



Mayor Corey L Adams

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City Staff:

City Recorder: *Sue C Hollis*
Library: *Melissa Hansen & Denise Willms*
Office Coordinator: *Debra Bernard*
Office Specialist: *Amber Deibel*
Public Works Director: *Jeff Brown*

**BEFORE THE COUNCIL OF THE CITY OF WILLAMINA
SITTING FOR THE TRANSACTION OF BUSINESS**

RESOLUTION NO. 13-14.003

**A RESOLUTION ADOPTING A SECTION 3 PLAN TO COMPLY WITH 24 CFR, PART 135
OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 3 AND ADOPTING A LIMITED ENGLISH PROFICIENCY PLAN**

WHEREAS, In 2012, the City executed an agreement with Infrastructure Finance Authority (IFA) for a Community Development Block Grant (CDBG) in the amount of \$99,000, file #P12012, to update the City's Water Master Plan; and

WHEREAS, recent CDBG rules require the adoption of a Section 3 Plan to comply with 24 CFR, Part 135 and a Limited English Proficiency Plan to comply with other federal regulations; and

WHEREAS, the United States Congress passed Section 3 of the Housing and Urban Development Act of 1968 (the Act) to further the goal of ensuring that federal funds benefit the residents of projects funded wholly or in part by those funds; and

WHEREAS, Part 135 of Section 3 is to establish the standards and procedures to be followed to ensure that the objectives of Section 3 are met; and

WHEREAS, the City has developed a Section 3 Plan in adherence to 24 CFR, Part 135 that more comprehensively addresses the standards and procedures prescribed in the Act; and

WHEREAS, the City has also developed a Limited English Proficiency Plan in order to comply with other federal regulations,

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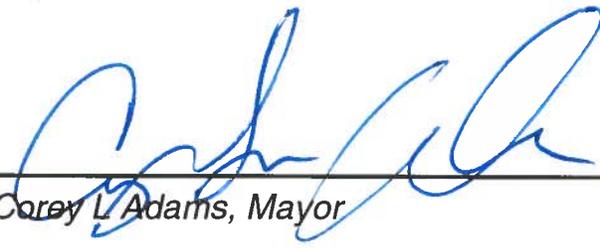
NOW, THEREFORE, THE CITY OF WILLAMINA RESOLVES AS FOLLOWS:

Section 1. The City Council hereby adopts a Section 3 Plan to ensure compliance with federal law for Community Development Block Grant projects and designates the City Recorder, or designee, as the Section 3 Coordinator for the City of Willamina. The Section 3 Plan is attached to this resolution as Exhibit "A" and is incorporated herein.

Section 2. City Council hereby adopts a Limited English Proficiency Plan to ensure compliance with federal law for Community Development Block Grant projects. The Limited English Proficiency Plan is attached to this resolution as Exhibit "B" and is incorporated herein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF WILLAMINA this 14th day of November, 2013.





Corey L. Adams, Mayor

ATTEST:


Sue Hollis, City Recorder

Attachments

F/RESOLUTIONS/2013-2014/13.14-003

SECTION 3 PLAN

General Policy Statement

It is the policy of the City of Willamina to require its contractors to make a good faith effort to provide equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability, veteran's or marital status, or economic status and to take affirmative action to ensure that both job applicants and existing employees are given fair and equal treatment.

The City of Willamina (hereinafter "CITY") implements this policy through the awarding of Community Development Block Grant program contracts to contractors, vendors, professional service providers/consultants and suppliers (hereinafter "CONTRACTOR"), to create employment and business opportunities for residents of the City of Willamina and other qualified low-and very low-income persons.

The policy will ensure that, in good faith, the CITY will have a reasonable level of success in the recruitment, employment, and utilization of Section 3 residents and other eligible persons and Section 3 business concerns working on contracts partially or wholly funded with the United States Department of Housing and Urban Development (HUD) monies. The CITY shall examine and consider a CONTRACTOR's potential for success by providing employment and business opportunities to Section 3 residents and business concerns prior to acting on any proposed contract award.

What is Section 3?

Section 3 of the Housing and Urban Development Act of 1968m as amended (12 USC 1701u)(Section 3) requires that recipients of HUD-funding exceeding \$200,000 ensure that employment 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 which provide economic opportunities to such persons.

Section 3 is applicable when the normal completion of construction and rehabilitation projects creates the need for new employment, contracting or training opportunities. If the expenditure of covered funding does not result in new employment, contracting, or training opportunities, the requirements of Section 3 are not applicable.

As a recipient of HUD Community Development Block Grant (CDBG) funds through the Oregon Business Development Department (OBDD), the CITY certifies that it will make good faith efforts, including the preference to contract with businesses that employ Section 3 residents from the local community, to comply with the requirements of Section 3. These same requirements apply to all contractors or subcontractors that receive contracts in excess of \$100,000 for Section 3 eligible projects.

HUD's Section 3 regulations can be found at 24 CFR 135.

Eligible Projects

All projects and activities involving housing construction, demolition, rehabilitation, or other public construction, such as roads, sewers, community centers, et cetera, that are completed with HUD Community Planning and Development funding are subject to the requirements of Section 3.

Section 3 Residents

1. Are residents of public or Indian housing; or
2. Are individuals that reside in the metropolitan area in which the Section 3 applicable assistance is expended and whose income does not exceed the local HUD income limits set forth for low- or very-low income households.

Section 3 Business Concerns

To be considered a Section 3 Business Concern; at least one of the following must apply:

1. Business is 51% or more owned by Section 3 residents; or
2. At least 30% of the business's permanent, full-time employees are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Business provides evidence of a commitment to subcontract in excess of 25% of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and business concerns seeking Section 3 preference shall certify, and/or submit evidence to the CITY, CONTRACTOR, or subcontractor, verifying that they meet the definitions provided above.

Implementing Procedures to Ensure Section 3 Requirements

The following Bid Specifications and Contract clause shall be included in all CITY bid solicitations and requests for proposals for projects whose funding is derived from HUD and involves housing construction, demolition, rehabilitation, or other public construction:

SECTION 3 CLAUSE

- A. *The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*

EXHIBIT A

- B. *The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.*
- C. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*
- D. *The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*
- E. *The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.*
- F. *Non compliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- G. *Contractor shall complete THE REQUIRED Section 3 Report form 60002 and submit it to the City with the final construction pay estimate for the project.*

Compliance with Section 3:

Section 3 businesses must meet minimum qualifications, including prequalification with the CITY, and have the ability and capacity to perform successfully under the terms and conditions of the contract. All contractors or businesses seeking Section 3 preference, before submitting bids or proposals to the CITY, will be required to complete certifications to acknowledge that Section 3 contracting and employment provisions have been met. Such certifications must be adequately supported with appropriate documentation and supplied at the time of prequalification.

The CITY will incorporate Section 3 requirements into all solicitations for project proposals that are funded in part or in whole with HUD monies. Section 3 residents must meet the minimum qualifications of the position to be filled and a Section 3 business concern must have the ability to and capacity to perform successfully under the terms and conditions of the proposed contract.

The CITY will, to the greatest extent possible, offer contracting opportunities to Section 3 business concerns. However, in the event that no Section 3 businesses bid on the contract, or bids but is not able to demonstrate to the CITY that it has the ability to perform successfully under the terms and conditions of the proposed contract, then that contract will be awarded to a non-Section 3 business concern that can meet the terms and conditions of the proposed contract through the competitive bidding process. That business concern must meet the general conditions of compliance with Section 3.

All contractors or businesses seeking Section 3 preference, before submitting bids or proposals to the CITY will be required to complete certifications, as appropriate, as acknowledgement of the Section 3 contracting and employment provisions required by this section. Such certifications shall be adequately supported with appropriate documentation as referenced on the form.

Compliance with Section 3 (Good Faith Effort)

At a minimum, the following tasks will be completed to demonstrate a good faith effort with the requirements of Section 3. To ensure compliance with Section 3 requirements, the CITY will document actions taken to comply, including but not limited to:

1. Advertise contracting opportunities via newspaper, mailings, or posting notices about the work to be contracted and where to obtain additional information. Alternatively, notifying the Housing Authority of Marion County, local job training centers and WorkSource Oregon of new employment, training or contracting opportunities resulting from the expenditure of covered funding.
2. Provide written notice of contracting opportunities to all known Section 3 business concerns within the City of Willamina. The written notice will be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation.
3. Include in all solicitations a statement to encourage eligible Section 3 businesses to apply;
4. Assisting and actively cooperating with OBDD in ensuring contractors and subcontractors comply with Section 3;
5. Refraining from entering into contracts with contractors or subcontractors that are in violation of Section 3 regulations; and
6. Documenting actions taken to comply with Section 3 and submitting necessary documentation to OBDD (HUF Form 60002).

CONTRACTOR's Requirements

In preparation for the award of contracts, the CONTRACTOR will supply the following to the CITY:

1. A list of all positions necessary to complete the contract, the names of employees who will fill those positions, and the names of all other employees,
2. Posting notices of any vacant positions, including training and/or apprenticeship positions, qualifications for positions, in a location(s) accessible to Section 3 person(s) where applications will be received, and starting date of employment,
3. To the greatest extent possible, making available vacant positions, including training and/or apprenticeship positions, to Section 3 residents,
4. If a position necessary to complete contractual task is vacated during the contract period, CONTRACTOR's certification that, to the greatest extent possible, that vacancies will be filled pursuant to items 2 and 3 above,
5. Submitting compliance reports as required,
6. If notified of non-compliance, correcting non-compliance issues within the allowable time period.

Businesses can use the WorkSource Oregon-First Source Hiring Agreement in complying with Section 3 requirements.

Evidence of Section 3 Certification

Any business seeking Section 3 preference in the awarding of contracts or purchase agreements with the CITY shall complete the Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability from, obtained from the CITY's Section 3 Coordinator. The business seeking Section 3 preference must provide adequate documentation as evidence of eligibility for preference under the Section 3 Program.

Certifications for Section 3 preference for business concerns must be submitted to the CITY's Section 3 Coordinator prior to the submission of bids for consideration. If the CITY has previously approved the certification for the business concern, then the certification may be submitted along with the bid.

Contractor's Requirements in Employing Section 3 Residents

After a contract is awarded, the CONTRACTOR will provide the following:

1. Names of Section 3 business concerns to be utilized;
2. Estimate of the number of employees to be utilized for contract;
3. Projected number of available positions, including job descriptions and wage rates (construction wages must be consistent with Davis-Bacon Act or Oregon BOLI rates, whichever is higher); and
4. Efforts that will be utilized to seek Section 3 participants.

Monitoring and Enforcement

The function of monitoring and enforcing these provisions will be carried out by the City's project manager for each HUD-funded construction project. During the pre-bid or pre-construction meetings between the CITY and CONTRACTOR, the CITY's Section 3 Policy will be provided again to the CONTRACTOR for inclusion in contract documents. The following contract requirements will be discussed in detail:

- Prevailing wage rates (Davis-Bacon or BOLI, whichever is higher)
- Minority and woman-owned businesses
- Section 3 hiring requirements

Each representative will define specific functional requirements and require the CONTRACTOR to certify its understanding of the terms and conditions of the contract as it applies to the aforementioned requirements.

Section 3 Complaint Procedure

The CITY will make every effort to resolve complaints generated from alleged non-compliance through an internal process. The CITY encourages submittal of non-compliance complaints to its Section 3 Coordinator as follows:

1. Submit to:
City of Willamina
Attn: Sue Hollis, City Recorder
411 NE "C" Street, Willamina OR 97396
2. Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR 135.
3. Complaints must be filed within thirty calendar days after the complainant becomes aware of the alleged violation.
4. An investigation will be conducted if complaint is found to be valid. The Section 3 Coordinator will conduct an informal but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.
5. The Section 3 Coordinator will provide written documentation detailing the findings of the investigation to the City Attorney. The City Attorney will review the findings for accuracy and completeness before it is released to the complainants. The findings will be made available no more than thirty days after the complaint is filed with the CITY.

EXHIBIT A

If complainants wish to have their concerns considered outside the CITY's internal procedure, a complaint may be filed with

Assistant Secretary for Fair Housing and Equal Opportunity
United States Department of Housing and Urban Development
451 Seventh Street Northwest
Washington, District of Columbia, 20410

The complaint must be received no later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPACITY

Name of Business _____

Address of Business _____

Type of Business: Corporation Partnership
 Sole Proprietorship Joint Venture

Attached is the following documentation as evidence of status:

_____ **For Business claiming status as a Section 3 resident-owned enterprise:**

- Copy of resident lease
- Copy of receipt of public assistance
- Copy of evidence of participation in public assistance program
- Other evidence

_____ **For business entity as applicable:**

- Copy of Articles of Incorporation
- Assumed Business Name Certificate
- List of owners/stockholders and % ownership of each
- Latest Board minutes appointing officers
- Organization chart with names and titles and brief function statement
- Additional information
- Certificate of Good Standing
- Partnership Agreement
- Corporation Annual Report

_____ **For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 business:**

- List of subcontracted Section 3 business(es) and subcontract amount

_____ **For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:**

- List of all current full-time employees
- List of employees claiming Section 3 status
- PHA/IHA Residential lease less than 3 years from day of employment
- Other evidence of Section 3 status less than 3 years from date of employment

_____ Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- Current financial statement
- Statement of ability to comply with public policy
- List of owned equipment
- List of all contracts for the past two years

(Corporate Seal)

Authorizing Name and Signature

Attested by: _____

MID-WILLAMETTE VALLEY COUNCIL OF GOVERNMENTS
105 HIGH STREET S. E. SALEM, OREGON 97301-3667
Telephone: 503-588-6177 FAX: 503-588-6094

MEMO

To: City Council, City of Willamina
From: Renata Wakeley, COG
Date: November 14, 2013
Subject: Water Plan Update, P12021

REQUESTED ACTION

- a) Motion to adopt the attached Limited English Proficiency Plan for the Program.
- b) Motion to adopt the attached Section 3 Plan for current and future projects funded with Housing and Urban Development funding.

BACKGROUND

The City of Willamina was awarded a Community Development Block Grant (CDBG) in the amount of \$99,000 to assist in updating their Water Facilities Master Plan. CDBG program rules require compliance with specific policies regarding federal rules such as fair housing, non-discrimination in employment, and accessibility to public facilities. While the City has successfully implemented CDBG awards in compliance with program rules in previous years, the program has new rules that came into effect as part of the 2012 funding cycle.

Specifically, 2012 CDBG awards are required to show compliance with the two above referenced new program requirements for employment and translation services.

Before the City can start requesting, or "drawing down", funds from the grant, you must show compliance with these items by adoption of the resolution and plans.

ATTACHMENTS

Section 3 Resolution and Section 3 Plan
Limited English Proficiency Plan

LIMITED ENGLISH PROFICIENCY (LEP) PLAN CITY OF WILLAMINA, OREGON

*The information below was completed with assistance from "Checklist for Developing a Limited English Proficiency (LEP) Plan" provided by the National Association of Statework Force Agencies. The checklist is included in the City's file for review if requested.

This Limited English Proficiency (LEP) Plan has been prepared to address the City of Willamina's responsibilities as a recipient of federal financial assistance as it relates to the needs of individuals with limited English proficiency language skills. The plan has been prepared in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq, and its implementing regulations which state that no person shall be subjected to discrimination on the basis of race, color or national origin.

Executive Order 13166, titled Improving Access to Services for Persons with Limited English Proficiency, indicates that differing treatment based upon a person's inability to speak, read, write or understand English is a type of national original discrimination. It directs each agency to publish guidance for its respective recipients clarifying their obligation to ensure such discrimination does not take place. This order applies to all state and local agencies which receive federal funds, including the City of Willamina.

In order to prepare this plan, the City of Willamina used the most current version of the U.S. Census American Community Survey, the Four-Factor LEP Analysis for Meaningful Access, and the Safe Harbor Test for Written Translation Services.

FOUR FACTOR ANALYSIS FOR MEANINGFUL ACCESS

Recipients are required to take reasonable steps to ensure meaningful access to LEP persons through the four factor analysis. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue financial burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

1. The number of proportion of LEP persons served or encountered in the eligible service population ("served" or "encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services):

The City of Willamina's most current population estimate is 1,694 persons over 5 years of age¹. Of this population, 15 persons are listed as German speakers who speak English less than "very well", or less than 0.01% of the population. Of the total population over 5 years of age, 7 persons are listed as speakers of Other Native North American language who speak English less than "very well", or less than 0.01% of the total population. American Community Survey data is attached. No other population is listed as having a spoken language where English is spoken less than "very well".

2. The frequency with which LEP persons come into contact with the program:

It can be expected that LEP persons may come into contact with City programs, services, or facilities but the portion of the general population is less than 0.01% according to 2007-2011 American Community Survey Estimates. Additionally, city staff has not received solicitations or request for language interpretation or sign services in the past 5 years.

3. The nature and importance of the program, activity, or service provided by the program:

Access and the availability of all city services, programs and facilities to LEP persons should be provided. According to the 'Safe Harbor' Guidelines, any language population that falls below 50 individuals and/or 5% of the service population is not required to receive written translations for vital documents. However, the City will provide said services upon request and does offer verbal translation services at hearings and as requested.

¹ American Community Survey 5-year Estimate. U.S. Census data, September 2013. www.factfinder2.census.gov

4. The resources available and costs to the recipient:

With a population of approximately 1,600 persons and a staff of less than 10 persons, the City is very limited in the persons they are able to hire to address LEP needs and services. However, the City of Willamina has established translation services available for public meetings upon request.

LANGUAGE ACCESS PLAN (LAP) AND DETERMINATION: The City of Willamina has established translation services for public meetings. The City can tap into these resources as needed and has assigned the City Recorder as the staff point of contact for interested parties and/or staff needing translation services. The LEP population, based upon most current census data, does not require or justify the translation of vital documents at this time nor has the City received requests for interpretation or translation services in the past five years.

SAFE HARBOR TEST FOR WRITTEN TRANSLATION SERVICES:

Size of Language Group	Recommended Provision of Written Language Assistance	CDBG Recipient	Supporting Documentation
1,000 or more in eligible population in the market area of among current beneficiaries	Translated vital documents.		
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents.		
More than 5% of eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.		
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.	X	American Community Survey Data: Less than .01% of the total population but potentially up to 22 persons in the general population over 5 years of age.

SAFE HARBOR DETERMINATION: The City offers interpretation services if requested and said translation services and accommodations are made in public hearing documents. The City has not received requests for translation services or documents in recent years. According to the above 'safe harbor' guidelines, written translation services are not required to be provided. However, the City will continue to offer translation services as requested.

The City will also use, when there is difficulty determining the language spoken, Language Identification Cards created by the US Census Bureau at <http://www.lep.gov/resources/ISpeakCards2004.pdf> and the City will post notices in English explaining that LEP services are available if requested.

F/RESOLUTIONS/2013-2014/13.14-003.EXHIBIT B

