

## AGENDA REPORT

To: Mayor Pat Humphrey and the Clare City Commission  
From: Jeremy Howard, City Manager  
Date: July 13, 2023  
Regarding: Approval of 9B Section 3 Policy – Michigan Economic Development Corporation (MEDC) Community Development Block Grant (CDBG) Water Resources Infrastructure (WRI) Grant Project

For the Agenda of July 17, 2023

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**Background.** In October of 2022, the City of Clare was awarded a \$2.77 million dollar grant (2 million in grant funds and 770,000 in city matching funds (match amount was later increased due to increased costs in the project) from the MEDC CDBG WRI program for the construction of a new water well, water treatment facility improvements, new chemical feed system, electrical updates, lab updates, new backwash and retention tanks, new and integrated SCADA system, replacement of high service pumps and other water-related infrastructure improvements.

In consultation with MEDC they have let the city know that as a component of the acceptance of the grant funds there is a requirement to adopt a policy covering what is known as Section 3 of the Housing and Urban Development Act of 1968, as amended which requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs be directed to low and very low-income persons.

The City Commission is asked to approve the Section 3 Policy (*att'd*) and authorize the City Manager and/or Mayor to sign any and all documents necessary to complete this requirement.

**Issues & Questions Specified.** Should the City Commission approve the policy needed for the Michigan Economic Development Corporation (MEDC) Community Development Block Grant (CDBG) Water Resources Infrastructure (WRI) Grant Project?

**Alternatives.**

1. Approve the policy.
2. Do not approve the policy.
3. Set aside the decision regarding this matter to a subsequently scheduled public meeting.

**Financial Impact.** No cost to the city.

**Recommendation.** I recommend that the City Commission approve the Section 3 Policy and authorize the City Manager and/or Mayor to sign any and all documents necessary to complete this requirement by adoption of Resolution 2023-053 (*copy att'd*).

**Attachments.**

1. Section 3 Policy.
2. Resolution 2023-053.

## SECTION 3 POLICY

### PURPOSE

Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u) ("Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs be directed to low- and very low-income persons. The priority of assistance should be to those who are recipients of government assistance for housing and business concerns which provide economic opportunities to low- and very low-income persons.

The Section 3 program was created to ensure that persons living in communities where HUD-assisted programs were being funded could economically benefit from the resources being spent. This would improve the overall socioeconomic condition of not only the community, but also the low- and very low-income residents that reside within the neighborhoods. The implementing regulation for Section 3 can be found at [24 CFR Part 75](#).

### GENERAL POLICY STATEMENT

On behalf of the Michigan Strategic Fund (MSF), the Michigan Economic Development Corporation (MEDC) CDBG Program shall comply with Section 3 requirements set forth at 24 CFR 75 of the federal regulation which states that, to the greatest extent possible, businesses and employers working on HUD-funded projects must make a good faith effort to train and employ low-income individuals living in the local area and also to contract with businesses owned by or that employ Section 3 workers.

It is the policy of the CDBG Program that all Units of General Local Governments (UGLGs/Grantees/Recipients) are required to make good faith efforts to provide "to the greatest extent feasible" opportunities to Section 3 area workers and Section 3 business concerns.

Failure to comply with the requirements of Section 3 may result in a monitoring finding or sanctions that may include, debarment, suspension of funds or limited denial of participation in the MEDC CDBG programs.

### 24 CFR PART 75.19 REQUIREMENTS

#### (a) *Employment and training.*

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, UGLGs (grantees, recipients) covered by this subpart shall ensure that 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.

(2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

- (i) Section 3 workers residing within the service area or the neighborhood of the project, and
- (ii) Participants in YouthBuild programs.

#### (b) *Contracting.*

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure 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.

(2) To include the Section 3 Contractors Packet (Form 4-T) and required Section 3 language in all construction contracts.

(3) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:

- (i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
- (ii) YouthBuild programs.

### **APPLICABILITY OF SECTION 3 REQUIREMENTS TO INDIVIDUAL PROJECTS**

Whenever any portion of CDBG funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 may apply, based on the guidance provided below.

#### **Section 3 requirements that apply to CDBG funded Projects**

In conjunction with construction activity, Section 3 applies to projects that receive \$200,000 or more in CDBG assistance, including projects that are financed in conjunction with state, local, or private matching or leveraged funds, provided that the Section 3 monetary threshold requirements are met. In particular:

- Section 3 applies to recipients of CDBG funding, as well as its sub-recipients, contractors and subcontractors; and
- Professional service contract labor hours (construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and construction draw inspection, and prevailing wage labor compliance) are not required to be reported. If a contract covers both professional services and other work and the recipient, contractor, or sub-contractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.
- Section 3 requirements do not apply to material supply contracts. The regulations should not be construed to mean that recipients are required to hire Section 3 Workers or award contracts to Section 3 Business Concerns other than what is needed to complete covered projects and activities. If the expenditure of funding for an otherwise covered project and activity does not result in new employment, contracting, or training opportunities, reporting is still required.

#### **Section 3 Goals**

Contractors and sub-contractors will be required, to the greatest extent feasible, meet the Section 3 HUD benchmarks.

1. 25% or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

Section 3 Worker Labor Hours divided by Total Labor Hours = 25%

**AND**

2. 5% or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers;

Targeted Section 3 Labor Hours divided by Total Labor Hours = 5%

#### **Additional Reporting if Section 3 Benchmarks are *not met*:**

If the Recipient's reporting indicates the Section 3 benchmarks have not been met, the Recipient must report on the nature of activities pursued in the absence of not meeting Section 3 benchmarks.

#### **Section 3 Worker**

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

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

#### **Targeted Section 3 Worker**

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

1. A worker employed by a Section 3 business concern; or
2. Currently fits or when hired fit at least one of the following categories, as documented within the past five years:

- (i) Low- or very low-income workers residing within a one-mile radius of the Section 3 project. If fewer than 5,000 people live within that one-mile radius, the circle may be expanded outward until that population is reached or the neighborhood of the project, as defined; or
- (ii) A YouthBuild participant.



The status of workers on the Section 3 project will be determined by one of the following methods:

1. **Worker income self-certification.** The use of certification forms provided to contractors and subcontractors working on the project. Each worker on the project must complete the provided certification form to be kept in the grant record for reference when tracking and aggregating labor hours worked.
  - a. Section 3 Worker and Targeted Section 3 Worker Certification (Form 9-L)
2. **Worker is employed by a Section 3 Business Concern.** The contractor or subcontractor is able to provide documentation that it qualifies as a Section 3 Business Concern. All employees of a qualifying business will be considered Section 3 workers.
3. **Worker is a Youthbuild participant.** Verifiable documentation must be provided by the worker or the employer showing the worker is participating in a Youthbuild program.
4. **Employer wage record.** The employer is able to provide certified documentation that the worker's income from that employer is below the income limit for the corresponding family size when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis.

**NOTE:** Documentation submitted by employers should only contain employee names, state and county of residence, annual income, and a certifying signature and date. Do not include any information such as social security numbers or bank account information.

Nothing in this part 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.

### **Section 3 Business**

A Section 3 business concern is a business that meets at least one of the following criteria, documented within the last 6-month period:

1. It is at least 51% owned and controlled by low- or very low-income persons;
2. Over 75% of the labor hours performed by the business are performed by low or very low-income persons; or

3. It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Contractors or subcontractors who wish to be identified as a Section 3 Business must complete the Section 3 Business Concern Certification (Form 9-A1) and provide requested backup documentation.

While contracting and subcontracting with Section 3 Business Concerns is encouraged, nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 Business Concern. Additionally, Section 3 Business Concerns are not exempt from meeting the specifications of the contract, including required licensures and certifications.

Businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above. Subrecipients are allowed discretion to determine the required documentation to verify a Section 3 Business Concern. At monitoring, the MEDC will check that documentation has been received and is in the file, not for a specific type of documentation.

### SECTION 3 REPORTING REQUIREMENTS

#### Reporting of Labor Hours

- (a) Reporting Labor Hours. (1) recipients must report in a manner prescribed by HUD:
- (i) The total number of labor hours worked;
  - (ii) The total number of labor hours worked by Section 3 workers; and
  - (iii) The total number of labor hours worked by Targeted Section 3 workers.
- 1) 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.
  - 2) The labor hours reported under paragraph (a)(1) of this section 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 recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.
  - 3) Recipients reporting under this section, as well as subrecipients, contractors and subcontractors who report to recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.
  - 4) Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance-based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.
- (b) Safe Harbor Compliance. Additional reporting if Section 3 benchmarks are not met. If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

Consequences for noncompliance. Any recipient with outstanding findings of noncompliance with Section 3 may be barred from receiving additional competitively awarded financial assistance.

**Assistance to Achieve the Goals**

The UGLG that receives CDBG funding has the responsibility to comply with Section 3 requirements. They are also required to “ensure compliance” of their contractors and sub- contractors.

This responsibility includes:

1. Notifying Section 3 Workers and business concerns about jobs and contracts generated by Section 3 covered assistance so that they may submit bids/proposals for available contracts and job openings with the grantee;
2. Notify potential contractors of their responsibilities under Section 3;
3. Include Section 3 language in all applicable contracts;
4. Require sub-recipients, contractors, and sub-contractors to meet the requirements of §75.19, regardless of whether Section 3 language is included in recipient or sub-recipient agreements, program regulatory agreements, or contracts;
5. Document action(s) taken to meet the HUD benchmarks;
6. Respond to Section 3 complaints; and
7. Complete and submit the required Section 3 Forms to MEDC.

**Outreach Best Practices**

Grantees must develop a Section 3 plan, including outreach to Section 3 Workers and Businesses within the municipality. Best practices include:

1. Publication of opportunities in newsletters or other local newspapers, including those targeted to Limited English Proficient populations.
2. Use of signage at the project site and flyers posted in the project area.
3. Notification of potential training or employment opportunities to neighborhood and non- profit groups, including Public Housing Authorities, servicing low- and very low-income persons.
4. Communicate opportunities to employment agencies and career centers.
5. Complete copy of a “Notice to Citizens Opportunity for Work” (Form 9-P), which can be used for development of Section 3 employment opportunities. Send completed form to the local [Michigan Works!](https://www.michiganworks.org/) service center (<https://www.michiganworks.org/>).

**Section 3 Business and Resident Resources**

The following are potential resources where UGLGs/contractors might find Section 3 businesses and residents (workers):

1. [HUD Section 3 Registry/Portal](#) (Businesses)
2. [MSHDA MBE/WBE list](#) (Businesses)
3. [MDOT DBE list](#) (Businesses)
4. [MDOT Michigan Unified Certification Program \(MUCP\)](#) (Businesses)
5. [Michigan Works!](#) (Businesses & Workers)
6. [PHAs](#) (Workers)

**Orders of Priority Consideration for Employment and Contracting Opportunities**

(a) General.

- 1) CDBG Grantees and their contractors shall provide priority consideration to Section 3 residents and Section 3 businesses for new training, employment, and contracting opportunities generated because of the expenditure of Section 3 covered financial assistance.
- 2) Priority consideration should not be construed to be a quota or set-aside program, or as an entitlement to economic opportunities such as a particular job or contract.
- 3) Section 3 residents must possess the same job qualifications, skills, eligibility criteria, and capacity as other applicants for employment and training opportunities being sought.

- 4) Section 3 businesses must be selected in accordance with the procurement standards of 24 CFR 85.36 or 24 CFR 84.40, as appropriate, including price, ability, and willingness to comply with this part, and other factor, to be considered lowest responsible bidders on contracting opportunities being sought.
- 5) CDBG Grantees and contractors may give priority consideration to a Section 3 resident or business if such resident or business is qualified for the respective employment or contracting opportunities.
- 6) CDBG Grantees and contractors must give priority consideration to a Section 3 resident or business when that Section 3 resident or business is equally qualified with other individuals or businesses that would be offered employment or contracting opportunities.

(b) Orders of priority consideration for employment and training opportunities.

- 1) CDBG Grantees that meet the funding thresholds shall direct their efforts to provide training and employment opportunities generated from the expenditure of Section 3 housing and community development financial assistance to Section 3 residents in the following order of priority consideration:
  - (i) Section 3 Workers residing in the service area where the CDBG funded project is located;
  - (ii) Section 3 Workers participating in the Department of Labor (DOL) YouthBuild program;
  - (iii) Other Section 3 Workers.

UGLG Name		
Signature		Date
Printed Name		
Title		
Date Adopted		

**RESOLUTION 2023-053**

**A RESOLUTION OF THE CLARE CITY COMMISSION APPROVING A SECTION 3 POLICY FOR THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION (MEDC) COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) WATER RESOURCES INFRASTRUCTURE (WRI) GRANT PROJECT.**

**WHEREAS**, the City of Clare applied to the Michigan Economic Development Corporation (MEDC) for a Community Development Block Grant (CDBG) Water Resource Infrastructure (WRI) grant; and

**WHEREAS**, MEDC Staff have requested the City to approve a Section 3 Policy per the requirements of Section 3 of the Housing and Urban Development Act of 1968; and

**WHEREAS**, the City Commission has reviewed and considered said policy and deemed it reasonable, appropriate, prudent, and in the best interests of the City.

**NOW THEREFORE BE IT RESOLVED THAT** the Clare City Commission hereby approves the Section 3 Policy as required for the Michigan Economic Development Corporation (MEDC) Community Development Block Grant (CDBG) Water Resource Infrastructure (WRI) grant and project.

**BE IT FURTHER RESOLVED THAT** the Clare City Commission authorizes the City Manager and or Mayor to execute any and all documents necessary to complete the policy or requirements for the project.

**ALL RESOLUTIONS AND PARTS OF RESOLUTIONS INsofar AS THEY CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION BE AND THE SAME ARE HEREBY RESCINDED.**

**The Resolution was introduced by Commissioner \_\_\_\_\_ and supported by Commissioner \_\_\_\_\_. The Resolution declared adopted by the following roll call vote:**

**YEAS:**

**NAYS:**

**ABSENT:**

Resolution approved for adoption on this 17<sup>th</sup> day of July, 2023.

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Diane Lyon, City Clerk