



Community Development Division

Section 3
Disadvantaged Business Enterprise (DBE)
Minority Business Enterprise (MBE)
Women Business Enterprise (WBE)

Toolkit

DOCCDD@mt.gov

<https://comdev.mt.gov/Resources>

Table of Contents

Section 3 Definitions (24 CFR Part 135)	1
DBE/MBE/WBE Definitions	2
Section 3 and DBE/MBE/WBE Overview.....	3
Advertising	4
Section 3.....	4
DBE/MBE/WBE.....	5
Contracting.....	5
Reporting	6
Commerce’s Reporting to HUD.....	6
Grantees’ Reporting to Commerce	7
Section 3 Goals.....	7
Resources	8
Section 3.....	8
DBE/MBE/WBE.....	8

This page intentionally left blank.

Section 3 Definitions (24 CFR Part 135)

Contractor: Contractor means any entity which contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

Metropolitan: Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget. A current list of MSAs can be found at <http://www.census.gov/population/www/metroareas/metrodef.html>.

New Hire: A new hire means a full-time employee for a new permanent, temporary, or seasonal position that is created as a direct result of the expenditure of Section 3 covered financial assistance.

Non-Metropolitan County: A non-metropolitan county means any county outside of a metropolitan area.

Business Concern: A Section 3 business concern means a business entity formed in accordance with State law, and which is licensed under State, county, or municipal law to engage in the type of business activity for which it was formed. Non-profit organizations can be legitimate business concerns.

Safe Harbor: The term “safe harbor” is used to refer to recipient agencies or contractors who meet the numerical goals of Section 3 and are considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

Section 3 Business Concern: Section 3 business concern means a business concern, as defined in this section: (1) that is 51 percent or more owned by Section 3 residents; or (2) 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 business concern were Section 3 residents; or (3) that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet one of the first two qualifications above.

Section 3 Contract: A Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. “Section 3 covered contracts” do not include contracts awarded under HUD’s procurement program, which are governed by the Federal Acquisition Regulation System. “Section 3 covered contracts” also do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.

Section 3 Project: A Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance (e.g., street repair, sewage line repair or installation, updates to building facades, etc.). Additionally, a Section 3 covered project includes work arising in connection with the activities listed above (e.g., professional and non-professional services completed prior to construction).

Section 3 Resident: Section 3 resident means: (1) A public housing resident; or (2) An individual who resides in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended, and who is: (i) A low-income person, i.e., families (including single persons) whose incomes do not exceed 80 per centum of the median family income for the area adjusted for family size; or (ii) A very low-income person, i.e., families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area adjusted for family size.

Subcontractor: Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of Section 3 covered assistance or arising in connection with a Section 3 covered project.

Youthbuild Programs: HUD Youthbuild programs mean programs that receive assistance under Subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992, and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

DBE/MBE/WBE Definitions

Disadvantaged: Certain groups of persons are presumed disadvantaged, including women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and others found to be disadvantaged by the U.S. Small Business Administration (SBA). Persons who are not members of one of the groups presumed disadvantaged may be eligible for preference under DBE/MBE/WBE if they establish their social and economic disadvantage. Additionally, disadvantaged persons must not exceed certain personal net worth limits.

Ownership: A business must be 51 percent owned by a socially and economically disadvantaged individual/s to qualify under DBE/MBE/WBE.

For more information, visit <https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>.

Section 3 and DBE/MBE/WBE Overview

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment, contracting, and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons. Section 3 covered activities include housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement), housing construction, and other public construction for which the amount of assistance exceeds \$200,000.

Section 281 of the National Affordable Housing Act requires that recipients of HUD financial assistance reach out to disadvantaged, minority, and women-owned business enterprises (hereafter, “DBE/MBE/WBE”) for all contracting activities facilitating the provision of affordable housing authorized under federal law.

Section 3 and DBE/MBE/WBE covered projects may be funded by one or a combination of the following federal sources administered by the Montana Department of Commerce (Commerce): the HOME Investment Partnerships Program (HOME), the Housing Trust Fund (HTF) Program, or the Community Development Block Grant (CDBG) Program. All activities that are part of a Section 3 covered project are subject to applicable requirements, regardless of whether they, individually, are directly funded by the assistance that triggers Section 3. Additionally, while Section 3 is not specifically required for planning grants provided under CDBG, if a planning grant will result in a “covered” project (i.e., federally assisted housing construction, demolition, rehabilitation, or other public construction), Section 3 must be followed during the planning grant project.

It should be noted that Section 3 and DBE/MBE/WBE are separate requirements and that a HUD-assisted project subject to DBE/MBE/WBE may not be covered under Section 3. For a side-by-side comparison of the two requirements, see the table below.

Side-by-Side Comparison of Section 3 and DBE/MBE/WBE

	Section 3	DBE/MBE/WBE
Code of Federal Regulations Reference	24 CFR § 135	2 CFR § 200.321
Preferences	Preferences provided under this regulation are based on income level and location	Preferences provided under this regulation are based on social and economic disadvantages such as ethnicity and gender
Requirements	Section 3 requirements apply to job training, employment, contracting, subcontracting, and other economic opportunities (Grantees comply with Section 3 through their project advertising, contracting, and reporting; see sections below for more details)	DBE/MBE/WBE requirements apply to contracting and subcontracting (Grantees comply with DBE/MBE/WBE through their project advertising, contracting, and reporting; see sections below for more details)

	Section 3	DBE/MBE/WBE
Level of Assistance	The level of assistance that triggers Section 3 requirements is \$200,000	Any amount of assistance triggers DBE/MBE/WBE requirements
Triggering Activities	HUD-assisted projects that involve the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards) and other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance (e.g., street repair, sewage line repair or installation, updates to building facades, etc.). Additionally, HUD-assisted projects that include work arising in connection with the activities listed above (e.g., professional and non-professional services completed prior to receiving a CDBG, HOME, or HTF award for construction).	All HUD-assisted projects are subject to DBE/MBE/WBE requirements, regardless of activities undertaken

Finally, it is worth noting that federal regulations may change and, as such, this toolkit is subject to revision.

Advertising

Grantees are encouraged to maintain a plan that outlines specific, affirmative steps they will take to market to and solicit the services and goods of Section 3 and DBE/MBE/WBE contractors and subcontractors. Additionally, grantees must ensure the maximum participation of Section 3 and DBE/MBE/WBE firms by dividing total requirements, when economically feasible, into smaller tasks or quantities and establishing reasonable delivery schedules.

Section 3

Grantees receiving assistance for covered projects must proactively reach out to Section 3 business concerns when soliciting goods and services. Grantees are encouraged to utilize the Section 3 Business Registry online at <https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness> to search for firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business. Firms within the region who potentially qualify to complete the work being advertised should be contacted directly.

Additionally, a Section 3 notice must be published at least once at the beginning of a covered project (see sample notice below) and may be incorporated into each advertisement for procurement. Note: Documentation showing Section 3 outreach efforts (e.g., results of the registry search, emails

documenting direct solicitation, affidavit/s of publication for Section 3 notice) must be maintained as part of the project file and provided to Commerce.

DBE/MBE/WBE

Grantees receiving assistance must proactively reach out to DBE/MBE/WBE businesses and contractors when soliciting goods and services. Grantees should utilize the Montana Department of Transportation's (MDT) DBE directory and/or DBE quote request tool online at <https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml> to search for and directly solicit quotes from firms that are MDT certified as DBE. Grantees also have the option of using SAM.gov to identify firms that may be given preference based on their socio-economic status (see the Resources section of this document for more information).

Additionally, a DBE/MBE/WBE notice must be published at least once at the beginning of a covered project (see sample notice below) and may be incorporated into each advertisement for procurement. Note: Documentation showing DBE/MBE/WBE outreach efforts (e.g., results of the directory search, emails documenting direct solicitation, affidavit/s of publication for DBE/MBE/WBE notice) must be maintained as part of the project file and provided to Commerce.

Sample Section 3 and DBE/MBE/WBE Public Notice (Note: Language can be extracted as needed when only one requirement is triggered.)

SAMPLE SECTION 3 AND DBE/MBE/WBE PUBLIC NOTICE

The ***(Name of Grantee)*** has received notice of the award of ***(Program)*** funds from the Montana Department of Commerce. ***(Name of Grantee)*** will soon commence implementation of a ***(include brief description)*** project.

(Program) regulations governing the grant require that to the greatest extent feasible, opportunities for training, employment, and contracting arising in connection with this ***(Program)***-assisted project will be extended to local lower-income residents. Further, to the greatest extent feasible, business concerns located in or substantially owned by residents of the project area will be utilized.

(Program) regulations governing the grant also require that opportunities for contracting will be extended to minority, women-owned, and disadvantaged ("DBE/MBE/WBE") businesses. DBE/MBE/WBE firms are encouraged to apply.

For more information, please contact ***(name)*** at ***(address)*** or call ***(phone number)***.

Contracting

All of Commerce's contracts for covered projects specify that grantees will comply with all applicable local, state, and federal laws as well as all applicable regulations, ordinances, and resolutions. Compliance includes meeting Section 3 and DBE/MBE/WBE requirements, which are extended from Commerce to the grantee (via the contract) and then to subcontractors (via subcontract supplemental conditions or required clauses) if the grantee sublets or subcontracts any portion of the assisted project.

Reporting

Commerce's Reporting to HUD

Commerce submits reports to HUD detailing Section 3 and DBE/MBE/WBE compliance according to HUD's prescribed reporting periods and deadlines. Section 3 reporting is due annually on or about August 15 while DBE/MBE/WBE reporting is due semiannually on or about April 30 and October 31. See the tables below for reporting periods and deadlines.

Section 3 Reporting Periods (Every 12 Months)

Start Date	End Date	Program Year	Report Year
4/1/2019	3/31/2020	2019	2019
4/1/2020	3/31/2021	2020	2020
4/1/2021	3/31/2022	2021	2021
4/1/2022	3/31/2023	2022	2022
4/1/2023	3/31/2024	2023	2023
4/1/2024	3/31/2025	2024	2024
4/1/2025	3/31/2026	2025	2025
4/1/2026	3/31/2027	2026	2026
4/1/2027	3/31/2028	2027	2027
4/1/2028	3/31/2029	2028	2028
4/1/2029	3/31/2030	2029	2029
4/1/2030	3/31/2031	2030	2030

DBE/MBE/WBE Reporting Periods (Every 6 Months)

Start Date	End Date	Reporting Period
10/1/2018	3/31/2019	10/1/2018-9/30/2019 (2019)
4/1/2019	9/30/2019	
10/1/2019	3/31/2020	10/1/2019-9/30/2020 (2020)
4/1/2020	9/30/2020	
10/1/2020	3/31/2021	10/1/2020-9/30/2021 (2021)
4/1/2021	9/30/2021	
10/1/2021	3/31/2022	10/1/2021-9/30/2022 (2021)
4/1/2022	9/30/2022	
10/1/2022	3/31/2023	10/1/2022-9/30/2023 (2022)
4/1/2023	9/30/2023	
10/1/2023	3/31/2024	10/1/2023-9/30/2024 (2023)
4/1/2024	9/30/2024	
10/1/2024	3/31/2025	10/1/2024-9/30/2025 (2024)
4/1/2025	9/30/2025	
10/1/2025	3/31/2026	10/1/2025-9/30/2026 (2025)
4/1/2026	9/30/2026	
10/1/2026	3/31/2027	10/1/2026-9/30/2027 (2026)
4/1/2027	9/30/2027	
10/1/2027	3/31/2028	10/1/2027-9/30/2028 (2027)
4/1/2028	9/30/2028	

Grantees' Reporting to Commerce

To meet its reporting obligations, **Commerce requires grantees to provide a summary of contracting and hiring activities with each request for reimbursement.** Historically, Commerce has accepted the following forms for this purpose: the Section 3 Report Summary (Form HUD-60002), referred to as Exhibit 9-L and 12-H in the CDBG manual; and the Contract Reporting Form, referred to as Exhibit 5-J, 9-K, and 12-E in the CDBG manual. While Commerce will continue to accept these forms, grantees are encouraged to use a new, consolidated form, the Contract and Employment Reporting Form (appended to this toolkit), which allows for more streamlined and efficient reporting.

Commerce aggregates data according to the date it is submitted. For example, if a grantee submits a draw request on May 15, 2019, the Section 3 and DBE/MBE/WBE data they provide is included in the 2019 Section 3 report, which runs from April 1, 2019, to March 31, 2020, as well as the 2019 DBE/MBE/WBE report for the period running April 1, 2019, to September 30, 2019.

Once aggregated, data are entered into Form HUD-2516, an Excel worksheet sent to HUD via email, and HUD's data repository, the Section 3 – Performance Evaluation and Registry System (SPEARS), also referred to as Form HUD-60002. Data are also included in the Consolidated Annual Performance and Evaluation Report (CAPER) Commerce submits to HUD annually.

Section 3 Goals

The Section 3 numerical goals are minimum targets established by HUD that must be reached for purposes of compliance. Commerce and its grantees are required to make best efforts, to the greatest extent feasible, to achieve the annual numerical goals for employment and contracting. If goals are not met, Commerce and its grantees must adequately document efforts to meet the targets, explaining barriers encountered.

The minimum numerical goal for employment is **30 percent of the total number of new hires shall be Section 3 residents.** For example, 3 out of 10 new employees needed to complete a Section 3 covered project or activity shall be Section 3 residents.

The minimum goals for contracting are: **10 percent of the total dollar amount of all Section 3 covered contracts for building trades work (i.e., construction) shall be awarded to Section 3 businesses;** and **3 percent of the total dollar amount of all non-construction Section 3 covered contracts shall be awarded to Section 3 businesses.**

As mentioned previously, grantees provide a summary of their contracting and hiring activities with each request for reimbursement. In cases where grantees don't meet minimum numerical goals, they must provide Commerce with a description of efforts undertaken and an explanation of barriers encountered. Commerce aggregates all Section 3 data supplied by grantees and assesses whether numerical goals were met for each program at the state level.

Resources

HUD's Income Limits for Low- or Very Low-Income Households

<https://www.huduser.gov/portal/datasets/il.html>

SAM.gov – Register Your Business to Be Eligible for Federal Contracts and to Receive Preference for Socio-Economic Status

<https://www.sam.gov/SAM/>

Section 3

Sample Section 3 Certification Form – Business Seeking Preference

<https://www.hudexchange.info/resource/750/sample-section-3-certification-form-business-seeking-preference/>

Section 3 Business Registry

<https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness>

Section 3 Business Registry Brochure

https://www.hud.gov/sites/documents/BR_BROCHURE.ENGLISH.PDF

Section 3 – Economic Opportunities Webpage on HUD.GOV

<https://www.hud.gov/Section3>

Section 3 Frequently Asked Questions (FAQs)

<https://www.hud.gov/sites/documents/11SECFAQS.PDF>

Section 3 Opportunity Portal – Match Section 3 Resident to Jobs and Training Opportunities and Section 3 Businesses to Contracting Opportunities

<https://hudapps.hud.gov/OpportunityPortal/>

Section 3 Sample Plan - Template

<https://www.hudexchange.info/resource/766/section-3-sample-plan-template/>

DBE/MBE/WBE

Guidance on Minority Business Enterprise and Women's Business Enterprise Outreach

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

Minority Business Development Agency Website

<https://www.mbda.gov/>

Montana Department of Transportation Disadvantaged Business Enterprise Program Webpage

<https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>

Small Business Administration Website

<https://www.sba.gov/>

Montana Department of Commerce – Community Development Programs

CONTRACT AND EMPLOYMENT REPORTING FORM

This form is used for DBE/MBE/WBE and Section 3 Reporting and must be submitted with each request for reimbursement. Reporting is cumulative for the entire duration of a project; thus, this form must be filled out by the grantee at first draw and updated with each subsequent draw.

Grant Recipient Name: _____	Contact Person: _____	[] Draw 1
Grant Recipient Address: _____	Phone Number: _____	[] Draw 2
Grant Contract Number: _____	Date Submitted: _____	[] Draw 3
		[] Draw 4

- (1) Did the expenditure of grant funds result in new hires for you or your contractors? _____
- (2) Did the expenditure of grant funds result in any covered contracts? _____

Answering YES to one or both of the questions above indicates that you have reporting obligations and must complete Parts I, II, and III below. Answering NO to both of the questions above indicates you did not trigger the reporting requirements of Section 3 and DBE/MBE/WBE and the form is complete.

Part I: Employment and Training

Job Category	(A) Number of New Hires	(B) Number of New Hires that Are Section 3 Residents	(C) Aggregate Number of Staff Hours Worked by All Employees <i>optional</i>	(D) Total Number of Staff Hours Worked by Section 3 Employees <i>optional</i>	(E) Number of Section 3 Trainees	Notes
Administrative						
Carpentry						
Case Management						
Clerical						
Electrical						
Facilities/Maintenance						
Masonry						
Plumbing						
Professional						
Technical (e.g. Bookkeeping and IT)						
Other (Describe in Notes)						

- Number of New Hires [Column A].** Enter the number of new hires, meaning full-time employees—permanent, temporary, or seasonal—that are a direct result of the covered project.
- Number of New Hires that Are Section 3 Residents [Column B].** Enter the number of new hires (see definition above) that are Section 3 residents, defined as follows: (1) A public housing resident; or (2) An individual who resides in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended, and who is a low-income or very low-income person, i.e., families (including single persons) whose incomes do not exceed 80 percent and 50 percent, respectively, of the median family income for the area adjusted for family size.

4. **Business Ethnicity, Racial Category, and Gender [Column D].** Enter all the appropriate racial, ethnicity and gender codes that indicate the racial, ethnic and gender background of the contractor or subcontractor. If the subcontractor ID number is provided, the code would apply to the subcontractor only, not the prime contractor.

1 = White Americans	4 = Hispanic Americans
2 = Black Americans	5 = Asian/Pacific Americans
3 = Native Americans	6 = Hasidic Jews
5. **Contractor Identification (ID) Number [Column E].** Enter the Employer (IRS) Number of the prime contractor as the unique identifier for the prime recipient of grant funds. Note that the Employer's Number must be provided for each contract or subcontract awarded.
6. **Subcontractor Identification (ID) Number [Column F].** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from grant funds. Note that when the subcontractor ID number is provided, the respective prime contractor ID number must also be provided.
7. **Section 3 [Column G].** Indicate whether the contractor or subcontractor is a Section 3 business, defined as follows: (1) Is 51 percent or more owned by Section 3 residents (see definition above); or (2) Has 30 percent or more permanent, full-time employees that are currently Section 3 residents or were Section 3 residents within three years of their date of hire; or (3) Evidences a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to Section 3 businesses that meet one of the first two qualifications above.
8. **Contractor/Subcontractor Name and Address [Column H].** Enter the name and address information for each firm receiving contract or subcontract activity. This information needs to be provided only one time on each report for each firm.

Part III: Numerical Goals (Section 3)

(1) Were at least 30 percent of new hires Section 3 residents? (To date)

(2) Was at least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work (i.e., construction) awarded to Section 3 businesses? (To date)

(3) Was at least 3 percent of the total dollar amount of all non-construction Section 3 covered contracts awarded to Section 3 businesses? (To date)

Answering NO to any of the questions above indicates that you have not met Section 3 numerical goals, which are minimum targets established by HUD. If your project is covered by Section 3, please provide below a brief description of efforts you undertook to meet these numerical goals and an explanation of barriers you encountered.