

The Missouri Housing Development Commission (“MHDC”) hereby establishes a workforce eligibility policy. This policy replaces any and all prior MHDC policies regarding workforce eligibility, including the Workforce Eligibility Policy (passed on March 17, 2006), the Policy for Bond Financed Multifamily Developments (passed on May 2, 2006), the Workforce Eligibility Policy clarification memorandum (passed on November 17, 2007) and all Workforce Compliance Handbooks.

This policy is applicable to all business entities who receive funding from the MHDC in the form of a grant, tax-credit(s) or loan(s) for the purpose of developing rental housing developments (collectively “Resources”). This policy does not extend to the Missouri Housing Trust Fund, any single family program and the affordable housing assistance program.

Any Business Entity receiving Resources shall:

- 1) Provide MHDC with an original sworn affidavit which affirms, under penalty of perjury, that the Business Entity is enrolled and actively participating in a federal work authorization program and that the Business Entity does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services;
- 2) Require their General Contractor to provide MHDC with an original sworn affidavit which affirms, under penalty of perjury, that the General Contractor is enrolled and actively participating in a federal work authorization program, that the General Contractor does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services, and that the General Contractor’s employees are lawfully present in the United States;
- 3) Require that their General Contractor obtain, and make available for inspection by MHDC, from each subcontractor of any tier, an original sworn affidavit which affirms, under penalty of perjury, that the subcontractor is enrolled and actively participating in a federal work authorization program, that the subcontractor does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services, and that the subcontractor’s employees are lawfully present in the United States;
- 4) Provide MHDC with documentation which shows to the satisfaction of MHDC that the Business Entity and their General Contractor have enrolled in a federal work authorization program. An example of a provision of documentation which meets this requirement is a copy of the E-Verify memorandum of understanding;
- 5) Require their General Contractor to obtain, make available for inspection by MHDC, and provide copies as requested, from each subcontractor of any tier, documentation which shows to the satisfaction of MHDC that the subcontractor has enrolled in a Federal Work Authorization program.
- 6) Require a provision which stipulates that “the Contractor shall comply with all applicable federal, state and local labor laws and is not Knowingly in violation of RSMo §285.530(1) and shall not henceforth be in such violation” to appear in its contract with the general contractor, in contracts between the general contractor and subcontractors, and contracts between subcontractors of any tier.

7) Require a provision which stipulates that the Contractor shall comply with RSMo. §285.230, §285.233, §285.234, §285.500 – 285.515, and §285.550.

8) Require a provision which stipulates that the Contractor for the purposes of construction of an MHDC project and any subcontractor to such contractor shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees who have not previously completed the program are required to complete the program within sixty days of beginning work on such construction project.

The terms capitalized herein shall have the following meaning:

Business Entity - any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Contractor - a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity.

Employees - any person performing work or service of any kind or character for hire within the state of Missouri.

Federal Work Authorization Program - any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603.

Knowingly - a person acts knowingly or with knowledge.

Unauthorized Alien - an alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).



Workforce Eligibility Compliance Handbook

Effective September 17, 2010

Policy Authority and Purpose

On September 17, 2010, Missouri Housing Development Commission (MHDC) passed a Workforce Eligibility policy. The purpose of this Workforce Eligibility Compliance Handbook (WECH) is to provide guidance for Contracting Parties in connection with MHDC funded developments.

MHDC requires that all Contracting Parties adhere to all applicable labor laws and specifically prohibits the use of undocumented workers in the construction of any MHDC-approved Development. In addition, MHDC requires that all Contracting Parties compel all subcontractors, mechanics, third party contractors, agents or other parties providing construction related labor on a development to likewise adhere to all applicable labor laws and requirements set forth by MHDC. Noncompliance with the requirements set forth may result in very serious sanctions including but not limited to suspension and revocation of funding, recission of tax credits, and suspension and debarment from MHDC programs.

Definitions

Contracting Parties shall refer to any one or more of the following: the owner, mortgagor, developer, sponsor, employer, business entity, or person that performs or provides any service or labor associated with construction on an MHDC-approved Development including, but not limited to general contractors, subcontractors, independent contractors, contract employees, project managers and recruiting or staffing entities.

E-Verify is an internet-based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of their newly hired employees.

MHDC-approved Development shall refer to any development approved by MHDC on to receive a reservation for funding in the form of low-income housing tax credits, MHDC fund balance, HOME funds or any other source of funding administered or provided by MHDC, or any combination thereof.

Transient Employer shall refer to any Contracting Party that meets the definition of a transient employer as defined or specified in RSMo §285.230.

Basic Guidelines Applying to All Requirements

Electronic Submission of Data. MHDC encourages the submission of required documentation in an electronic format via email or recorded on a CD. All documentation should be in .pdf format. The CD or emailed files should be clearly labeled with the development name and development number assigned by MHDC. In the event it is impossible or impractical to submit documentation in an electronic format, hard copies may be submitted. Email submissions should be sent to tbeer@mhdc.com. All CD or hard copy submissions should be mailed to:

Workforce Eligibility Compliance Unit
Missouri Housing Development Commission
3435 Broadway
Kansas City, MO 64111

On Site Audits. Audits of construction sites will be conducted on a periodic basis. Each construction site must have present at all times an individual designated to assist with the audit process.

Requirements

1. **Contract Language Required.** Specific language is required for all construction contracts executed in conjunction with MHDC-approved developments. The specific language required is attached as Exhibit 1. The required language must be included verbatim in every contract with Contracting Parties.
2. **Use of E-Verify.** Each Contracting Party who has or will have employees that perform labor on site must enroll and actively participate in E-Verify.
3. **Workforce Eligibility Affidavit.** Prior to commencing work or providing labor in connection with any MHDC-approved Development, each contracting party must complete and submit a Workforce Eligibility Affidavit.
4. **Proof of Using E-Verify.** All employers must submit a copy of the employer's Department of Homeland Security Memorandum of Understanding as proof of enrollment in E-Verify.
5. **Compliance with Missouri Statutes and Transient Employers.** Each contracting party must comply with all applicable federal, state and local labor laws including but not limited to RSMo §285.530(1), 285.233, 285.234, 285.500 – 285.515, and 285.550.
6. **OSHA training.** Within sixty (60) days of commencing work, any person performing construction labor on any MHDC-approved Development must have completed an OSHA construction safety training program or the equivalent of such program as detailed in the Workforce Eligibility Policy. Proof of completion of such training must be made available on site during periodic audits conducted by MHDC.

EXHIBIT 1

Effective September 17, 2010

REQUIRED LANGUAGE FOR ALL CONSTRUCTION CONTRACTS EXECUTED IN CONJUNCTION WITH MHDC FUNDED TRANSACTIONS

The following language shall be included in all construction contracts and subcontracts including, but not limited to, those between the Owners, Contractors, Subcontractors, or independent contractors in conjunction with projects which benefit from any Missouri Housing Development Commission (MHDC) administered funding sources including, but not limited to, loans, MHDC issued bonds, and Low Income Housing Tax Credits:

“The contracting parties acknowledge and agree to be bound by the MHDC Workforce Eligibility Policy. If there is a violation of the MHDC Workforce Eligibility Policy, as may be amended from time to time, the contracting parties are subject to sanctions by MHDC. The imposition of sanctions will include, but is not limited to, suspension or revocation of funding provided by MHDC, rescission of credits, and suspension and debarment of the contracting parties.

The contracting parties agree that in order to adhere to the MHDC Workforce Eligibility Policy, each party to this agreement shall comply with the following:

The contracting parties agree that all contracts and subcontracts and down the line contracts and subcontracts entered into as a part of this development shall include the language of this Exhibit 1 verbatim.

The contracting parties agree to enroll and actively participate in the Department of Homeland Security’s E-Verify program (E-Verify) for the purpose of verifying the workforce eligibility of employees and to provide a sworn affidavit affirming that the party is enrolled in and actively participating in E-Verify, that the party’s employees are lawfully present in the United States, and that the party does not knowingly employ any person who is an unauthorized alien. The parties further agree to provide written documentation showing proof of enrollment in E-Verify in a form acceptable to MHDC such as a copy of the Memorandum of Understanding entered into with Department of Homeland Security. In the event a contracting party is not an employer and is therefore unable to use E-Verify, such party, in lieu of enrolling and participating in E-Verify and providing the above listed documentation, shall provide a sworn affidavit stating that the party is unable to participate in E-Verify because the party is not an employer and does not have employees, that all independent contractors paid by such party are properly classified as independent contractors and should not be classified as employees, that all such independent contractors are lawfully present in the United States, and that any such independent contractors are not unauthorized aliens.

The contracting parties shall comply with all applicable federal, state and local laws, including but not limited to, RSMo §285.530(1), 285.230, 285.233, 285.234, 285.500-285.515, and 285.550.

The contracting parties shall require participation in or provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees and independent contractors which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees and independent contractors are required to complete the program within sixty days of beginning work and shall make documentation proving completion of the program available for inspection.

The contracting parties agree to permit site access to MHDC for the purpose of conducting Workforce Eligibility Policy compliance reviews and shall cooperate in providing requested documentation congruent with the terms of this agreement.”

