

# Section 3 Contracting

Improving Legal Compliance while Increasing Economic Opportunities for Low-Income Pennsylvanians



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*PAHRA Capital Conference*  
February 23, 2015

# RHLS

Regional Housing Legal Services is a nonprofit law firm with unique expertise in affordable, sustainable housing and its



related components — community and economic development, utility matters and preservation of home ownership. RHLS provides innovative project and policy solutions that help create sustainable communities offering decent, safe and affordable housing for lower-income Pennsylvanians



## Section 3 Contracting

- **Section 3 Contracting Requirements**
- HUD Section 3 Business Database
- RHLS Section 3 Business Certification Program
- Resources/Questions

# Section 3 of the U.S. Housing and Urban Development Act of 1968

- Purpose: To ensure that economic opportunities generated by HUD funding will, **to the greatest extent feasible**, be directed to low- and very low-income persons
- Unfunded mandate
- Rationale: Increasing incomes will help reduce reliance on HUD programs
- Regulations: [24 CFR Part 135](#)

## “Greatest Extent Feasible”

- “Greatest extent feasible” means **every effort must be made**
- Recipients must meet or exceed HUD **safe harbor thresholds** in order to demonstrate compliance
- Meeting the thresholds creates a presumption of compliance
- Failing to meet thresholds creates a presumption of non-compliance

24 C.F.R. 135.30 and HUD Section 3 FAQ

## Safe Harbor Contracting Thresholds

- **Construction: 10%** of the dollar amount of all construction contracts awarded must be awarded to Section 3 business concerns
- Contracts solely for materials and supplies are excluded
- **Non-construction: 3%** of the dollar amount of all non-construction contracts awarded must be awarded to Section 3 business concerns
- i.e., maintenance & professional services

24 C.F.R. 135.30 and 135.5

## “Section 3 Business Concern”

### Category 1

**Owned by** Section 3 residents (51%+) )

### Category 2

**Employs** Section 3 residents (30% or more of all permanent, full-time employees)

### Category 3

**Subcontracts** with category 1 or category 2 businesses (at least 25% of the dollar amount of all subcontracts)

24 C.F.R. 135.5

## Covered Projects

### Public housing

All development, operating and modernization is covered – **no monetary thresholds**

### HUD-funded housing/community development

Contracts worth over **\$100,000** on construction or rehabilitation projects by agencies receiving over **\$200,000** in Section 3 funds

**CDBG, HOME, ESG, HOPWA, Section 108, NSP, EDI**

24 C.F.R. 135.3 and FAQ



## Covered Projects, Cont'd

***Thresholds are per agency, NOT per activity***

Example: City receives \$210,000 in CDBG funds, but expends only \$180,000 for housing rehab. The housing rehab project is covered.

***Section 3 applies to the entire project/activity***

Example: \$1 million construction project with \$250,000 in CDBG funds. The “total value of all contracts awarded” is \$1 million, not \$250,000.

24 C.F.R. 135.3 and FAQ

## Recipient Responsibilities

Each recipient must **comply** in its own operations **and ensure compliance** by its contractors. Specifically:

- **Notify** Section 3 businesses about opportunities
- **Inform** contractors of their obligations
- **Facilitate** contract awards to Section 3 firms
- **Obtain compliance** by contractors and refrain from contracting with violators
- **Document and report** Section 3 compliance

24 C.F.R. 135.32

## Examples of Efforts to Award Contracts to Section 3 Businesses

- Targeted **outreach**
- Maintain a **list of Section 3 businesses**
- **Workshops** on contracting procedures
- Break up work into **smaller contracts**
- **Referrals** for help with bonding, lines of credit, financing and insurance
- Actively support Section 3 **joint ventures**

24 C.F.R. Part 135 Appendix II

## Enforcement

- **Administrative complaint** (filed by a Section 3 business or representative organization with HUD FHEO)  
Examples: Long Beach, CA; St. Paul, MN
- **HUD compliance review** (initiated by HUD HQ)  
Examples: Kansas City, MO; HACM (Milwaukee)
- **Litigation**  
Example: Mannarino v. Morgan Twp., 2003 WL 1972491 (3<sup>rd</sup> Cir. 2003)

## Procedure on Complaint

- **Safe harbor presumptions** determine whether the recipient or the complaining party has the burden of proof
- If HUD determines noncompliance, HUD, the recipient and the complaining party negotiate a **Voluntary Compliance Agreement (VCA)**
- Sanctions include disbarment, suspension and limited denial of participation

24 C.F.R. 135.76 and FAQ



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## HUD Section 3 Registry

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

□ Nationwide registry of Section 3 business concerns



- Searchable by trade and location
- Businesses self-certify their eligibility
- 6 businesses in PA

# Contracting with Non-Local Section 3 Businesses

- Contracting with non-local Section 3 firms **counts toward the safe harbor thresholds**
- Recipients must give a **preference for local Section 3 firms** over non-local
- Income eligibility is based on the location of the business, not the project



## Self-Certification Disclaimer

“HUD has not verified the information submitted by businesses listed in this registry and does not endorse the services that they provide. Users of this database are strongly encouraged to perform due diligence by verifying Section 3 eligibility before providing preference or awarding contracts to firms that have self-certified their Section 3 status with the Department.”

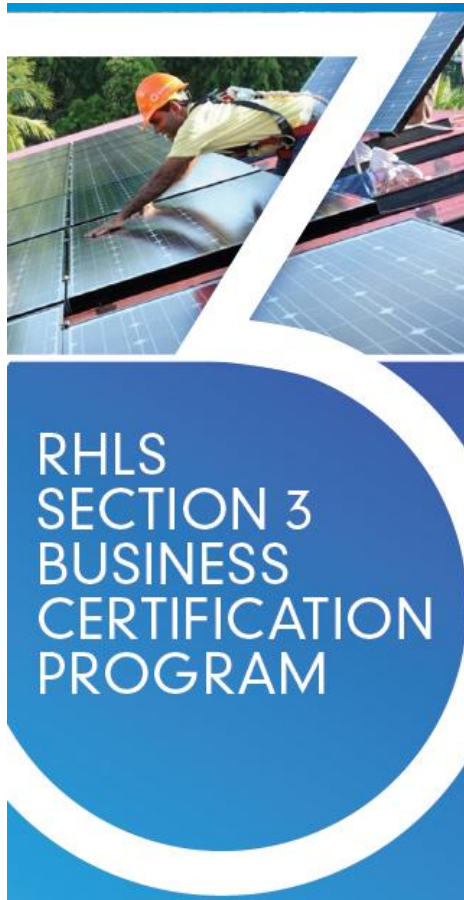
HUD Section 3 Business Registry



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# RHLS Business Certification Program

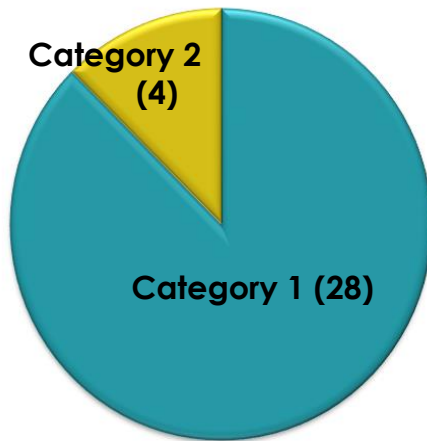


<https://section3.rhls.org/>

- ❑ Created in 2012
- ❑ Allegheny County, PA
- ❑ RHLS documents eligibility
- ❑ Searchable by trade and location
- ❑ Businesses can get contract opportunities via RSS feed
- ❑ 32 certified businesses

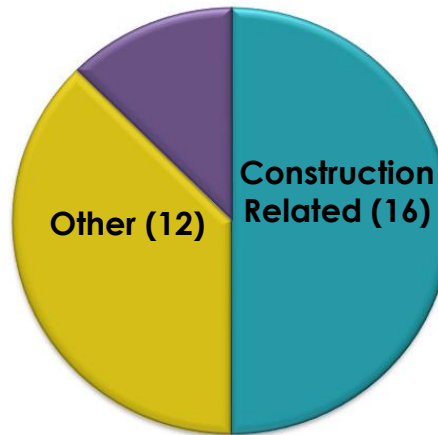
# Certified Businesses – Allegheny Co.

### Section 3 Category



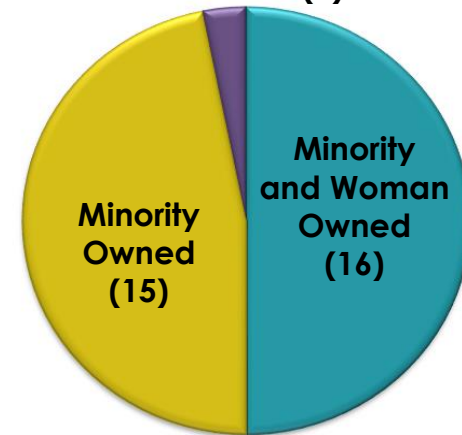
### Trade

Professional Services (4)

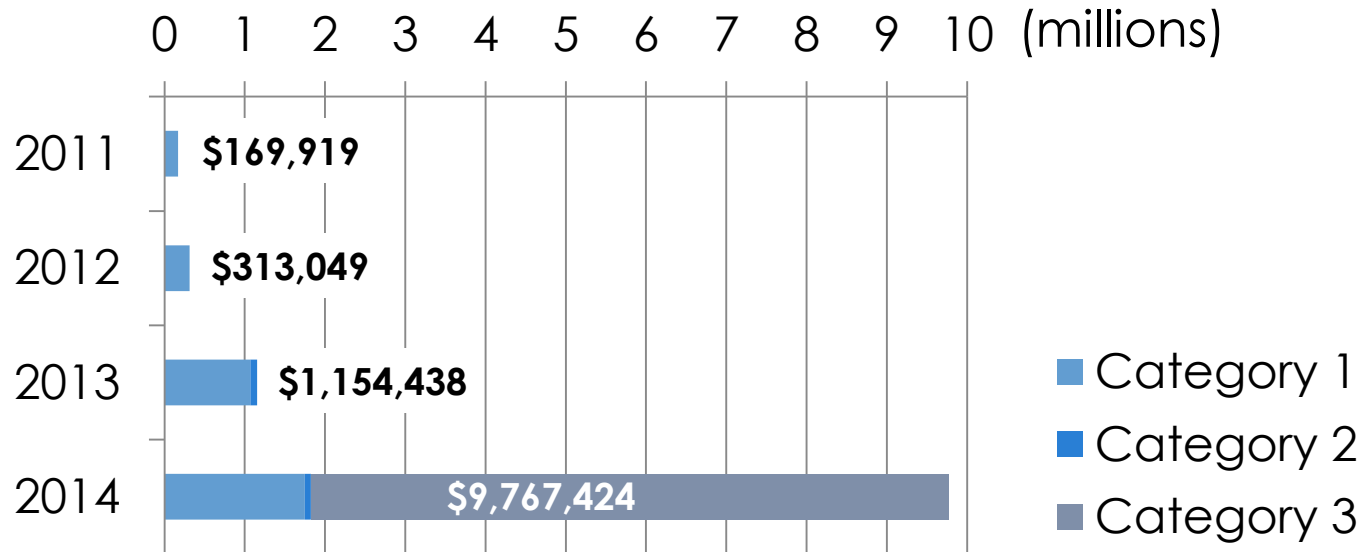


### MBE/WBE

Woman Owned (1)



## Contracting Outcomes – Allegheny Co.



- 2011 and 2012 data is from HUD 60002 reports submitted by five Allegheny County agencies
- 2013 and 2014 data is from developers and contractors who used RHLS' services



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## Section 3 Resources

- Statute: 12 U.S.C. §1701u
- Regulations: 24 C.F.R. Part 135
- HUD Section 3 website: [www.hud.gov/section3](http://www.hud.gov/section3)
- HUD Section 3 FAQ: <http://portal.hud.gov/hudportal/documents/huddoc?id=11secfaqs.pdf>
- Association of Section 3 Professionals (to join, contact Sharbara Ellis at [As3pha@gmail.com](mailto:As3pha@gmail.com))

# Questions?

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