demonstrate Davis-Bacon compliance, Lee County or its subrecipients will maintain a file with the following documentation for each construction contract for a minimum of three (3) years after the completion date of applicable project:

- Labor Standards Officer Designation Form
- Wage Determination Form(s)
- Wage Rate Decision(s)
- Request(s) for Additional Wage Classification and Rate
- Pre-construction conference report minutes and sign-in sheet(s)
- Labor Standards Record
- Eligibility Verification printouts from SAM (for each prime and/or subcontractor)
- Payrolls, with evidence of compliance review (including LSO Payroll Certification)
- Employee interviews
- Interim inspection reports
- Wage violations (amount of restitution, number of hours and days)
- Liquidated damages fees and documentation (if any)
- Certificate(s) of Construction Completion

Reporting

Local authorities and subrecipients must report to HUD on all DBRA regulated contracts awarded and on all enforcement actions taken each six (6) months. Semi-annual labor reports are due to HUD in April (for the period October 1 through March 31) and October (for the period April 1 through September 30). Lee County monitors its subrecipients for completion of the reports. The Semi-Annual Labor Standards Enforcement Report form (HUD-4710) and Instructions (HUD-4710i) are available on HUD’s website.

Additional Forms

File Name	HUD 4010 Federal Labor Standards.pdf
File Location/Link	https://hudgov.sharepoint.com/sites/FPM/OFPM/DBLS/HQ/Shared Documents/Forms DBLS/HUD-4010 Federal Labor Standards Provisions/HUD 4010

File Name	HUD 11 Record of Employee Interview.pdf
File Location/Link	HUD-11 Record of Employee Interview

File Name	WH-1321 Davis-Bacon Poster.pdf
File Location/Link	Davis-Bacon Poster (Government Construction) U.S. Department of Labor (dol.gov)

File Name	WH-347 Payroll Reporting Form.pdf
File Location/Link	PAYROLL (dol.gov)

File Name	Minority Participation Goals
File Location/Link	U. S. Department of Labor; Office of Federal Contract Compliance Programs Construction Contractors Technical Assistance Guide (dol.gov)

Contact

Lee County’s Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR labor standards.

To connect with SRGA regarding these efforts, please contact: Kevin Loucks

Email: recovery@leegov.com Phone: 239-533-2315

Section 3

Overview

HUD requires that CDBG-DR funded programs comply with Section 3 requirements. Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that promotes economic opportunities for low-income individuals and businesses residing in areas where HUD financial assistance is provided for housing and community development projects. As of November 30, 2020, CDBG-DR programs are required to adhere to the reporting and compliance requirements outlined in CPD Notice 21-09 and 24 CFR Part 75.

Applicability

Section 3 requirements apply to all CDBG-DR funded housing rehabilitation, reconstruction, elevation or new construction and any other public construction project that has a total project cost of \$200,000 or more. The project includes the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing. Section 3 applies to the entire project even when the CDBG-DR funds are only a portion of the total funding.

In accordance with 24 CFR 75.3(b), Section 3 requirements do not apply to material supply contracts.

Benchmarks

Lee County subrecipients will make every effort to comply with HUD benchmarks when undertaking applicable projects to satisfy Section 3 requirements. Lee County subrecipients will be considered to have complied with requirements of HUD's Section 3 final rule if it certifies that it has followed the prioritization effort in 24 CFR Part 75.19 and it has met or exceeded the following Section 3 benchmarks:

- 25% of all labor hours are performed by a Section 3 worker
- 5% of all labor hours are performed by Targeted Section 3 workers

In addition to the benchmarks above to the greatest extent feasible, Lee County subrecipients, shall ensure the following:

- Contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located;
- Where feasible, priority for contracting opportunities should be given to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and to YouthBuild programs;

- Employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located; and
- Where feasible, priority opportunities and training should be given to Section 3 workers within the service area or the neighborhood of the project and to YouthBuild programs.

Section 3 Worker

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

- The worker's income for the previous or annualized calendar year is below the income limit² established by HUD.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction. Nothing in 24 CFR Part 75 shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Targeted Section 3 Worker

A 'Targeted' Section 3 worker for housing and community development financial assistance is defined as a worker that is a Section 3 worker who is also:

- A worker employed by a section 3 business concern; or
- A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR Part 75.5; or
 - A YouthBuild participant.

Section 3 Business Concern

A Section 3 business concern is defined as a business concern meeting at least one of the following criteria, documented within the last six-month period:

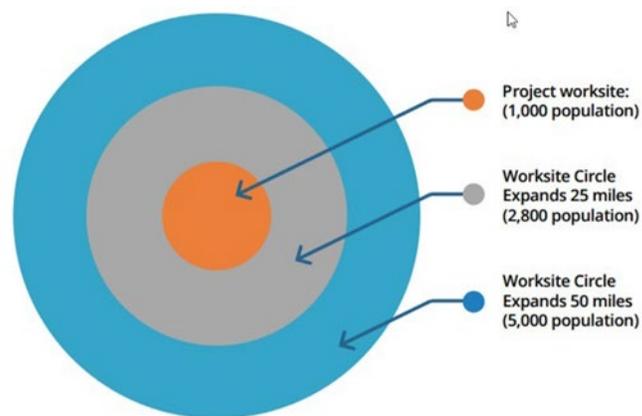
- It is at least 51 percent owned and controlled by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three- month period are performed by Section 3 workers; or
- It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

² The one-person household income limit is used to determine income eligibility. Income limits are available at <https://www.huduser.gov/portal/datasets/il.html>

The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.



Procurement

All procurements issued by Lee County subrecipients that include funding covered by 24 CFR 75.3 will include notice that Section 3 is applicable to the funding and may include, as appropriate for the specific procurement, points for the quality of a proposed plan to achieve Section 3 benchmarks.

Contracting

Lee County subrecipients must include language in any agreements or contracts to apply Section 3 to contractors or subrecipients.

Lee County subrecipients must require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.

Lee County subrecipients must require all contractors and subcontractors to meet the requirements of 24 CFR Part 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Sample Section 3 contract language can be provided upon request.

Reporting

Lee County subrecipients will report, monthly, in a tracking form prescribed by Lee County below, the total number of labor hours worked, the total number of labor hours worked by

Section 3 workers, and the total number of labor hours worked by Targeted Section 3 workers.

File Name	Section 3 Tracking Report
File Location/Link	https://cdbgdr.leegov.com/

Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to 21 CFR 75.31.

The labor hours reported must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the Lee County subrecipient is required or elects to report. Lee County subrecipients will not include labor hours from professional services in the total labor hours worked. If a contract covers professional services and other work, Lee County subrecipients must report the labor hours under the contract that are not from professional services.

Lee County subrecipients will report on labor hours for the subrecipient and any contractors or subcontractors on the employer's good faith assessment of labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance-based payroll system, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

Qualitative Efforts

If Section 3 benchmarks are not met, Lee County subrecipients must report quarterly on the qualitative nature of its Section 3 compliance activities and those of its contractors and subcontractors. Such qualitative efforts may include, but are not limited to the following:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Held one or more job fairs.

- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
- Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided bonding assistance, guarantees, or other efforts to support viable bids from Section 3 business concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

Recordkeeping

Lee County subrecipients must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

- For a worker to qualify as a Section 3 worker, one of the following must be maintained:
 - A worker's self-certification that their income is below the income limit from the prior calendar year;
 - A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
 - Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
 - An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
 - An employer's certification that the worker is employed by a Section 3 business concern.
- For a worker to qualify as a Targeted Section 3 worker the following must be maintained:
 - An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle

centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

- An employer's certification that the worker is employed by a Section 3 business concern; or
- A worker's self-certification that the worker is a YouthBuild participant.

Lee County subrecipients must maintain all Section 3 records related to CDBG-DR for a minimum of 5 years after grant closeout.

Subrecipient Procedure

Lee County subrecipients will implement the following steps to comply with HUD Section 3 requirements.

1. Develop a Section 3 Plan (optional). While the final rule does not require recipients to have Section 3 plans, a Section 3 plan can serve as a guide for the community ensuring that the Section 3 requirements are properly implemented and communicated. The development of a Section 3 plan is optional.
2. Identify a Section 3 Coordinator.
3. Facilitate training of staff and stakeholders on Section 3 goals and requirements.
4. Incorporate Section 3 language in procurement activities.
5. For each project identify the service area or the neighborhood of the project as defined in 24 CFR 75.5. Service areas can be defined using the HUD developed mapping tool just to map the Section 3 service area:
<https://hud.maps.arcgis.com/apps/webappviewer/index.html?id=1d27b42dd64e4684ba74fe5bd00f9755>
6. Review contracts and agreements to ensure that Section 3 contract provisions have been included in all agreements and contracts for Section 3 projects.
7. At a preconstruction conference inform the contractor of the contractor's Section 3 responsibilities, Section 3 Benchmark goals, and Section 3 reporting requirements. Provide the contractor with Section 3 certification forms, tracking templates, and report forms.
8. On a quarterly basis, review contractor Section 3 reports to determine progress toward meeting Section 3 Benchmarks. Provide additional assistance as required to assist contractors in achieving Section 3 labor hour goals.
9. If contractor reporting indicates that the contractor is not meeting the Section 3 Benchmarks, require contractors to provide documentation of the qualitative efforts listed in 24 CFR 75.25(b) they have undertaken.
10. Lee County subrecipients should obtain any Section 3 worker or Section 3 Targeted worker labor hours from professional services during the reporting period.

NOTE: Professional services are not counted in the total project hours BUT any professional services performed by Section 3 firms may be counted in the Section 3 hours when calculating the percentages.

11. Complete and submit required Section 3 reports to Lee County on a timely basis.
12. Promptly report all Section 3 complaints or potential violations of Section 3 requirements to Lee County.
13. Maintain Section 3 reports, certification forms, and related documents in accordance with Lee County record retention requirements.

Forms – Section 3 Employer Certification

Section 3 Housing and Community Development Employer Certification Form	U.S. Department of Housing and Urban Development Office of Field Policy and Management	HUD FORM 4736A OMB Approval Number 2501-0041 (Exp. 04/30/2025)
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(In compliance with Section 3 of the HUD Act of 1968 and 24 CFR Part 75)

Public reporting for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), and 12 U.S.C. § 1701u ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. The regulations are found at 24 CFR Part 75. This collection of information is required in order to ensure that a worker can be certified as an eligible Section 3 worker as outlined in 24 C.F.R. § 75.31. The information will be used by the Department to ensure compliance with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients to ensure they are complying with their recordkeeping requirements found in the regulation, and as a self-monitoring tool.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. XXXX-XXXX. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. No assurances of confidentiality are provided for this information collection.

The purpose of this form is to comply with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31. To qualify as a Section 3 worker, the United States legal resident's annual income must not exceed the HUD income limits for the year before the worker was hired, or the individual's current income annualized on a full-time basis for the year must be below the HUD income limit. Additionally, an individual can qualify as a Section 3 worker and Targeted Section 3 worker, if an employee of a Section 3 Business Concern. To qualify as a Targeted Section 3 worker, an employer can confirm that the employee lives within the service area or neighborhood of the project.

Please provide the following information about the business/employer:

Name of Business: _____

Street Address _____ City _____ State _____ Zip _____

Phone #: _____ Email: _____

Please Provide the following information about the worker/employee:

Printed Name of Worker: _____

Street Address (Not a PO Box) _____ Apt# _____ City _____ State _____ Zip _____

Phone #: _____ Email: _____

Please indicate which of the following is true for the worker listed above: (Select all that apply)

<input type="checkbox"/> Worker's income from your employment is below the income limit based on a calculation of what the worker's wage rate would translate to if annualized on a full-time basis*	Income limit <u>\$XX,XXX</u>
<input type="checkbox"/> Worker is employed by a Section 3 Business Concern (Select if your business qualifies as a Section 3 Business Concern)	
<input type="checkbox"/> Worker's residence is within the service area or neighborhood of the project	

*Currently or at the time of hire if hired within the past 5 years.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and certifies that the worker identified above meets the definition of a Section 3 worker. WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802)

Signature

Date

Form- Section 3 Worker Self-Certification

Section 3 Worker Self-Certification-Housing and Community Development	U.S. Department of Housing and Urban Development Office of Field Policy and Management	HUD FORM 4736C OMB Approval Number 2501-0041 (Exp. 04/30/2025)
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(In compliance with Section 3 of the HUD Act of 1968 and 24 CFR Part 75)

Public reporting for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), and 12 U.S.C. § 1701u ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. The regulations are found at 24 CFR Part 75. This collection of information is required in order to ensure that a worker can be certified as an eligible Section 3 worker as outlined in 24 C.F.R. § 75.31. The information will be used by the Department to ensure compliance with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients to ensure they are complying with their recordkeeping requirements found in the regulation, and as a self-monitoring tool.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. XXXX-XXXX. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. No assurances of confidentiality are provided for this information collection.

The purpose of this form is to comply with Section 3 of the HUD Act of 1968 employer certification requirements listed in 24 CFR § 75.31. To qualify as a Section 3 worker, any United States legal resident's annual income must not exceed the HUD income limits for the year before the worker was hired, or the individual's current income annualized on a full-time basis for the year must be below the HUD income limit. Additionally, an individual can qualify as a Section 3 worker if they are a YouthBuild participant or employee of a Section 3 Business concern.

Printed Name: _____

Street Address (Not a PO Box) _____ Apt# _____ City _____ State _____ Zip _____

Phone #: _____ Email: _____

To qualify as a Section 3 Worker, you must meet **one** of the following requirements **OR** have your employer certify that you are employed by a Section 3 Business concern:

<ul style="list-style-type: none">• Income for the previous calendar year is below the income limit*• A participant in a means-tested program such as public housing or Section 8-assisted housing• A YouthBuild Participant*	Income limit <u>\$XX,XXX</u>
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*Currently or at the time of hire if hired within the past 5 years

I meet at least one of the requirements in the box above and therefore qualify to be counted as a Section 3 Worker under 24 CFR § 75.

If applicable, please indicate which requirement you meet to be considered a Targeted Section 3 worker in the box below. If you select "Living within the service area or neighborhood of the project," that selection will have to be confirmed by your employer. If you do not meet any of these requirements or do not know if you meet any of the requirements listed below, you may leave this section blank.

<p><input type="checkbox"/> Living within the service area or neighborhood of the project (requires employer <u>confirmation</u>)*</p> <p><input type="checkbox"/> YouthBuild participant*</p>
--

*Currently or at the time of hire if hired within the past 5 years

In addition to qualifying as a Section 3 Worker, I meet at least **one** of the requirements in the box above and therefore qualify to be counted as a Targeted Section 3 Worker under 75 CFR § 75.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct and certifies that the worker identified above meets the definition of a Section 3 worker. **WARNING:** Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802)

Signature

Date

Form - Section 3 Business Concern Certification

CERTIFICATION FOR A BUSINESS SEEKING SECTION 3 PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPABILITY

Name of Business _____

Address of Business _____

Type of Business: _____ Corporation _____ Partnership _____ Sole Proprietorship
Joint Venture

Attach each of the following as applicable to your business:

- | | |
|--|--|
| <input type="checkbox"/> Copy of Articles of Incorporation | <input type="checkbox"/> Corporation Annual Report |
| <input type="checkbox"/> Certificate of Good Standing | <input type="checkbox"/> Latest Board minutes appointing officers |
| <input type="checkbox"/> Assumed Business Name Certificate | <input type="checkbox"/> Organization chart with names and titles |
| <input type="checkbox"/> Partnership Agreement | <input type="checkbox"/> Additional documentation and brief functional statement |
| <input type="checkbox"/> List of owners/stockholders and % ownership of each | |

For business claiming Section 3 status, the business must provide documentation for the last 6-month period to support the following:

- At least 51 percent owned and controlled by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

- | | |
|--|---|
| <input type="checkbox"/> Documentation in accordance with 24 CFR 75.31, indicating owners qualification as a Section 3 Worker or as a Targeted Section 3 worker; | <input type="checkbox"/> Evidence of ability to perform successfully under the terms and conditions of the proposed contract: |
| <input type="checkbox"/> List of all current full-time employees, list of employees claiming Section 3 status, and Section 3 workers' and Targeted Section 3 workers' labor hours; | <input type="checkbox"/> Current financial statement |
| <input type="checkbox"/> Documentation of owners residence in Section 8 assisted housing. | <input type="checkbox"/> Statement of ability to comply with public policy |
| | <input type="checkbox"/> List of owned equipment |
| | <input type="checkbox"/> List of all contracts for the past two years |

Authorizing Name and Signature: _____ Date: _____

(Corporate Seal) Attested by: _____ Date: _____

Additional Forms

File Name	Section 3 Sample Plan-HUD template
File Location/Link	Section-3-Sample-Plan.docx (live.com)

Contact

Lee County's Office of Strategic Resources and Government Affairs (SRGA) is responsible for ensuring compliance with HUD CDBG-DR funding.

To connect with SRGA regarding these efforts, please contact: Email: Recovery@leegov.com

Phone: 239-533-2315