

Mr. Darrell Tuckness
Fresno Housing Authorities
P.O. Box 11985
1331 Fulton Mall
Fresno, California 93721

Dear Mr. Darrell Tuckness:

We have recently had the opportunity to review the Housing Authority City of Fresno, HOPE VI, Section 3 Action Plan (hereinafter Section 3 Action Plan). For your convenience and to avoid confusion, the copy that we reviewed is attached, as it is not dated.

It is our understanding at the joint meeting of the Housing Authorities of the City and County of Fresno, held on August 23, 2006, the Section 3 Action Plan was amended to make it applicable to the public housing capital fund for the both housing authorities. We are pleased that the Boards approved the expansion of the Section 3 Action Plan to cover the capital fund and to make it applicable to both agencies.

It is also our understanding from the minutes that the Commissioners requested other information regarding the Section 3 Action Plan. The minutes reflect that the following issues were discussed:

- Revision of the document to specify the manner in which the funds will be disbursed, whether to the residents or the program
- Review of the criteria for reviews and assessments
- A plan to make the Section 3 program on going
- A commitment to make the Section 3 Action Plan cover all programs of the Fresno Housing Authority.

In this context, we urge the housing authorities to make a number of significant amendments to the Section 3 Action Plan.

- The Section 3 Action Plan must be expanded to cover all activities of the housing authorities. Section 3 is applicable to the activities funded by the public housing operating fund as well as the capital fund and any modernization funding. 24 C.F.R. § 135.3(a)(1). Thus, Section 3 is applicable to every new hire of the housing authorities.
- The Section 3 Action Plan provides that the Employment Goal is that “at least 15% of the HOPE VI jobs created through construction and/or professional services will be reserved for HACF Section 3 eligible.” (Page 7) This goal must be increased to provide that “at least 30% of all jobs created will be reserved for Fresno Housing Authority Section 3 residents.” The goal must be at least 30% of new hires to be consistent with the Section

3 regulations. 24 C.F.R. § 135.30(b)(1). Nevertheless, we urge the housing authorities to set a higher goal where feasible. For example, we know that the San Francisco Housing Authority has set a goal of 25% of total workforce hours.

- It should be stated in the Section 3 Action Plan that the overall objective is to promote long term and permanent employment opportunities for Section 3 residents.
- The Section 3 Action Plan provides for preferences for the jobs created. (Page 7) There needs to be a slight revision to ensure that all public housing residents have priority over other low income residents of the City or the County of Fresno, as applicable. Such a preference is consistent with the regulations. 24 C.F.R. § 135.34 Thus the preference must be provided in the following order
 - First to residents of the development for which the financial assistance is expended
 - Second to other public housing residents
 - Third to other low and very low income residents of the area¹⁷

More significantly, the Section 3 Action Plan should provide information as to what is meant by a preference. A preference means that if the individual applying for the job meets the stated qualifications, that individual with the preference gets the job over all others who have no preference or who have a lower preference.¹⁸

- In the section on Background Summary—Employment, there is a statement that there must be a preference for hiring from the housing development where the work is being performed. The section then states that this hiring preference is not required if the “contractors/vendor’s workforce is adequate to do the job and no new hiring is required.” (Page 11) The term workforce is again used on page 15. The term workforce should be used with care and defined so as to avoid confusion.

It is important to distinguish between the contractor’s workforce at the time the contract is signed and the workforce at the time that the work is performed. Contractors must be required to list all full time permanent employees at the time that the contract is signed. Such individuals would be considered the initial workforce. Any hires in addition to those listed as the initial workforce should be new hires.

Proof of the full time employment status should be submitted to the housing authority in

¹⁷ The regulations also state that there should be a preference for participants in HUD Youthbuild programs. It is our understanding that there is no currently funded HUD Youthbuild program in Fresno.

¹⁸ Such an explanation of a preference should also be referenced in the section on preferences for Section 3 businesses.

the form of payroll forms at the time the contract is signed. If this is not required, contractors will be able to avoid the obligation to hire public housing and other low and very low income individuals. Such an evasion—intentional or not—will be particularly pronounced in the case of construction contractors who have a team of workers who they may routinely call upon, none of whom are permanent full time employees. Significantly increasing the time of a part time worker should be considered a new hire as should the rehire of an employee that the contractor often works with. Once the work begins, the workforce may change as additional individuals are added to the workforce. The term workforce should not be defined as the workforce that the contractor shows up with when the work is ready to be performed. If that happens, there rarely will be any new hires in frustration of the goals of the Section 3 program.

- The Section 3 Action Plan sets the goal of contracting with Section 3 businesses for 30% of the total prime contracts and including within the goal contracts in the amount of \$50,000. (Page 12) These are commendable goals which we support.
- The Section 3 Action Plan does not contain a provision for review of compliance with the overall objectives. Such a provision should be included in the Section 3 Action Plan. Data should be kept regarding the number of new hires by contract, job category and the number of new hires and the number who are Section 3 residents by numbers and by hours worked. The HUD Form 60002 provides an initial basis for collecting the data and a review of the objectives. But this form could be improved upon for use at the local level. For example, the information collected at the local level should always include information about the hours worked by all new hires and each new hire that is a Section 3 resident. Such reporting will avoid problems experienced elsewhere when contractors hired Section 3 residents late in the process so as to claim compliance with the numbers of individuals hired but not the spirit of the Section 3 obligation which is to ensure employment opportunities *to the greatest extent feasible*.

If the Fresno Housing Authority collects and evaluates the data, it should help determine if the goals are being met and if Section 3 residents are being hired and Section 3 businesses contracted with. Using the data and other available information, there should be a process of on-going evaluations and adjustments to the efforts if the numbers are low and there are not many new hired and new hires who are Section 3 residents and if the goal of contracting with Section 3 businesses is not met.

- The Section 3 Action Plan provides that if a contractor fails to comply with the Section 3 Action Plan, it must provide evidence of the reasons for noncompliance. If the contractor can demonstrate that compliance is not possible, it must “support ‘other economic opportunities’ for Section 3 residents.” (Page 8). Acceptable reasons for non compliance

include: Recruitment did not produce a qualified pool or one sufficient to secure the number of residents required in the contract.

Conceptually this is a helpful provision because it sets forth a remedy for noncompliance. Nevertheless certain improvements should be made to the Section 3 Action Plan. For example, the plan currently provides that “other economic opportunities” include contributing to a scholarship fund. It is important to determine and set forth in the Section 3 Action Plan how much must be contributed or set forth a formula for determining the amount per violation or per inability to perform. The plan also provides that “other economic opportunities include” part-time work or paid job shadowing/ internships for HACF residents. The Plan further provides that “The hours of part-time work or training when converted to dollars must equal the threshold requirements established” It is not clear what the quoted language means. What is meant by “threshold requirements” and how will hours of training be converted to dollars? The final option for alternative compliance includes a Contribution to the HOPE VI Computer Tech Lab program at the Village or to the Community Supportive Services plan for HOPE VI. Again the issue is how will that amount be determined? It is important to set forth the dollar amount or the formula for determining the amount, up front. Setting forth the dollar amount or the standards for determining that amount, may lead to enhanced compliance with the goals of the Section 3 Action Plan.

- For large contracts, such as those associated with HOPE VI developments, the housing authorities should create a monitoring committee that meets periodically to review compliance. Such a committee might meet monthly at the beginning of the contracting process and taper off as the work subsides.
- The Section 3 Action Plan ought to contain a provision in the event that the contractor completely fails to comply with the contractual terms. Such a provision would be a liquidated damages clause. There are various examples of such clauses used by housing authorities that we could share if there is interest.

Please provide us with a copy of the reporting documents referenced on page 11, item 2 and a copy of the Community and Supportive Services Plan for HOPE VI referenced on page 9.

If you have any questions about this letter or wish to speak to us about additional issues related to Section 3 please contact Jess Negrete, _____ or Catherine Bishop, NHLP, 510-251-9400 x 105.

We look forward to working with you as you implement and revise the Section 3 Action Plan.

Cordially,

February 16, 2005

Rosemary Griffin
Oakland Housing Authority
1619 Harrison Street
Oakland, CA 94612

Dear: Rosemary

Thank you for the informative meeting regarding OHAs implementation of Section 3. As promised, the following are comments on the Economic Opportunities Implementation Procedure (EOIP) and the Oakland Housing Authority Economic Opportunities Policy. In addition, I have added a general comment and would also like to renew my request for additional information. If you have any questions about this letter or if you would like any additional information or assistance please feel free to contact me.

In general missing from the EOIP and the Policy is a requirement that contractors have a Section 3 plan. If contractors are to meet their Section 3 hiring goals and subcontracting goals for Section 3 businesses, it would be appropriate to require that a contractor submit to a plan for achieving those goals.

Economic Opportunities Implementation Procedure (EOIP):

Page 10 (2. III. Compliance and Documentation of "To the Greatest Extent Feasible/good Faith Effort")

This section ought to cross reference the Appendix to the Section 3 regulations as that Appendix lists other activities that could be engaged in to promote Section 3.

Missing from this section is any reference to promoting contracting with Section 3 businesses. The Appendix to the Section 3 regulations notes many efforts that can be undertaken to facilitate contracting with Section 3 businesses. Some of these, if not all, should be listed or modified and adopted for the EOIP. If the problem is identifying Section 3 businesses, perhaps, OHA could do more out reach with the business community including groups that represent minority, women and small business.

Rosemary Griffin
February 16, 2005

The EOIP suggests ways in which OHA may conduct out reach to Section 3 residents. Outreach to resident organizations and the Resident Advisory Board (RAB) is not mentioned. Does OHA use the RAB and active resident organizations to advertise the priorities for employment and Section 3 contracting? If OHA has used the RAB and tenant organizations, how effective has that outreach been? Are there other activities that OHA may engage in that will make that outreach more effective? The public housing operating subsidy formula provides for \$25 per unit per year for resident participation activities. 24 C.F.R. § 990.108(e). Having the RAB and resident organizations engage in Section 3 out reach would be an activity that could be supported by these funds. Is OHA using the funds in this manner? (This reference to the \$25 per unit per year assumes that OHA under the moving to work contract continues to provide funding for resident participation. Is that true?)

The following activities would also help promote Section 3. OHA could use its web site more effectively to promote Section 3 goals and objectives. For example, the EOIP ought to be posted. In addition, currently there is no reference to Section 3 in the employment section of the web site. On the OHA web site in the section regarding employment, the preference for Section 3 residents should be stated. In addition, the web site should be used to advertise job openings and training opportunities related to large contracts. Because many of those contracts are on going and presumably the hiring is also on going, the hiring goals should also be listed for the length of the contract. The information provided should be for Section 3 residents as well as Section 3 businesses. Finally the web site ought to provide information on how Section 3 businesses and Section 3 residents may file a complaint.

Page 11 (3. Department Responsibilities)

The Section 3 regulations provide that a recipient of funds subject to Section 3, such as OHA, must comply with Section 3 and assure that its contractors and sub contractors also comply. Significantly the regulations require recipients to not only document compliance but also document impediments, if any. 24 C.F.R. § 135.32(e) This regulation assumes that the recipient would not only seek documentation of compliance and notify parties of non compliance, but also, in the event of non compliance, document the impediments so as to facilitate compliance. Thus, it would be beneficial and appropriate to add to this section a provision that states that the Executive Office, or another appropriate OHA office will

- Evaluate the compliance with Section 3, identifying impediments, if any, and recommend and implement changes to address any impediments. OHA will conduct the evaluation annually or more frequently, if necessary.

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Page 12 (3. Department Responsibilities, Resident and Community Services)

Is the Resident and Community Services department or another OHA department keeping track of those public housing residents, who express an interest in job readiness programs, job training or apprenticeship programs or applied for a Section 3 job or a training opportunity, to determine what happened to that individual? Was the tenant trained, hired, rejected, etc.? If the tenant was not hired, is OHA informed of the rejection and the reasons for the rejection and does OHA follow up and evaluate whether the rejection was permissible? The same questions can be asked about Section 3 businesses, is there follow up to determine what happened? Did the Section 3 business get the contract with OHA or with the contractor and if so with what result? If the Section 3 business did not get the contract with OHA or with the contractor, why not?

Missing from the listed activities of OHA is out reach to the community at large regarding Section 3. (It may be that OHA engages in the activity but does not list it.) That outreach should include to the Chamber of Commerce, organizations representing minority, women and small businesses, job training schools and to the welfare department. There is mention of "providing a list of State approved apprenticeship programs that have graduated apprentices." Page 12 But it is not clear to whom this list is provided and it is also unclear what follow up is conducted to ensure that and to track whether recently graduated apprentices who are Section 3 residents are informed of the job opportunities, informed of the preferences and are provided with a preference.

Also, OHA should maintain a list of public housing residents with their job skills and training. When jobs are available, OHA should provide that list to the OHA department, which is hiring, or the contractor, which is hiring, and notify the residents of the possible job opportunity.

New Hire Section 3 Information Forms--Contractor Version and OHA Employees

Attached is a proposed revised version of the form. Added to the form are a certification and a line for a California driver's license or identification card number and/or social security number. The purpose of these additions is to add gravity to the form. The certification should ensure that the individual, to the best of his or her knowledge, is providing accurate information. The Section 3 regulations provide that if a Section 3 resident is seeking a preference, he or she should certify or provide evidence of eligibility. 24 C.F.R. § 135.34(b). The California Civil Code sets forth the manner in which an individual may certify compliance with a rule. That certification language is included the revised form. An additional, reason for requesting the driver's license and social security numbers is to facilitate verification in the event that OHA

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deems it necessary. Also, added to the form is a question regarding receipt of public assistance. The Section 3 regulations provide that evidence of receipt of welfare is evidence of eligibility for a preference under Section 3. 24 C.F.R. § 135.34(b).

To determine household income for purposes of eligibility for a preference and to meet the Section 3 goals, it is sufficient to ask the new hire what is the total annual gross income for the family. OHA staff could easily compare the income information provided by the new hire with the current HUD published income limits. It is not necessary to include the income ranges, but the income ranges are retained in the event that OHA believes that it would be useful.

Oakland Housing Authority Economic Opportunities Policy:

The Policy should reference the EOIP. The Policy is bare bones and the EOIP provides substantially more detail. The overall comments on the Policy are limited.

The Background section could be revised to recognize that the effective date of the Section 3 regulations was extended by removing the end date. 60 Fed. Reg. 28,325 (May 31, 1995). Thus, the Section 3 regulations continue to be in effect. There appears to be a typographical problem reflected in consistent numbering. The policy begins using numbered paragraphs on page 3. There are two paragraphs numbered 2, one under the caption Small Purchase and another under the caption Competitive bids. There is no number 1 under Competitive bids. As a result, the reference to numbered paragraphs in paragraph number 3, page 4, is confusing.

Miscellaneous

In our meeting, you stated that you would be able to provide me with the following

- a copy of the Section 3 language from the bid and Request for Proposal documents,
- a copy of the Section 3 contract language,
- a copy of the flyers that contractors and OHA use to notify Section 3 residents and Section 3 businesses of the job and contracting opportunities, and
- a copies of several consecutive months of the monthly summary reports submitted by a construction contractor

I have not received those documents. I would appreciate it if you could please send them to me.

As stated above, if I can be of any further assistance, please let me know. I will follow

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up with you on these issues some time in mid March or earlier, if you so desire.

Sincerely,

Staff Attorney

Attachment