



REQUEST FOR PROPOSALS

For Construction Management Services

OPEN CHANNELS NY, INC, dba DIXON PLACE, a registered 501 (c) (3) non-profit organization in the state of New York, seeks proposals to provide Construction Management services relating to its capital construction of located at 161 Chrystie Street in Lower Manhattan

DIXON PLACE
Michael Howett, Board Chair
Richard Connette, Treasurer
Ellie Covan, Executive Director

April 23, 2007

Deadline for Proposals: May 18, 2007, 5:00pm EDT

Questions should be submitted in writing before
May 4, 2007 by email to:

Robert "Len" Tempest
Technical Assistance
Landair Project Resources Group, Inc.
10 E 33rd Street, NY, NY 10016
212-658-9680

RTempest@projectresourcesgroup.com

I) GENERAL INFORMATION

DIXON PLACE, a performance space currently located on the Bowery in Manhattan, is seeking proposals from Construction Managers (herein after "CM") to complete the renovation of it's new space at 161 Chrystie St., Manhattan. The project is located on the cellar and street levels of a mixed use residential development on the west side of Chrystie Street.

Your firm is invited to submit two separate proposals, a Technical Proposal and a Price Proposal (the "Proposal") to carry out the work As Agent for Owner and Holding the Trade Contracts as described in this Request for Proposal (RFP).

Mandatory Inspection and Site Visit of the premises at 161 Chrystie St. on Wednesday May 2, 2007 @ 9:00am.

Firms submitting a Proposal in response to this RFP may be required to give an oral presentation to Senior Staff and/or Board Members of DIXON PLACE. This oral presentation is intended as an opportunity to clarify and elaborate on the proposal, although it will not alter the original submission. DIXON PLACE's request for an oral presentation shall not constitute acceptance of a proposal.

Proposals must be received no later than **May 18, 2007 @ 5:00pm EDT**. The RFP includes drawings and specifications in PDF format issued by Meyer and Gifford, Architects LLP.

Project Information

Client	DIXON PLACE, Ellie Covan, Executive Director 258 Bowery, 2 nd floor, New York, NY 10012 212-219-0736 web: www.dixonplace.org
Architect	Meyer and Gifford, Architects, LLP, Charles Gifford, AIA 270 Lafayette Street, NY, NY 10012 212-925-7171x120 web: www.meyerandgifford.com
Owners Representative	Studio T+L, Jason Livingston, Principal – Theatrical Design 123 7 th Avenue, #283m Brooklyn, NY 11215 718-788-0588 web: www.studio-TL.com
Technical Assistance	Landair Project Resources, Inc., Robert "Len" Tempest, VP 10 E 33 rd Street, NY, NY 10016 212-685-9680 web: www.landairprojectresources.com

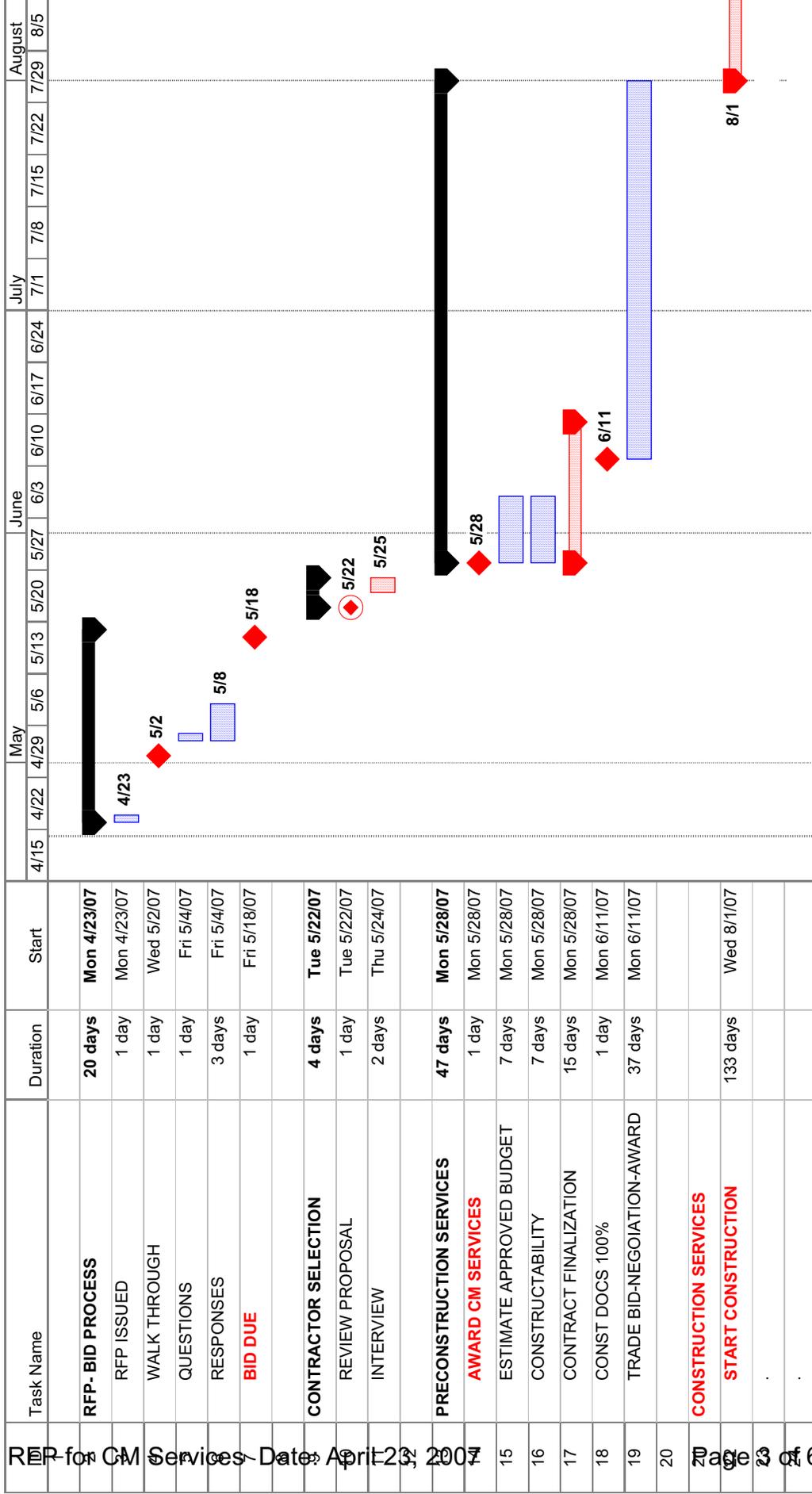
Questions in Writing, all email correspondence shall be in *.pdf format and

Deliver all proposals to: Robert "Len" Tempest
Landair Project Resources, Inc.
10 E 33rd St., NY, NY 10016 212-685-9680
RTempest@projectresourcesgroup.com

DIXON PLACE reserves the right to reject any or all of the proposals if such election is deemed to be in the best interest of DIXON PLACE. DIXON PLACE assumes no obligation, no responsibility, and no liability for costs incurred by the responding firms prior to the issuance of a contract.

PRELIMINARY PROJECT SCHEDULE - DIXON PLACE -

DATE: APRIL 23, 2007



II) ESTIMATED SCHEDULE FOR THIS PROJECT IS AS FOLLOWS:

April 23, 2007	RFP issued
May 2, 2007	Mandatory Site Inspection – 3:00 Wednesday 5/2/07
May 4, 2007	Questions in writing due
May 8, 2007	Responses from Owner and Architect
May 18, 2007	Proposals Due
May 24-25, 2007	Interview (Mornings)
	Preconstruction Services – DURATION 2 MONTHS
May 28, 2007	Award of CM Services
May 28-June 5, 2007	Review Documents, Prepare Estimate and Schedule
June 5, 2007	Estimate, Approved Budget and Schedule
June 11-July 31, 2007	Constructability Reviews, Bidding, Negotiation, Awards, Approvals
August 1, 2007	Construction Period Services – DURATION 6 MONTHS <i>(Estimated)</i>
February 1, 2008	TCO, Fire Alarm Letter of Defect, Temp Public Assembly Beneficial Occupancy
	Project Closeout – DURATION 2 MONTHS
February 1-March 30, 2007	
April , 2008	Final Payments <i>(Estimated)</i>

III) DESCRIPTION OF PROCUREMENT AND FUNDING

Funding for the project is being provided by grants from the Lower Manhattan Development Corporation (LMDC), which is funded by Community Development Block Grants from the United States Department of Housing and Urban Development (HUD), the Dormitory Authority of the State of New York (DASNY) which is funded by the Empire State Development Corporation and from the City of New York, as administered by the City of New York Department of Cultural Affairs (DCA) and the Department of Design and Construction (DDC). Since the project is partially funded by the City of New York as a pass-through contract, the project is subject to Wicks Law requirements and prevailing wage.

IV) PROJECT AREA and ESTIMATED COST

The project is construction of the new DIXON PLACE at 161 Chrystie Street, which is 3,800 sf. in the cellar and 2,900 square feet on the ground floor for an estimated gross area of 6,700 sf. The facility will include a public assembly theater with flexible seating and a mezzanine, a rehearsal studio, a lobby/lounge, 7 restrooms, dressing room, offices and storage spaces. The estimated budget is \$2.4 Million, inclusive of hard cost construction, CM Fee, reimbursables for Staffing Costs, General Conditions and 10% Contingency. Estimated project duration of 6 months.

Please note that the site is a 'condominium unit' and is under and adjacent to occupied spaces; there will be coordination issues with these neighbors. However, other than building systems shut down or other activities that might pose a danger to adjacent occupants. Adjacent occupants include a sound and recording studio so normal hours of work should be from 7:00am to 3:00pm unless the CM can coordinate or provide other arrangements.

V) SCOPE OF SERVICES

DIXON PLACE seeks a Construction Manager to implement the construction of its new facility and requests proposals for firms to provide services including but not limited to the scope of work described below:

V.A Key Issues

The key issues include:

1. Qualified Construction Management (CM) firms who have successfully completed and are experienced with the program requirement, technology and operation of theatre spaces are encouraged to respond to this RFP.
2. All firms responding to this RFP shall understand and have fluency in the management of grant and public funding and have the capacity to respond to and comply with the requirements (procurement procedures, approval process, periodic reporting, requisition processes and project closeout) of the public funders and oversight agencies.
3. CM shall have the contractual role as Agent of Owner, holding all Contracts and having the responsibility to maintain and supervise all financial records.
4. CM shall analyze and understand the existing conditions and project scope.
5. CM shall integrate and coordinate new work into an existing building which is part of a mixed use residential condominium project which will remain occupied during construction.
6. CM is responsible for the implementation of a well thought out logistics plan, security plan, project schedule and establishing and maintaining community relations to insure community and workforce harmony.
7. CM is responsible during the Preconstruction Phase for scoping the project, establishing the budget, identifying qualified Contractors, soliciting competitive proposals from Contractors, nominating Contractors, administering funder approval of Contractors while insuring absolute adherence to public procurement requirements, initiating and finalizing contracts on behalf of the Client and preparing documents required to obtain funder approval of the program and budget.
8. CM is responsible during the Construction Phase for the management and administration of all matters of coordination, oversight, daily construction supervision, technical supervision, budgetary control and management of an aggressive project schedule.
9. CM is responsible for estimating and providing the cost of common labor as part of the proposal. In actuality the CM may or may not provide the required common labor with his own forces but shall insure such responsibilities are assigned to a prime contractor.
10. CM is responsible for providing an estimate of all Staffing Costs, General Conditions and Reimbursable expenses as part of the Proposal such as printing costs, communication,

mailing, security, carting, toilets, facility for a field office and equipment that are incidental and necessary to support the work effort of the project.

11. CM is responsible as part of the general administration of the project for closeout, completion of the final punch lists, coordination of all building commissioning, administration of or preparation of all final project documentation and submittals, coordination and satisfaction of all department of building reviews and approvals, etc.
12. CM shall expect that all base contract work such as lighting, dimming systems, fire alarm, HVAC and finishes are included in the base contract work and the base contract work will be sufficient to secure department of building approvals. However, CM will coordinate the installation of FF&E items such as Owner provided and installed theatrical lighting, audio, accessory components, millwork, specialty items and equipment which will be indicated as being “provided by Others” in the contract documents.
13. CM shall expect strong advocacy by the Client and on behalf of the Client by the Architect and Owners Representative of the Client’s interests on all contract issues and administration.
14. CM to shall present monthly reports and billing to the Client in an efficient and timely manner.
15. CM is to insure and maintain all forms of safety and quality control.

V.B SCOPE OF PROJECT

PRECONSTRUCTION SERVICES

Preconstruction services

- Review, scope and prepare Cost Estimate for approval by the Client based on 80% Construction Documents.
- Apply value engineering, as may be needed or directed by the Client.
- Develop contracting plan, including fast tracking where appropriate. Determine number of trade contracts that will be required.
- Develop project schedule, including construction schedule.
- Review and comment on the design for constructability and advise the Client on any issues. Identify and procure long-lead items.
- Prepare bid packages, including scope of work by trade, for Client review.
- In the absence of Green or Sustainable Guidelines or a consultant to provide the requirement for Sustainable Initiatives for this project the CM will work with the project team to establish Sustainable Guidelines that will become General Conditions of the Trade and Contractor Agreements.
- Develop the Final Cost Estimate and submit the Cost Estimate as the as the Approved Project budget.
- Submit proposals to apply CM’s own labor force or contracted forces for early removals of debris, miscellaneous materials, excavation, underpinning and other work at the site.

Bidding

- Comply with all requirements of the agreement between LMDC, DCA, DDC and the Client regarding procurement
- Obtain at least 3 bids for all subcontracts
- Pre-qualify trade sub contractors who are Vendex approved by the City of New York.
- Prepare and circulate bidders list for each trade for Client review and approval.
- Develop and execute affirmative action bidding and contracting plan.
- Solicit and receive bids, including unit price bidding.
- Conduct bid analysis and prepare tabulation, distribution to project team; coordinate evaluations; prepare recommendations.
- Evaluate alternative proposals, coordinate with project team; develop recommendations and justifications.
- Negotiate and award contracts, as agent for Client, including scope and bid verification.
- Provide documentation of the bidding, negotiation and contracting in accordance with LMDC grant requirements, DDC and Client requirements.
- Generally advise Client on all aspects of the bidding and negotiations with subcontractors, including as required, recommendations for alternatives, unit pricing and other cost savings measures to keep the project on budget.

CONSTRUCTION SERVICES

Construction Manager is to provide services as Agent of Owner under an AIA Contract and General Conditions. Specific contract form of agreement to be mutually agreed between DIXON PLACE and CM. Services to include (but are not limited to) the solicitation, assistance in contracting, and ongoing coordination of contractors to provide services not limited to, the following areas:

- demolition, excavation & underpinning
- masonry & concrete
- thermal & moisture protection
- structural steel & architectural metals
- rough & finish carpentry
- mechanical items (HVAC, electrical, plumbing, fire safety systems)
- doors & windows
- specialties
- finishes (sheetrock, sprung vinyl flooring, stone & tile, painting) & millwork
- theatrical lighting, sound & video equipment and infrastructure as indicated
- Temp utilities, site logistics, sidewalk sheds, all permits
- Secure all permits not limited to ACP5, Alt 1, Fire Department Approval, TCO, CO and Permit of Assembly. Insure that Trade Contractors and Mechanical Disciplines file for all post approval amendments and technical filings to insure timely review and approval by the building department.
- Surveying as required for construction
- Coordinate and provide assistance in the installation of all Client supplied and installed Fixtures, Furnishings and Equipment.
- Design, implement and maintain Site Safety Plan, Recycling and Source Separation Plan, provide oversight and coordination for Green or Sustainable Initiatives Required by Client or other recommended programs.

VI) SUBMISSION REQUIREMENTS

The two part Proposal consisting of a **Technical Proposal** and **Fee Proposal** must provide a straightforward, complete, and concise description of the firm's capabilities to satisfy the requirements of this RFP. Please organize and letter your responses exactly as the questions are presented herein.

Submit **Five Bound Copies and Two CD's** (pdf format) of the Technical Proposal and **Three Bound Copies of a Sealed Fee Proposal** with original signatures by the principal of the Firm.

Please limit your submission to twenty (20) one-sided pages, not including project or work samples and other additional items indicated below.

A) CONTACT INFORMATION (does not count toward 20-page limit)

On a single cover sheet bound with your Technical Proposal and bound with your Fee Proposal, please provide:

1. The lead firm or individual's name;
2. The lead firm's contact person;
3. License or certification information of lead firm principal or individuals working on the DIXON PLACE project;
4. Telephone, fax, and wireless numbers for firm principals or individuals working on the DIXON PLACE project;
5. E-mail address for firm principals or individuals working on the DIXON PLACE project;
6. The street address of the lead firm or individual;
7. The year the firm or individual practice was established;
8. The LBE/MBE/WBE status of the firm (Minority-owned Business Enterprise or Women-owned Business Enterprise, as certified by New York State);
9. The type of work or specialty and size of firm; and
10. The signature of the lead individual, and the date of the signature.
11. Provide all required forms and submittals
 - (a) ATTACHMENT 1 – 5 pages - a completed Standard Business Background Questionnaire (SBBQ) required by the Lower Manhattan Development Corporation
 - (b) ATTACHMENT 2 & 3 - 5 pages - a completed Work Force and Typical Monthly Utilization required by LMDC, do not complete Schedule C-2
 - (c) ATTACHMENT 7 - 1 page – a completed Certification of No Change required by NYC

Note-

1. Attachments 1, 2, 3 and 7 shall be bound into the Technical Proposal. Reminder, some of these qualification forms for governmental entities shall have an expiration timeframe, such as the Vendex is only good for two years. It is the responsibility of the CM and all Contractors retained to work on behalf of DIXON PLACE to insure that all qualification documentation does not lapse and parties having Contract with DIXON PLACE shall be entities in good standing for the duration of the project.
2. Entities whose business conduct causes them to default these public qualification obligations are responsible for all costs and damages arising from their inability to complete those portions of the work assigned to them by DIXON PLACE.

B) EXPERIENCE, STRUCTURE AND PERSONNEL

1. A history of the firm's experience providing General Contracting services to economic development organizations, municipalities, other governmental entities, private developers, not-for-profits and civic organizations.
2. Identify in particular, any experience related to the construction and fitting out of a theatre space and discuss in detail your firm's familiarity and accomplishments with theatrical lighting systems, dimming systems, multimedia installations, theatrical smoke purge system, fire alarm control panels, multizone HVAC systems, interconnects between systems, vibration isolation, sound proofing/deadening, energy conservation, green and/or sustainable design and other issues that are applicable to this project.
3. A description and organization chart of the firm's structure describing the responsibilities of the staff to be assigned to the project, including resumes of the principals, project manager(s), and professional staff who would work directly with DIXON PLACE.
4. Samples of up to five (6) comparable projects that the firm has completed in the areas of Construction Management or General Contracting services. Include the client, the name of a contact person who is able to provide a reference, a description of the scope and nature of the work, the size and complexity of the project, and the dollar amount and the agreed fee arrangements. State outcomes of project- awards, technical issues, significant issues, etc.
5. Any other information that you believe would make the firm's work on behalf of DIXON PLACE superior to that of other firms, or information about your specialty or particular skill to perform a specific requested service.

C) METHODOLOGICAL APPROACH

1. A description of how the firm intends to address the anticipated scope of services set forth in Section V of this RFP.
2. A statement explaining the firm's approach to institutional planning, including methods, analytical techniques, models, etc., that would be employed.
3. A statement explaining the process to identify and administrate a change of scope that results in a Change Order to the contract. Describe how your firm manages the scope change process, establishes a value for the work, establishes the additional costs associated with general conditions and fee, if any, associated with the change of scope.
4. Prepare an estimated project schedule highlighting time span from award of contract to completion including detail such as preconstruction activities, procurement, award to trades, approvals and construction, substantial completion, punchlist, municipal approvals, final approval by funder and certificate of occupancy.
5. Comments or suggestions regarding possible cost savings.

D) CONFLICTS OF INTEREST (does not count toward 20-page limit)

1. Provide a statement whether the respondent firm has worked previously with the Owner, the Architect, the Theatrical Design Consultant, the Owners Representative, other professionals associate with the project.
2. Provide a statement regarding current work load and commitments and the ability of the firm to provide necessary executive skills, staff manpower and resources to achieve the goals and timetable for this project.
3. Submit a statement describing any potential conflict of interest or appearance of impropriety relating to other clients of the firm or officers, directors, and employees of DIXON PLACE that could be created by providing services to DIXON PLACE.
4. Indicate what procedures will be followed to detect and notify DIXON PLACE of and to resolve any conflicts of interest.
5. Indicate any pending litigation and/or regulatory action by any oversight body or entity that could have an adverse material impact on the firm's ability to serve DIXON PLACE.
6. Indicate if the firm has ever had a prior contract with any governmental entity terminated for any reason, and provide an explanation.

E) NON-DISCRIMINATION POLICY (does not count toward 20-page limit)

1. Consulting agencies with 50 or more employees shall submit a copy of their nondiscrimination or affirmative action plan.
2. Firms with less than 50 employees shall submit a statement of their commitment to equal opportunity and affirmative action from their chief executive officer.
3. Each responding firm must also complete and submit both (a) Attachment 2 A-7 relating to the anticipated workforce to be utilized on the contract, and (b) Attachment 2 A-8 and Attachment 3 relating to the anticipated participation of minority- and women-owned business enterprises as subcontractors, if any.

F) FEE PROPOSAL

Note: The Fee Proposals shall be in a SEPARATE SEALED ENVELOPE and shall have the name of the project, the project sponsor / Clients name, the date of the Proposal Submittal and the name and address of the Proposal Respondent.

1. Provide a fixed Fee for Preconstruction Services for estimated duration of about 2 months.
2. Provide a total estimated Firm Fee and the reimbursable General Conditions for Construction Services to complete the project not more than 6 months and provide administration of project closeout for an estimated duration of about 2 additional months.
 - (a) Insure that your proposal has sufficient manpower to achieve the goals for the construction period or identify how your Firm can recommend any other methods to accelerate the project and identify the cost of acceleration.
3. Identify the associated General Condition costs including administrative overhead and costs, staffing and site supervision and labor, security, site logistics, temporary utilities, site facility (toilet, office, etc.) permits, rubbish removal, etc. must be included.
4. Provide the normal hourly rate schedule of each principal and senior staff member whose resume is provided in the Proposal or those job categories that are anticipated to be used in the administration of the project.
5. Provide a list of anticipated reimbursable expenses and the rate charged for each.
6. State all discounts and reduced fees offered to other municipalities, governmental entities, economic development or nonprofit organizations, and civic organizations.
7. State any or all other fees or charges.

NOTE: The Fee Proposal must be submitted in a separate, clearly marked, sealed envelope. The fees will not be opened until all Technical Proposals have been initially evaluated. Although proposed Fees will be taken into account, DIXON PLACE reserves the right to negotiate a lower or different fee structure with any firm that is selected.

All information and documents described in subsections A through F above must be included or addressed in the submission.

VI) CRITERIA FOR SELECTION

In evaluating proposals submitted pursuant to this request, DIXON PLACE places high value on the following factors, not necessarily in this order of importance:

- Approaches in methodology with respect to the anticipated scope of services and project time frames that demonstrate maximum comprehension of and ability to provide such services to DIXON PLACE.
- Experience of firm and employees to be assigned to the project in general, and, in particular, providing Construction Management services to not-for-profit art or cultural organizations.
- Experience of firm and employees to be assigned to the project in dealing with municipalities, economic development organizations, or other governmental entities.
- Scope, size, complexity, cost and quality of comparable completed projects demonstrated by the submitted project samples.
- Innovative or outstanding work by firm that demonstrates the firm's unique qualifications to provide Construction Management Services.
- Number, complexity, and nature of Construction Management projects handled by the firm.
- Firm's staff ability, availability and facility to work cooperatively with DIXON PLACE directors, officers, staff and consultants.
- Conformity with or exceeding of applicable DIXON PLACE policies as noted herein, including specific policies relating to nondiscrimination, affirmative action and subcontracting goals.
- Projected cost of services (Fee, General Conditions and Reimbursables).
- Projected schedule

VII) CONTRACT TERMS AND REQUIREMENTS

The contents of the Proposal prepared by the successful firm, with any amendments approved by DIXON PLACE, will become a part of the agreement signed as a result of this RFP process. The terms outlined throughout this RFP should be considered all-inclusive. The selected firm will be required to:

- Work with DIXON PLACE staff and its consultants to provide CM services to the DIXON PLACE project.
- Maintain accurate accounting records and other evidence pertaining to costs incurred in providing services, and, on DIXON PLACE's request, to make such records available to DIXON PLACE at all reasonable times during the contract period and for six (6) years after the date of the final payment to the firm under the contract.
- Assume sole responsibility for the complete effort as required by this RFP, and be the sole point of contact with regard to contractual matters.
- Refrain from assigning, transferring, conveying, subletting, or otherwise disposing of the contract or its rights, titles or interest therein or its power to execute such agreement to any other person, firm, partnership, company, or corporation without the prior consent and approval in writing of DIXON PLACE.
- Comply with applicable laws governing projects initiated or supported by DIXON PLACE, including all applicable HUD requirements and regulations.

- The Construction Manager shall provide and submit for his/her firm, and subsequently obtain and submit paperwork for all nominated Contractors, tradesmen and vendors any and all documentation and comply with all regulations required by DIXON PLACE or its' Funders (HUD, DDC, LMDC, etc) including, but not limited to Vendex Applications (any contractor or subcontractor exceeding \$100,000), Mayors Office of Contracts background checks, LMDC background checks, LBE/MBE/WBE requirements, apprentice programs, workforce and payroll reporting, etc. See examples of LMDC requirements, but not limited to other requirements.
- Upon Notice to Proceed for Preconstruction Services the Nominated CM shall provide Preconstruction Services consisting of, but not limited to document review, scoping, project estimating, value engineering and budgeting, project scheduling, prequalification of trade contractors, procurement and thereby resulting in a final Approved Project Budget.
- All Trade Contractors and Vendors shall be pre-qualified by the CM and be presented with complete scopes of work by the CM which will be competitively bid according to the public bidding laws and conform to the requirements of LMDC and the Mayors Office of Contract. CM shall maintain records for prequalification, notice of bid opportunity, transmittal of bid documents, attendance sheet at pre bid meetings, requests for information by a Trade Contractor(s) and responses made by the CM or Professional of Record, and at the time of the receipt of bids, the CM shall prepare a bid comparison sheet and maintain records of the process of bid de-scoping.
- All nominated Trade Contractors and Vendors shall complete all documentation and be Vendex Qualified at the time the Approved Project Budget is approved by the Client.
- All services and project budgets shall be based on Prevailing Wage Scale as of July 1 2007 as published by the New York State Department of Labor.
- Contractor is responsible for all administration (bid process, approval of subcontractors by NYC, payment requisitions, sign-offs, fulfillment of grant requirements, etc.)
- Prime Trades shall be bid according to Wicks Law provisions.
- Obtain Performance and Completion Bonding for any subcontractor with a contract exceeding \$250,000. (Except LBE's)

DIXON PLACE reserves the right to terminate any contract entered into as a result of this RFP at any time, provided that written notice has been given to the firm at least thirty (30) days prior to such proposed termination.

VIII) INSURANCE REQUIREMENTS

Insurance and Bonds that the Contracting firm is required to provide:

- Workers' Compensation: to limits required by New York State Law
- General Liability: \$2,000,000
- Personal Injury: \$1,000,000
- Property Damage: \$1,000,000
- Automobile Liability \$1,000,000
- Excess Liability \$5,000,000 – limits of insurance may be increased or decreased upon finalization of Approved Budget and finalization of Agreement.

All Contracting firms' insurance policies shall name DIXON PLACE, Meyer and Gifford, Architects, LLP, Studio T+L, Landair Project Resources, the Lower Manhattan Development Corporation, Agencies of the City of New York as required, the Dormitory Authority of the State of New York and other parties as additionally insured.

IX) MISCELLANEOUS CONDITIONS

a. OBLIGATION ONLY ON FORMAL CONTRACT

The issuance of this RFP, the submission of a response by any firm, and the acceptance of such response by DIXON PLACE do not obligate DIXON PLACE in any manner. Legal obligations will only arise on the execution of a formal contract by DIXON PLACE and the firm(s) selected by DIXON PLACE. DIXON PLACE's formal contract will consist of more than one schedule and attachment, include one substantially in the form of the accompanying:

Attachment 1	LMDC Standard Business Background Search Request
Attachment 2	Workforce Utilization Report
Attachment 3	MWBE Compliance Report
Attachment 4	HUD/LMDC Compliance Requirements
Attachment 5	Federal Labor Standards Provisions
Attachment 6	U.S. Department of Labor Certified Payroll
Attachment 7	NYC Certificate of No Change – NYC Vendexed Contractors
Attachment 8	NYC Department of Labor – Construction Employment Report
Attachment 9	NYC DCA/DDC pass-through contract guide

Attachments 2, 4, 5, 6, 8 and 9 are provided for informational purposes only. DIXON PLACE may amend its contract schedules at any time. Responses to this RFP will be prepared at the sole cost and expense of the proposing Construction Management firms. No materials submitted in response to this RFP will be returned.

b. DIXON PLACE RESERVATION OF RIGHTS

DIXON PLACE reserves the right to:

- i. Amend, modify, or withdraw this RFP.
- ii. Revise requirements of this RFP.

- iii. Require supplemental statements or information from any firm.
- iv. Accept or reject any or all responses hereto.
- v. Extend the deadline for submission of responses thereto.
- vi. Negotiate or hold discussions with any respondent and waive defects and allow corrections of deficient responses which do not completely conform to the instructions contained herein.
- vii. Cancel this RFP, in whole or in part, if DIXON PLACE deems it in its best interest to do so.

DIXON PLACE may exercise the foregoing rights at any time without notice and without liability to any proposing firm or any other party for their expenses incurred in the preparation of the responses hereto or otherwise.

c. NONDISCRIMINATION AND AFFIRMATIVE ACTION POLICIES

It is the policy of the State of New York, LMDC and DIXON PLACE to comply with all federal, state, and local laws, policies, orders, rules and regulations, which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that Minority- and Women-owned Business Enterprises (LBE/MWBEs), Minority Group Members and women share in the economic opportunities generated by DIXON PLACE's participation in projects or initiatives, and/or the use of DIXON PLACE funds. As a subsidiary of the NYS ESDC, LMDC and its grantees follow ESDC's non-discrimination and affirmative action policy, which will apply to any contract entered into as a result of the RFP. LMDC has established a 20% LBE/MWBEs participation goal for its entire redevelopment project. The selected firm(s) shall be required to use best efforts to provide for the meaningful participation of United States LBE/MWBEs, Minority Group Members and women in the execution of this contract. A copy of each responding firm's equal employment opportunity policy statement, Attachment 2 relating to the anticipated workforce to be utilized on the contract and Attachment 3 relating to the anticipated participation by LBE/MWBEs as subcontractors, shall be included as part of the response to the RFP. The ESDC Affirmative Action Unit (AAU) is available to assist you in identifying LBE/MWBEs certified by the State of New York that can provide goods and services in connection with the contract anticipated by this RFP. If you require LBE/MWBEs listings, please call the AAU at (212) 803-3224.



LOWER MANHATTAN DEVELOPMENT CORPORATION
STANDARD BUSINESS BACKGROUND QUESTIONNAIRE

INSTRUCTIONS

- This Questionnaire shall be completed on behalf of the Firm by an individual who is knowledgeable about the past and present operations of the firm and its policies.
- Firms intending to bid as joint venturers should submit a separate Questionnaire for each joint venturer.
- Whenever more space is needed to answer any question, or you wish to give further explanation, complete by attaching extra pages.
- All questions must be answered. If a particular question does not apply, the response must state "Not Applicable" ("NA").
- Any suits, liens, judgments, litigation, violations, and administrative or court actions under appeal must be disclosed.

NOTE: Please indicate whether you believe that any of the information supplied herein is confidential and should be exempt from disclosure under the New York Freedom of Information Law: _____yes, _____no. If you checked "yes" you must identify the information you feel is confidential by placing an asterisk in front of the appropriate question number(s) and attach an additional sheet(s) explaining the basis for such claim(s).

DEFINITIONS

For purposes of this Questionnaire, the following terms shall have the following meanings:

- A. "Affiliate" shall mean any person or entity that is directly or indirectly controlled by the person or entity to which the question relates, or any person or entity that directly or indirectly controls such person or entity. For purposes of this definition, control means the power to direct the management of the firm, person or other entity, whether through ownership of shares, the right to designate the Board of Directors, contract or otherwise.
- B. "Principal" shall mean any person who is or has been, within the past five (5) years, either an owner of five percent (5%) or more of the firm's shares, one of the firm's five (5) largest shareholders or a director, officer, partner or proprietor of the Firm.
- C. "Key Person" shall mean any individual, not identified in this Questionnaire as a Principal, who participates in policy making, financial decisions, or the Firm's operations in relation to the LMDC project.

GENERAL INFORMATION

1. LEGAL NAME OF FIRM (hereafter, the "Firm") _____
 DBA NAME, IF ANY _____ PHONE NO. (____) _____
 MAILING ADDRESS _____ STATE _____ COUNTY _____ ZIP _____ FAX NO. (____) _____
 CITY _____
 ACTUAL LOCATION _____
 FIRM HEADQUARTERS (if different) _____
 E-MAIL ADDRESS _____ WEB SITE _____
2. CONTACT NAME FOR QUESTIONNAIRE _____ TITLE _____ PHONE NO. _____
3. TYPE OF FIRM (check only one) _____ CORPORATION _____ PARTNERSHIP _____ PROPRIETORSHIP _____ JOINT VENTURE _____ LLC _____ LLP
4. HOW MANY YEARS HAS THE FIRM BEEN IN BUSINESS? _____ UNDER THE SAME NAME? _____ FORMER NAME(S): _____
- 4a. WAS THE FIRM PURCHASED AS AN EXISTING BUSINESS BY ITS PRESENT OWNER(S) NO _____ YES _____ (IF YES PROVIDE INFORMATION)
 DATE PURCHASED ____/____/____ PREVIOUS OWNER(S) NAME(S): _____
5. WHAT IS THE FIRM'S BONDING RANGE? \$ _____ SINGLE PROJECT \$ _____ AGGREGATE (ALL PROJECTS)
6. ARE YOU CERTIFIED MBE _____ WBE _____ IF SO, BY WHOM? _____

**ATTACHMENT 1 - SBBQ
DIXON PLACE**

OWNERSHIP, MANAGEMENT, AFFILIATION

7. **Principals:** Identify each person who is, or has been within the past five (5) years, an owner of five percent (5.0%) or more of the Firm's shares, or one of the five (5) largest shareholders or a director, an officer, a partner or a proprietor. Fill in name, % owned, office held and indicate by Y or N whether the individual is a director, officer, partner or Key Person.

FIRST NAME	MI	LAST NAME	DATE OF BIRTH	% OWNED	DIRECTOR (Y OR N)	OFFICER (Y OR N)	TITLE	PARTNER (Y OR N)	KEY PERSON (Y OR N)

8. **Key Persons:** Identify any individual, not listed in your answers to question 7 and identified as a Principal, who participates in policy making, financial decisions or the Firm's operations in relation to the LMDC project:

FIRST NAME	MI	LAST NAME	DATE OF BIRTH	TITLE

9. **Ownership of Other Firms:** Identify any other firms in which, now or in the past five (5) years, the Firm or any Principals or Key Persons, either owned or owns five percent (5.0%) or more of the shares of, or was or is one of the five (5) largest shareholders, a director, officer, partner or proprietor of such other firm:

FEDERAL ID NO.	% OWNED	FIRM/COMPANY NAME	FIRM/COMPANY ADDRESS

**ATTACHMENT 1 - SBBQ
DIXON PLACE**

14. For the purpose of this contract, is any other person or entity guaranteeing the performance of, or otherwise providing financial assistance to, your Firm? If so, describe the form of assistance and list the name(s) and federal tax identification number(s) ("TIN") of each person or entity:

FORM OF ASSISTANCE	INDIVIDUAL	COMPANY NAME	FEDERAL TIN	ADDRESS

OTHER INFORMATION

15. For the Firm or any individual, firm or Affiliate identified in questions 7 through 10 above; (a) list and describe all judgments, liens or claims over \$25,000 filed against the Firm, individual, firm or Affiliate and remaining undischarged or unsatisfied for more than ninety (90) days; and (b) list and describe all liquidated damages assessed. Also list any litigation currently pending against the Firm, individual, firm, or Affiliate, if the judgment sought relates to the type of work to be performed for the LMDC, or could have a material adverse financial impact on the Firm, individual, firm or Affiliate.

INDIVIDUAL, FIRM OR AFFILIATE	LIENS, CLAIMS, LITIGATION INDEX/DOCKET NO.	LIQUIDATED DAMAGES

**ATTACHMENT 1 - SBBQ
DIXON PLACE**

16. Within the past five (5) years has the Firm, Principal, Key Person, or Affiliate been the subject of any of the following (respond to each question and describe in detail the circumstances of each affirmative answer; attach additional pages if necessary):

- (a) a judgment of conviction for any business-related conduct constituting a crime under state or Federal law? No _____ Yes _____
- (b) a criminal investigation or indictment for any business-related conduct constituting a crime under state or Federal law? No _____ Yes _____
- (c) a grant of immunity for any business-related conduct constituting a crime under state or Federal law? No _____ Yes _____
- (d) any felony or misdemeanor charges pending that were filed either before or during their employment or affiliation with the Firm? No _____ Yes _____
- (e) a Federal or state suspension or debarment? No _____ Yes _____
- (f) a finding of non-responsibility by any government agency? No _____ Yes _____
- (g) a denial or revocation of prequalification? No _____ Yes _____
- (h) a voluntary exclusion from bidding/contracting agreement? No _____ Yes _____
- (i) any administrative or civil action seeking specific performance or restitution on any public works contract except any disputed work proceeding? No _____ Yes _____
- (j) an OSHA Citation and Notification of Penalty containing a violation classified as serious? No _____ Yes _____
- (k) an OSHA Citation and Notification of Penalty containing a violation classified as willful? No _____ Yes _____
- (l) a prevailing wage or supplement payment violation? No _____ Yes _____
- (m) a state labor law violation deemed willful? No _____ Yes _____
- (n) any other federal or state citations, notices, violation orders, pending administrative hearings or proceedings or determinations of a violation of any labor law or regulation? No _____ Yes _____
- (o) any criminal investigation, felony indictment or conviction concerning formation of, or any business association with, any allegedly false or fraudulent women's, minority or disadvantaged business enterprise? No _____ Yes _____
- (p) any denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status? No _____ Yes _____
- (q) rejection of a low bid on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements? No _____ Yes _____
- (r) consent order with the NYS Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal or state environmental laws? No _____ Yes _____
- (s) any citations, notices, violation orders, pending administrative hearings or proceedings or determinations for violations of:
 - Federal, state or local health laws, rules or regulations?
 - Federal, state or local environmental laws, rules or regulations?
 - unemployment insurance or workers compensation coverage or claim requirements?
 - ERISA (Employee Retirement Income Security Act)?
 - Federal, state or local human rights laws?
 - Federal or state security laws?
 - a request to withdraw a bid submitted to a public owner or any claim of an error on a bid submitted to a public owner?
- (t) any bankruptcy or reorganization proceeding? No _____ Yes _____
- (u) any suspension or revocation of any business or professional license, certificates or certifications? No _____ Yes _____
- (v) a denial of application an for a professional or trade license? No _____ Yes _____

**ATTACHMENT 1 - SBBQ
DIXON PLACE**

17. Within the past five (5) years has the Firm, Principal, or Key Person (respond to each question and detail the circumstances of each affirmative answer; attach additional pages if necessary):

- (a) filed or submitted to any government agency, employee or representative any document that the Firm, Affiliate, Principal or Key Person knew to contain a false statement or false information? No ___ Yes ___
 - (b) falsified any business record? No ___ Yes ___
 - (c) given or offered to give money or any thing of value or any benefit to any labor official or public servant with intent to influence that person with respect to his or her official acts, duties or decisions as a labor official or public servant? No ___ Yes ___
 - (d) given or offered to give money or any thing of value or any benefit to any official or employee of a business with intent to induce that person or employee to engage in unethical or illegal business practices? No ___ Yes ___
 - (e) agreed with any person to submit a proposal, price or bid below prevailing market rate? No ___ Yes ___
 - (f) been sued or paid a settlement of claim related to the performance of professional services? No ___ Yes ___
18. Within the past five (5) years, has the Firm ever:
- (a) failed to file any required tax returns or failed to pay any applicable Federal, state or New York City taxes, or other assessed New York City charges including, but not limited to, water and sewer charges? No ___ Yes ___
 - (b) had, or does it presently have, any delinquent Federal, state or New York City taxes outstanding? No ___ Yes ___

If you answered "yes" to questions 18(a) or 18(b), supply details.

19. Provide any supplemental information the Firm desires to have considered as part of its response to this Questionnaire.

CERTIFICATION

The undersigned recognizes that this Questionnaire is submitted for the express purpose of inducing the LMDC to award a contract or approve a subcontract; acknowledges that the LMDC may in its discretion, by means which it may choose, determine the truth and accuracy of all statements made herein; authorizes the LMDC, the United States Department of Housing and Urban Development, or their agents to contact any entity named in this Questionnaire and any attachments for the purposes of verifying the information supplied; acknowledges that the intentional submission of false or misleading information may constitute a felony under New York Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. Section 1001; and represents that the information submitted in this Questionnaire and any attached pages is true, accurate and complete.

Sworn to before me this _____ day of _____, _____.

Notary Public _____ Signature of Officer _____
Title _____

Commission Expiration Date _____

**ATTACHMENT 2 - WORKFORCE UTILIZATION
DIXON PLACE**

**Exhibit A-8: Workforce Utilization Report
Employees Impacted by September 11, 2001**

Type of Report (Check One) / / Total Workforce / / Contract Specific Workforce
 Type of Service (Check One) / / Professional, Construction, Consultant / / Service/ Consultant / / Commodities
 Contractor Name: _____ Contractor Start Date: _____
 Address: _____ Reporting Period: _____
 Telephone Number: _____ / / Quarterly Report / / Semi-Annual Report
 Federal ID NO: _____ Project Name: _____
 Check One: / / Prime Contractor / / Subcontractor Project Location: _____ Zip: _____
 Contract Number: _____ County: _____
 Contract Amount: _____ Product/Services Provided: _____

Federal Occupational Category	Number of Employees						Moderate-Income Existing and New Employees that Live Below Houston Street
	Total Number of Existing Employees Working on this Project	Total Number of New Employees Hired for this Project	Existing Employees that Lost Job or Wages as a Result of September 11, 2001	New Employees that Lost Job or Wages as a Result of September 11th, 2001	Low-Income Existing and New Employees that Lost Job or Wages as a Result of September 11th, 2001	Moderate-Income Existing and New Employees that Lost Job or Wages as a Result of September 11th, 2001	
Official/Administrator							
Professionals							
Technicians							
Sales Workers							
Office & Clerical							
Craft Workers							
Operatives							
Laborers							
Service Workers							
TOTALS							

Certification: I, _____ (Print Name) the _____ (Title)
 do certify that (i) I have read this Workforce Utilization Report on Employees Impacted by September 11, 2001 and (ii) to the best of my knowledge, information, and belief the information herein is complete and accurate.
 Signature: _____

**ATTACHMENT 2 - WORKFORCE UTILIZATION
DIXON PLACE**

Exhibit A-7: Workforce Utilization Report for Section 3 Clause

Type of Report (Check One) / / Total Workforce / / Contract Specific Workforce
 Type of Service (Check One) / / Professional, Construction, Consultant / / Service/ Consultant / / Commodities
 Contractor Name: _____
 Address: _____
 Reporting Period: _____
 / / Quarterly Report / / Semi-Annual Report
 Project Name: _____
 Federal ID NO: _____
 Check One: / / Prime Contractor / / Subcontractor County: _____ Zip: _____
 Contract Number: _____
 Contract Amount: _____
 Product/Services Provided: _____

Federal Occupational Category	Total Number of Employees Working on this Project	Number of Employees					Very Low Income Employees Participating in Other HUD Programs
		Low Income Employees Residing in Metropolitan Area	Very Low Income Employees Residing in Metropolitan Area	Low Income Employees Residing in Service Area or Neighborhood in which Project is Located	Very Low Income Employees Residing in Service Area or Neighborhood in which Project is Located	Low Income Employees Participating in Other HUD Programs	
Official/Administrator							
Professionals							
Technicians							
Sales Workers							
Office & Clerical							
Craft Workers							
Operatives							
Laborers							
Service Workers							
TOTALS							

Certification: I, _____ (Print Name) the, _____ (Title)
 do certify that (i) I have read this Workforce Utilization Report on Section 3 Clause and (ii) to the best of my knowledge, information, and belief the information herein is complete and accurate.
 Signature: _____

Schedule C, Attachment C-1
LMDC Construction Contract

MONTHLY EMPLOYMENT UTILIZATION REPORT
 (See reverse side for instructions)

COMPANY NAME: ADDRESS: CITY: _____ STATE: _____ ZIP: _____ TELEPHONE NUMBER: _____ FEDERAL ID NO.: _____ CHECK NOT-FOR-PROJECT: _____	PROJECT NAME: PROJECT LOCATION: COUNTY: _____ REPORTING PERIOD: _____ Month _____ Year CONTRACT NO.: _____ CONTRACT AMOUNT: _____ \$	CONTRACTOR START DATE: _____ ESTIMATED COMPLETION DATE: _____ PERCENT OF JOB COMPLETED (for reporting period): _____ C. NET INCREASE (applies only to changes, if any, in Company's Employee makeup at the end of project)
--	---	---

A. TOTAL COMPANY EMPLOYEES (at the beginning of project)	B. TOTAL COMPANY EMPLOYEES (at the end of project)	C. NET INCREASE (applies only to changes, if any, in Company's Employee makeup at the end of project)
Male _____ Female _____	Male _____ Female _____	C1 EMPLOYEES C2 OCCUPATIONAL CODES/ # OF EMPLOYEES C3 EMPLOYEES

CLASSIFICATION	1. WORKER HOURS OF EMPLOYMENT										2. NUMBER OF WORKERS		3. CONSTRUCTION TRADES	TOTAL MALE	TOTAL FEMALE		
	1a. ALL WORKER HOURS		1b. BLACK (Not of Hispanic Origin)		1c. HISPANIC		1d. ASIAN or PACIFIC ISLANDER		1e. NATIVE AMERICAN/ ALASKAN/NATIVE		2a. ALL					2b. MINORITY	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE				MALE	FEMALE
Supervisory																	
Journey Worker																	
Apprentice																	
Trainee																	
Subtotal																	
Journey Worker																	
Apprentice																	
Trainee																	
Subtotal																	
TOTAL SUPERVISORS																	
TOTAL JOURNEY WORKERS																	
TOTAL APPRENTICES																	

Revised: November 2004

COMPANY EMPLOYMENT DATA																																															
A. TOTAL COMPANY EMPLOYEES (at the beginning of project)			B. TOTAL COMPANY EMPLOYEES (at the end of project)			C. NET INCREASE <small>(applies only to changes, if any, in Company's Employee makeup at the end of project)</small>			TOTAL MALE			TOTAL FEMALE																																			
Male			Female			Male			Female			C1. EMPLOYEES			C2. OCCUPATIONAL CODES/# OF EMPLOYEES			C3. OCCUPATIONAL CODES/# OF EMPLOYEES																													
COMPANY NAME: _____ ADDRESS: _____ TELEPHONE NUMBER: _____ FEDERAL ID NO.: _____ CHECK <input type="checkbox"/> NOT-FOR-PROFIT: _____ TO TRAINEES _____ GRAND TOTAL _____												CONTRACTOR START DATE: _____ ESTIMATED COMPLETION DATE: _____ PERCENT OF JOB COMPLETED (for reporting period): _____ CONTRACT NO.: _____ CONTRACT AMOUNT: ___\$												PROJECT NAME: _____ PROJECT LOCATION: _____ COUNTY: _____ ZIP: _____ REPORTING PERIOD: _____ Month _____ Year												CERTIFICATION: I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Monthly Employment Utilization Report and (ii) to the best of my knowledge, information and belief the information contained herein is complete and accurate.											
SIGNATURE _____												DATE _____																																			

ATTACHMENT 3 - MWBE WORKFORCE COMPLIANCE
DIXON PLACE

**MONTHLY EMPLOYMENT UTILIZATION REPORT
ATTACHMENT 3 - WBE WORKFORCE COMPLIANCE**

DIXON PLACE

The Monthly Employment Utilization Report ("MEUR") is to be completed by each subject contractor (both Prime and Sub) and signed by a responsible official of the company. The reports are to be filed by the 5th day of each month during the term of the project, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. The prime contractor is responsible for submitting its subcontractors report, along with its own. Additional copies of this form may be obtained from Lower Manhattan Development Corp. ("LMDC").

Minority: Includes Blacks, Hispanics, Native Americans, Alaskan Natives, and Asian and Pacific Islanders, both men and women.

1. Worker Hours of Employment (a-e):
 - a) All Worker Hours: The total number of male hours, the total number of female hours, and the total of both male and female hours worked under each classification.
 - b) through e) Minority Worker Hours The total number of male hours and the total number of female hours worked by each specified group of minority worker in each classification.

2. Number of Workers (a-b):
 - a) All Workers Total number of males and total number of females working in each classification of each trade in the contractor's aggregate workforce during reporting period.
 - b) Minority Workers Total number of male minorities and total number of female minorities working in each classification, in each trade in the contractor's aggregate workforce during reporting period.

3. Construction Trade: Only those construction crafts which contractor employs in the covered area.
Construction Trades include: Field Office Staff (Professionals and Office/Clerical), Laborers, Equipment Operators, Surveyors, Truck Drivers, Iron Workers, Carpenters, Cement Masons, Painters, Electricians, Plumbers and Other.

Note: LMDC may demand payroll records to substantiate work hours listed on the Monthly Employment Utilization Report, if discrepancies should arise.

OCCUPATIONAL CODES

Officials/Administrators	100	
Professionals	110	
Technicians	120	
Sales Workers	130	
Office & Clerical	140	
Craft Workers	150	
Operatives	160	
Laborers		170
Service Workers		180

FORWARD TO THE RESPONSIBLE LMDC PROJECT MANAGER

Lower Manhattan Development Corp.
One Liberty Plaza, 20th Floor
New York, NY 10006
P (212) 962-2300
F (212) 962-2431

SCHEDULE C, Attachment C-2

MBE/WBE COMPLIANCE REPORT

CONSTRUCTION
(to be filed monthly)

PROJECT SPONSOR/DEVELOPER: _____
 ADDRESS: _____
 TELEPHONE: _____
 CONTACT PERSON: _____
 LMDC AA REPRESENTATIVE: **BEVERLY BOGS**
 PROJECT NAME: _____
 PROJECT START DATE: _____ PERCENT COMPLETE: _____
 ACTUAL COMPLETION: _____ REPORTING PERIOD: _____

Attach M/WBE contract documentation, i.e. executed contracts, signed purchase orders or cancelled checks. This report should be completed by an officer of the reporting company, and forwarded to the LMDC AA Representative with the appropriate documentation.

ATTACHMENT 3 - MWBE WORKFORCE COMPLIANCE

PRIME CONTRACTOR (Name, Address, Contact Person and Phone)	TYPE OF CONTRACT (Trade/Service)	CONTRACT AMOUNT	SUB CONTRACTOR NO. & AMT.	MBE/WBE SUBCONTRACTOR (Name, Address, Contact Person and Phone)	SCOPE OF SERVICES	AMOUNT CONTRACTED TO MBE/WBE

Services Date: April 23, 2007

CERTIFICATION: I, _____ (Print Name), the _____ (Title), do certify that (I) have read this Compliance Report and (II) to the best of my knowledge, information and belief the information contained herein is complete and accurate.
 SIGNATURE _____ DATE _____

FORWARD TO THE RESPONSIBLE LMDC PROJECT MANAGER

Lower Manhattan Development Corp.
 One Liberty Plaza, 20th Floor P (212) 962-2300
 New York, NY 10006 F (212) 962-2431

ATTACHMENT 4 - HUD/LMDC COMPLIANCE REQUIREMENTS
DIXON PLACE
SCHEDULE A

HUD / LMDC COMPLIANCE REQUIREMENTS

I. GENERAL CONDITIONS

A. General Compliance

Consultant agrees to comply with the requirements of the HUD regulations concerning CDBG, 24 CFR Part 570, as modified by the waivers and alternative requirements applicable to LMDC and its subrecipients that are published at 67 FR 12042 and 67 FR 36017. Consultant also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. Consultant further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Workers' Compensation

Consultant shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

C. Insurance and Bonding

Consultant shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud, or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Society.

Consultant shall comply with the bonding and insurance requirements of 24 CFR §§ Part 84.31 and 84.48, including but not limited to the following insurance to the extent stated:

1. Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars (\$2,000,000) aggregate and One Million Dollars (\$1,000,000) per occurrence. Such insurance is to be written on an occurrence basis. The Society and LMDC shall be named as additional insureds.

2. Automobile Liability and Property Damage Insurance, if applicable, in an amount not less than \$1,000,000 combined single limit for both bodily injury and property damage.

ATTACHMENT 4 - HUD/LMDC COMPLIANCE REQUIREMENTS
DIXON PLACE

3. Workers' Compensation coverage for employers liability and disability benefits as required by the State of New York.
4. Excess Liability Insurance in an amount not less than \$10,000,000.
5. Certificates of Insurance for all of the aforementioned coverages shall be provided to the Society prior to the commencement of work under this Agreement. The Society and LMDC shall be named as additional insureds on each such certificate.

II. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

Consultant agrees to comply with 24 CFR §§ 84.21-84.28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

Consultant shall administer the Program in conformance with OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," A-122 "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

Consultant shall maintain all records required by the HUD regulations specified in 24 CFR § 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;

ATTACHMENT 4 - HUD/LMDC COMPLIANCE REQUIREMENTS
DIXON PLACE

- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR §§ 85.20 and 570.502; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570 (24 CFR §§ 570.600-570.614).

2. Retention

Consultant shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has received final payment or for a reasonable period of time as requested by the Society. Notwithstanding the above, if there is a litigation, claim, audit, negotiation or other action that involves any of the records cited and that has started before the expiration of the four-year period, such records must be retained until completion of the action and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

Consultant shall index the records that must be maintained and retained in this subparagraph B. At the end of the four-year period following the completion or termination of all activities funded under this Agreement, or on earlier request by LMDC, Consultant shall produce to LMDC the index and all records maintained in accordance with this subparagraph B.

3. Disclosure

Consultant understands that personal client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Society's or Consultant's responsibilities with respect to services provided under this Agreement, is prohibited by the Privacy Act, 5 U.S.C. § 552a, unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent or guardian.

ATTACHMENT 4 - HUD/LMDC COMPLIANCE REQUIREMENTS
DIXON PLACE

4. Property Records

Consultant shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR § 570.503(b)(8), where applicable.

5. Audits and Inspections

All Consultant records with respect to any matters covered by this Agreement shall be made available to the Society, LMDC, HUD, their designees or the Federal Government, at any time during normal business hours, as often as LMDC or HUD deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Consultant within 30 days after receipt by Consultant. Failure of Consultant to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Consultant hereby agrees to have an annual agency audit conducted in accordance with current LMDC policy concerning subrecipient audits and OMB Circular A-133.

C. Procurement

1. Compliance

Consultant shall comply with current LMDC policies concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policies as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to LMDC upon termination or completion of this Agreement.

2. OMB Standards

Consultant shall procure all materials, property, or services in accordance with the requirements of 24 CFR § 85.36, and shall subsequently follow 24 CFR Part 85 as modified by 24 CFR § 570.502, covering utilization and disposal of property.

3. Travel

ATTACHMENT 4 - HUD/LMDC COMPLIANCE REQUIREMENTS
DIXON PLACE

Consultant shall obtain written approval from the Society for any travel outside the New York City metropolitan area with funds provided under this Agreement.

III. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

Consultant agrees to comply with all applicable civil rights laws, rules, and ordinances of the City of New York and the State of New York and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

Consultant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. Consultant will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and 24 CFR §§ 670.601 and 670.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Consultant shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that LMDC and the United States are

ATTACHMENT 4 - HUD/LMDC COMPLIANCE REQUIREMENTS
DIXON PLACE

beneficiaries of and entitled to enforce such covenants. Consultant, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

Consultant agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), which prohibits discrimination against the handicapped in any Federally assisted program. The Society shall provide Consultant with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Compliance with E.O. 11246

Consultant agrees that it shall be committed to carry out, pursuant to LMDC's specifications, an Affirmative Action Program to provide equal opportunity in employment in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966.

2. M/WBE

Consultant will use its best efforts to afford small and minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and woman-owned business enterprise" ("M/WBE") means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, 'minority group members' are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Consultant may rely on written representations by businesses regarding their status as minority and woman-owned female business enterprises in lieu of an independent investigation.

Consultant shall comply with and cause each of its subcontractors to comply with the provisions of Schedule C of the Society's subrecipient agreement with LMDC relating to non-discrimination and affirmative action, incorporated herein by reference. Consultant shall make best efforts to comply with the provisions of Schedule C relating to affirmative action.

ATTACHMENT 4 - HUD/LMDC COMPLIANCE REQUIREMENTS
DIXON PLACE

3. Access to Records

Consultant shall furnish and cause each of its subcontractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Society, LMDC, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Consultant, advising the labor union or worker's representative of Consultant's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. EEO/AA Statement

Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

Consultant will include the provisions of Sections III.A (Civil Rights) and III.B (Affirmative Action) in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its subcontractors.

C. Employment Restrictions

1. Prohibited Activity

Consultant is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

Consultant agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 et seq.) and all

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other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Consultant shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Society for review upon request.

Consultant agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by HUD pertaining to such contracts and with applicable requirements of the regulations of the United States Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Consultant of its obligation, if any, to require payment of the higher wage. In all such contracts subject to such regulations, Consultant shall cause or require to be inserted in full provisions meeting the requirements of this paragraph.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the Society, Consultant and any of Consultant's subcontractors. Failure to fulfill these requirements shall subject the Society, Consultant and any of Consultant's subcontractors, their successors and assigns, to those sanctions specified by this Agreement. Consultant certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

Consultant further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section

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3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701).

Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.

Consultant certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

b. Notifications. Consultant agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts. Consultant will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. Consultant will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Subcontracts

a. Monitoring. Consultant will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

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b. Content. Consultant shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

c. Selection Process. Consultant shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be given to the Society along with documentation concerning the selection process.

2. Hatch Act

Consultant agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

3. Conflict of Interest

Consultant agrees to abide by the provisions of 24 CFR § 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Consultant further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by Consultant hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of Consultant, or of any designated public agencies or subrecipients that are receiving funds from HUD under the CDBG program.

4. Lobbying

Consultant hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

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amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the certification language of this subparagraph 5 be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly:

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. Copyright

If this Agreement results in any copyrightable material or inventions, LMDC and/or HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

6. Religious Organization

Consultant agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR §570.200(j).

IV. ENVIRONMENTAL CONDITIONS

ATTACHMENT 4 - HUD/LMDC COMPLIANCE REQUIREMENTS
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Consultant agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C. § 7401, *et seq.*;

2. Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;

3. Environmental Protection Agency (“EPA”) regulations pursuant to 40 CFR Part 50, as amended.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2)** The classification is utilized in the area by the construction industry; and
- (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where

appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part

of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section I(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll

period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the

journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration.... makes, utters or publishes any statement knowing the same to be false.... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subpara-

graph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

ATTACHMENT 7 - CERTIFICATION OF NO CHANGE
DIXON PLACE

**DIRECTIONS: Please execute two originals (both with original signature).
Please forward directly to the agency (not M.O.C.S.).**

CERTIFICATION OF NO CHANGE

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS CERTIFICATION, AND/OR THE FAILURE TO CONDUCT APPROPRIATE DUE DILIGENCE IN VERIFYING THE INFORMATION THAT IS THE SUBJECT MATTER OF THIS CERTIFICATION, MAY RESULT IN RENDERING THE SUBMITTING ENTITY NON-RESPONSIBLE FOR THE PURPOSE OF CONTRACT AWARD, AND A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS CERTIFICATION MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

Submitting entity _____ Are you submitting this Certification as a parent? <input type="checkbox"/> Yes / <input type="checkbox"/> No EIN/TIN _____ Address _____ Agency _____

I, _____, being duly sworn, state that I have read and understand all the items contained in the _____ questionnaire, dated _____ [if applicable: and the submission(s) dated _____, updating the information in that questionnaire]; and that, to the best of my knowledge, information and belief, the answers contained in the _____ questionnaire [if applicable: as modified by the submission(s) dated _____,] are full, complete, and accurate; and that, to the best of my knowledge, information, and belief, those answers continue to be full, complete, and accurate. I further certify on behalf of the **submitting vendor** that the information contained in the **principal questionnaires** for _____, dated _____, _____, dated _____, _____, dated _____, [if applicable: and the submission(s) dated _____, updating the information in those questionnaires] has been verified and continues to the best of my knowledge to be full, complete and accurate. I understand that the City of New York will rely on the information supplied in this certification as additional inducement to enter into a contract with the submitting entity.

Sworn to before me this _____ day of _____ 20____		
_____ Notary Public	_____ County License Issued	_____ License Number
BY _____ Print name		
_____ Title		
_____ Signature	_____ Date	
ON BEHALF OF _____ Name of submitting entity		

ATTACHMENT 8 - DLS - CONSTRUCTION EMPLOYMENT REPORT - DIXON PLACE
DEPARTMENT OF SMALL BUSINESS SERVICES
DIVISION OF LABOR SERVICES
INSTRUCTIONS FOR COMPLETING
CONSTRUCTION EMPLOYMENT REPORT

I. WHO MUST FILE AN EMPLOYMENT REPORT

An Employment Report (ER) must be filed if you are:

Applicant, General contractor, Construction Manager, Developer

1. an applicant benefiting from the Industrial and Commercial Incentive Program (ICIP) with a construction contract value of \$1,000,000 or more; or
2. a general contractor or construction manager selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of \$1,000,000 or more; or
3. a general contractor selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of \$10,000 or more; and
4. a general contractor or construction manager selected to perform work on a construction project benefiting from the Industrial and Commercial Incentive Program (ICIP) with a contract value of \$750,000 or more.

Subcontractor, Supplier or Service Provider

1. a subcontractor selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of \$750,000 or more; or
2. a subcontractor selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of \$10,000 or more; or
3. a subcontractor selected to perform work on a construction project benefiting from the Industrial and Commercial Incentive Program (ICIP) with a contract value of \$750,000 or more.
4. a supplier or service provider performing work on a construction project funded or assisted by the City of New York with a proposed contract value of \$50,000 or more.

II. WHO MUST FILE A "LESS THAN \$750,000 SUBCONTRACTOR CERTIFICATE"

1. If your organization negotiates a subcontract (first and second tier) on this project and the subcontract value is less than \$750,000, you need to complete the "Less Than \$750,000 Subcontractor Certificate" for each subcontract below that amount.

III. WHERE TO FILE

1. If you are a contractor or subcontractor on a City funded construction project, the ER must be filed with the contracting agency which will award the contract to the prime contractor.
2. If you are a contractor or subcontractor who will be working for a private developer in receipt of funding or assistance from the City, the ER must be filed with the City agency with jurisdiction over the developer's project.
3. If you are a contractor or subcontractor who will be working for an applicant pursuant to the Industrial and Commercial Development Incentive Program, the ER must be filed with:

**Department of Business Services/
Division of Labor Services
110 William Street, 7 Floor
New York, NY 10038
Attention: Helen Wilson**

4. If you are a contractor or subcontractor on a federal government funded construction project, the Employment Report must be filed with the City contracting agency which will award the contract.

IV. WHO REVIEWS THE EMPLOYMENT REPORT

The contracting agency and/or DLS review the ER for completeness. If any portion is incomplete, you will be notified.

Upon receipt of a completed ER, it is reviewed by DLS to ensure that your firm or organization is in compliance with the City's equal employment opportunity requirements.

V. THE DIVISION OF LABOR SERVICES' REVIEW PROCESS

In accordance with E.O. 50, upon receipt by DLS of a completed ER, DLS conducts a review of the contractor's current employment policies, practices and procedures, as well as perform a statistical analysis of the contractor's workforce, if necessary. The process is as follows:

1. Within five (5) business days, DLS will review the ER for completeness and accuracy. If any information is omitted or incorrect, or if necessary documents are not submitted, the submission shall be deemed incomplete and DLS will inform the contractor. The substantive compliance review does not commence until the submission is complete. **An incomplete submission will delay the review process and may preclude or interrupt the contract approval.**

2. If the ER submission is complete, the compliance review will proceed, resulting in one of the following:
 - a) A **Conditional Certificate of Compliance**, valid for 1 month;
 - b) **Certificate of Approval**, valid for 12 months;
 - c) **Continued Approval Certificate**, good for the applicable contract if a Certificate of Approval has been issued; or
 - d) A **Compliance Review Analysis** Report. If the analysis yields a finding of underutilization of minorities and/or women resulting from policies or procedures that may have a discriminatory effect, or other employment policies or practices mitigating against equal employment opportunity, the contractor will be asked to attend a conference to present a legal and/or factual explanation, or to develop an Employment Program.

Any firm or organization making good faith efforts to take necessary corrective actions to change policies found to have a disparate effect on women and minorities may be issued a Conditional Certificate of Compliance.

VI. WHO MUST SIGN THE EMPLOYMENT REPORT

The signatory of this and all other documents submitted to DLS must be an official of the firm, authorized to enter into binding legal agreements.

NOTE: DLS WILL ONLY ACCEPT ORIGINAL SIGNATURES COPIES WILL BE REJECTED

VII. HOW TO COMPLETE THE EMPLOYMENT REPORT

A. General Information

1. Check the appropriate contractual relationship (contractor or subcontractor) you will have with the City as a result of this contract. If you are a subcontractor, you must state the name of the contractor for whom you are providing the construction services.
2. You must provide your Employer Identification or Federal Tax Number.
3. You must indicate the number of employees. (This number should include the number of current workers for all work performed in New York City.)

4. You must check the entry corresponding with the description of your firm's ownership.
5. Identify your firm's industry code (see Appendix A)

NOTE: READ BEFORE COMPLETING B. PART I

1. Companies With Prior DLS Approval

You have a valid Certificate of Approval issued by DLS within the past 12 months for the company performing on this contract.

2. You Have Prior Approval From OFCCP

The facility(ies) involved in the performance of this contract has within the past 24 months undergone an audit and received approval by the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and is in compliance with all other requirements of E.O. 50 and its implementing Rules.

B. PART I - CONTRACTOR/SUBCONTRACTOR INFORMATION

1. State the name of your company.
2. State the full address of the company's principal place of business and/or NYC Office.
3. Identify the Chief Operating Officer of the company. Please provide a telephone number.
4. Please provide the name and business telephone of designated Equal Opportunity Compliance Officer.
5. State the name of the prime contractor and contact person, if it is not your company.
6. State the following information, respectively:
 - (a) the NYC contracting agency with which your company (or the prime contractor) has the construction contract;
 - (b) identify the (sub)contract value;
 - (c) identify the Project Developer (applicable to Industrial Commercial Incentive Program (ICIP) contracts only);
 - (d) state the project/contract number which applies to the overall contract (applicable to federal and City-funded contracts only);
 - (e) state the lot and block number for the project (applicable to ICIP contracts only);
 - (f) state the projected commencement date for your company's participation on this project; and

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- (g) state the projected completion date for your company's participation on this project.
- 7. Provide a trade description of the work you will perform on this project and address where the work will be performed.

NOTE: SUBCONTRACTORS - THIS INFORMATION CAN BE OBTAINED FROM THE CONTRACT YOU HAVE WITH THE PRIME CONTRACTOR.

- 8a. This question refers to whether your company's particular facility locations that have been reviewed and/or certified by DLS within the past 12 months.
- 8b. If all of the facilities are involved in this proposed contract then you may complete and submit only Parts I and IV of the Employment Report for each operating facility. Be certain to identify the date on which you submitted DLS completed Employment Report, the name of the City contracting agency with which the contract was made, and the name and telephone number of the person to whom the Employment Report was submitted.
- 9. Was an approval issued in the last 24 months pursuant to an OFCCP Audit of the facility for which this Employment Report is being submitted? When answering this question, be careful to consider only those locations which the OFCCP actually audited. DLS will not consider OFCCP approvals and certifications for facility locations which were not audited.
 - (a) Identify the reviewing OFCCP office by its name and address;
 - (b) Was an unconditional certificate of compliance issued within the past 24 months by the OFCCP. If yes, attach a copy of the certificate in lieu of completing Employment Report Parts II and III; and if applicable, provide a copy of all stated OFCCP findings. Include copies of all corrective actions and documentation of OFCCP's performance.
- 10. Please provide a copy of any Collective Bargaining Agreement(s) which is negotiated through an employer trade association on behalf of your organization or any of its affiliates.

C. PART II - EMPLOYMENT POLICIES AND PRACTICES

REMEMBER TO LABEL ALL DOCUMENTS WITH THE QUESTION NUMBER FOR WHICH THEY ARE SUBMITTED

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Questions

11a. - j. You must respond to the questions as to whether or not your firm has documents reflecting written policies, benefits and procedures. If so, then you must identify by name each document in which the policy(ies), procedure(s) and benefit(s) is located and submit copies of all of the document(s).

If your firm follows unwritten practices or procedures, then you must explain in writing how they operate.

Questions

12a. and b. There are two parts to this question. Part (a) concerns the manner/ methods by which you comply with the requirements of the Immigration Reform and Control Act of 1986 (IRCA).

Part (b) inquires into where and how I-9 forms are maintained and stored.

Questions

13a. and b. Part (a) requirement that an applicant or employee be subjected to a medical examination at any given time.

Part (b) submission of medical information questionnaires used by the company.

Questions

14a and b For part (a) indicate the existence and location of all statements of your firm's Equal Employment Opportunity policy and to attach a copy of each statement.

For part (b) submit your current Affirmative Action Plan(s).

Questions

15a and b If your firm or collective bargaining agreement has an internal grievance procedure, for (a), indicate this and submit a copy of the policy and procedure.

If unwritten, for (b), explain its nature and operation. Explain how your firm's procedure addresses EEO complaints.

Question

16. If your employees have used the procedure in the last three (3) years, please submit an explanation in the format indicated below:

NUMBER COMPLAINT(s)	NATURE OF THE COMPLAINT(s)	POSITION(s) OF COMPLAINANT(s)	INVESTIGATION CONDUCTED YES/NO	CURRENT STATUS DISPOSITION
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Question

17. Indicate whether in the past three (3) years complaints have been filed with a court of law or administrative agency, naming your company as a defendant (or respondent) in a complaint alleging violation of any anti-discrimination or affirmative action laws. If yes, develop and submit a log to show, for each administrative/and or judicial action filed, the following information:

NAMES(s) OF COMPLAINANT(s)	ADMINISTRATIVE AGENCY OR COURT IN WHICH ACTION WAS FILED	NATURE OF THE COMPLAINT(s)	CURRENT STATUS	IF NOT PENDING, THE COMPLAINT'S DISPOSITION
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Question

18. Identify each job for which a physical qualification exists. Identify and explain the physical qualification(s) for each stated job. Submit job descriptions for each job and the reasons for the qualifications.

Question

19. Identify each job for which there exists any qualification related to age, race, color, national origin, sex, creed, disability, marital status, sexual orientation or citizenship status. Identify and explain the specific related qualification for each job stated. Submit job descriptions for each job and the reasons for the qualifications.

D. PART III: CONTRACT BID INFORMATION AND PROJECTED AND CURRENT WORKFORCE FORMS

- FORMA. CONTRACT BID INFORMATION - USE OF SUBCONTRACTORS/TRADES
- FORMB. CURRENT WORKFORCE FOR WORK TO BE PERFORMED ON THIS PROJECT.
- FORM C. PROJECTED WORKFORCE FOR WORK TO BE PERFORMED ON THIS PROJECT.

PART III-A CONTRACT BID INFORMATION REGARDING USE OF SUBCONTRACTORS

Your projections for the utilization of subcontractors on the proposed contract are to be provided in this section. Information is to be provided to the extent known at the time the ER is filed for review by DLS.

A chart has been provided for the identification of subcontractors. If "subcontractor's name" is unknown, so state. Under "ownership", enter the appropriate race/ethnic and gender code. If the contract is federally funded or assisted and the subcontractor is being utilized in accordance with applicable federal requirements with respect to Minority Business Enterprise or Woman Business Enterprise requirements, enter the appropriate code. This will also apply to state funded contracts with similar requirements for minority and female owned businesses.

SIGNATURE PAGE

The signatory of this Employment Report and all other documents submitted to DLS must be an official authorized to enter into a binding legal agreement.

THE SIGNATURE PAGE MUST BE COMPLETED IN ITS ENTIRETY AND NOTARIZED. ONLY ORIGINAL SIGNATURES WILL BE ACCEPTED.

REVISED 4/00

ATTACHMENT 9 - CRITERIA FOR PASSTHROUGH CONTRACTS
DIXON PLACE

CRITERIA AND REQUIREMENTS FOR PASSTHROUGH CONTRACTS
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I. INTRODUCTION

The passthrough contract mechanism provides a means for cultural institutions and organizations with funding from the New York City capital budget to modify to manage directly construction projects at their facilities. Through this mechanism, which is intended for complex capital projects of \$1 million or more, the cultural organization contracts directly with the City, which acts through its Department of Cultural Affairs (DCA) and Department of Design & Construction (DDC), agreeing to complete a guaranteed scope of work for a fixed financial contribution by the City. The organization, not the City, bears the responsibility to cover any cost overruns.

Through a passthrough contract, the cultural organization is given the right to oversee design, schedule work around its programmatic and operational needs, and select and supervise the subcontractors, subject to certain City policies and procedures. The passthrough contract mechanism differs from standard City construction contracts in that it (1) allows the cultural organization, rather than the City, to directly stage and supervise the work, (2) provides for a modified form of public bidding, and (3) enhances the integration of work that is both publicly and privately funded.

Passthrough contracts are the exception, rather than the rule, for City funded capital projects. The City makes the decision to award a passthrough contract on a case-by-case basis. The purpose of these guidelines is to set forth the criteria for the award of passthrough contracts, and the policy considerations and procedures applicable to the award of passthrough contracts.

II. CRITERIA

A. CITY FUNDING THRESHOLD

Passthrough contracts are only appropriate for projects in which the City has committed funds in excess of \$1 million.

B. PROJECT COMPLEXITY/EXPERTISE OF CULTURAL ORGANIZATION

One of the primary justifications for the passthrough contract is that it enables the City to benefit from the expertise of a particular cultural organization in (1) managing its premises, and (2) designing and constructing facilities intended for its special programmatic needs. Accordingly, a cultural organization requesting a passthrough contract must demonstrate that the successful completion of the project requires the special knowledge and expertise possessed by that organization.

Another justification for the passthrough contract is that by giving the cultural organization control over the phasing and scheduling of work, it enables the cultural organization to minimize disruption to the services it offers the public. Therefore, the cultural organization may demonstrate that the project presents complex scheduling issues which it is in the best position to resolve. For example,

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the project may involve work in multiple locations, requiring precise phasing, program/personnel shifts or special security measures; or it may have to be done in dark time or at an accelerated pace so that public programming at the facility is not restricted. The need to fit the project within the context of a formal capital maintenance or master plan may also justify the use of a passthrough contract, provided that the organization has raised funding for, and is actively implementing, such plan.

C. MANAGERIAL CAPABILITY OF CULTURAL ORGANIZATION

Before a passthrough contract may be awarded, the cultural organization must evidence the ability to manage the overall project and supervise construction. Most helpful in this context is evidence that the cultural organization has a construction staff and has successfully managed projects of a similar size and complexity in the past. At the very least, the cultural organization must demonstrate that (1) it has someone on staff, or has engaged a consultant, with significant construction management experience, and (2) it is committed to ongoing capital planning and maintenance at its facility; e.g., by having a capital maintenance or master plan.

D. FINANCIAL CAPABILITY OF CULTURAL ORGANIZATION

In every passthrough contract, the cultural organization has the obligation to cover any and all cost overruns. The City will neither contribute more than the contract price, nor accept a scope of work less than that set out in the contract. The organization must establish a Project Reserve, consisting of non-City funds in an amount equal to at least 10% of the construction cost estimate approved by DDC. To qualify for a passthrough contract, a cultural must demonstrate its ability to meet these financial obligations.

E. STATUS OF RESULTING FACILITY

Passthrough contracts are most appropriate for projects that will result in facilities immediately usable by the cultural organization. For example, in the case of a museum wing which is in a state of disrepair and closed to the public, a complete renovation of one floor so that it can be reopened for public use is preferable to a partial restoration of the entire wing that does not enable the facility to reopen. In general, passthrough contracts are not awarded solely for purposes of design.

F. LEVEL OF PRIVATE FUNDING

An additional justification for the passthrough contract is that it empowers cultural organizations to use the City's funding to leverage private dollars for capital projects. For this reason, cultural organizations are generally expected to secure private contributions for passthrough projects to supplement the public funds committed by the City.

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III. PASSTROUGH CONTRACT TERMS

A. GENERAL

REIMBURSABLE COSTS/DIRECTIVE #10. Under the passthrough contract, the City will pay only those direct costs incurred by the cultural organization in the performance of the work, up to an amount not to exceed the contract price. Construction costs will be paid on a reimbursement basis, and advance payments will be allowed only for the ordering of materials, fixtures and equipment. The City will pay only for costs that are capital eligible pursuant to Internal Control and Accountability Directive #10 issued by the City Comptroller. The City will not, under any circumstances, reimburse a cultural organization for administrative or other overhead expenses, staff time, legal or accounting fees.

CITY FUNDED WORK. Regarding projects to be jointly funded by the City and the cultural organization, the City funded scope of work must be differentiated from the privately funded scope of work. Unless otherwise indicated, contract requirements will apply only to the City funded work.

B. REQUIRED PROVISIONS

Certain required provisions are standard to City passthrough contracts. This section discusses some of the major ones, but is not meant to be exhaustive.

PRIOR APPROVAL. Prior approval by the City is required for:

- Plans, specifications, and cost estimates at schematic, preliminary, and final design stages;
- Selection (and selection process) of subcontractors and consultants;
- Change orders affecting scope and/or operating costs and all change orders above \$15,000. Once the aggregate of unapproved change orders exceeds \$100,000, the City must approve all further change orders.

Note: Major scope changes may require an amendment to the contract and a new contract approval process.

COMPETITIVE BIDDING. The cultural organization, acting as prime contractor, must use a competitive sealed bid process for engaging subcontractors. At least three qualified bids must be obtained for each construction contract on the basis of written bid packages. The contract must be awarded to the low bidder, unless a waiver is granted by DDC, in strict adherence to the Rules of the Procurement Policy Board.

Note: Waivers are granted only in the rarest of cases. Competitive bidding should be viewed by

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cultural organizations as an essential passthrough contract procedure.

WICKS LAW. The cultural organization, acting as prime contractor, must bid the project with separate specifications for electrical, HVAC, and plumbing trades in compliance with the multiple contracting provisions of the New York State General Municipal Law, §101, also known as Wicks Law.

LBE PROGRAM. The cultural organization, acting as prime contractor, must award at least 10% of the passthrough contract amount specified for construction to subcontractors that are certified Locally Based Enterprises (LBEs), in compliance with Local Laws 49 and 25. Design and design-related scope items are exempt from the LBE requirement. The LBE program is administered by the Department of Business Services, Division of Economic and Financial Opportunity (DBS/DEFO). That agency maintains a directory of certified LBEs, which is updated daily.

The LBE program was first established by an Executive Order in 1980, and has been maintained by Local Laws 49 (1984) and 25 (1989). The purpose of the LBE program is to promote the development of business and employment within economically disadvantaged areas of the City and to ensure that small enterprises conducting business in such areas or employing economically disadvantaged persons receive a fair share of construction contracts awarded by the City. From 1992 to 1998, The LBE requirement was superseded by the Minority/Women Business Enterprise (M/WBE) requirement. However, the M/WBE requirement sunset in June 1998. As a result, the LBE requirement is once again in full force and effect.

If the cultural organization is not able to engage a sufficient number of LBEs to meet the 10% requirement, despite a good faith effort, it may request that DDC seek a full or partial waiver of the LBE requirement from DBS/DEFO. However, waivers are only granted in cases where the cultural organization has made every possible effort to comply with the LBE requirement.

VENDEX/DLS SUBMISSIONS. Both the cultural organization as prime contractor, and all of its subcontractors and consultants with contracts in excess of \$100,000 or with aggregate City contracts in excess of \$100,000 in a given year, must submit the necessary Vendor Information Exchange System (VENDEX) questionnaires. These questionnaires have been developed by the Mayor's Office of Contracts to collect information from vendors who wish to do business with the City. The information is collected to ensure that the City does business only with responsible vendors, as mandated by the City Charter. VENDEX questionnaires are subject to a multi-agency review involving DDC, the Department of Business Services (DBS), the Department of Investigation (DOI), and the Inspector General (IG). The duration of review depends on the quality and completeness of the vendor's submission.

The cultural organization, its subcontractors, and consultants with contracts in excess of \$50,000 or with aggregate City contracts in excess of \$50,000 in a given year must also submit a Division of Labor Services (DLS) employment report. The purpose of this report is to review the equal employment opportunity practices of vendors to ensure compliance with City policies.

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Every passthrough contract requires a new VENDEX and DLS submission, regardless of past contracts and submissions. VENDEX and DLS approval must be obtained for the cultural organization itself before the passthrough contract can be registered with the City Comptroller. VENDEX and DLS approval must be obtained for subcontractors and consultants before they commence work on the project. Subcontractors and consultants who begin work prior to obtaining the necessary approvals assume the risk of non-payment by the City.

INSURANCE. The cultural organization must carry insurance on the project, including all risk (full replacement value), worker's compensation and statutory disability, general liability and property damage, and automobile liability. Subcontractors must also have general liability and property damage insurance. Architectural and engineering consultants must carry professional liability insurance.

BONDING. Performance and payment bonds will be required on all construction subcontracts exceeding \$250,000, except those awarded to LBEs.

IV. CONTRACT NEGOTIATION PROCESS

A. PRELIMINARY DISCUSSIONS WITH DCA

Cultural organizations interested in using a passthrough contract for a project to which City capital funds have been committed should contact DCA at the early stages of project development to discuss the feasibility of a passthrough.

B. DESIGN DEVELOPMENT

CITY FUNDED DESIGN. If the City capital appropriation for the project includes both design and construction funds, the City will first enter into a standard City design contract for the design of the project. In such instances, DDC will award a consultant contract to a design consultant selected through the City's regular consultant selection procedures in consultation with the organization.

NON-CITY FUNDED DESIGN. Because of the time necessary to award and register a City design contract, a decision by the cultural organization to fund design privately may hasten the progress of the project. However, prior to awarding a private design contract for a proposed passthrough project, the organization should obtain DCA and DDC approval of the selection of that consultant and the terms of the consultant's contract. Thereafter, DCA and DDC will review design documents and cost estimates at various milestones and, in addition, may do a value engineering study of the design.

C. FORMAL PASSTHROUGH REQUEST

Upon completion of design, a cultural organization intending to request a passthrough contract must formally advise DCA by sending to the Assistant Commissioner for Capital Projects all of the following documents:

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JUSTIFICATION LETTER. The letter must describe the project's background, detailing its objectives, its relation to a master plan, and the ways in which it would serve the public. The letter must also explain the circumstances of the project that justify use of a passthrough contract instead of standard City procedures, addressing the following criteria, which are described fully in §II(A)-(F) of these guidelines:

- City Funding Threshold;
- Project Complexity/Expertise of Cultural Organization;
- Managerial Capability of Cultural Organization;
- Financial Capability of Cultural Organization;
- Status of Resulting Facility; and
- Level of Private Funding.

MANAGEMENT PLAN. The project management plan must contain the following items:

- Statement of management strategy describing how the project will be staged and how it will be managed by the organization; i.e., by in-house staff, through a construction management firm, etc.;
- Statement of intended management methods with special attention on adhering to budget and schedule;
- Description of selection process for consultants and construction managers;
- Descriptions of the roles and responsibilities for each project team member;
- Projections of time to be spent by each team member on the project;
- Organizational flow chart indicating management structure;
- Resumes of the project team members with emphasis on credentials and experience relevant to the project; and
- Project schedule.

NARRATIVE SCOPE. The narrative scope should be a detailed, prose description of the overall project. It should include a discussion of the project's origin and purpose. If the project represents a particular phase of the cultural organization's master plan, it should describe the work already done

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on the master plan and explain the relationship between the project and the master plan. The narrative scope should also specify the components of the project to which City funding would be applied.

GUARANTEED SCOPE (EXHIBIT "A"). This must be a comprehensive, detailed, and itemized scope of work for the City-funded portion of the project containing a discrete cost estimate for each item. The guaranteed scope items must be broken down into separate categories for design and other soft costs, general construction, plumbing, electrical, and HVAC. The guaranteed scope of work, after receiving final approval by DDC, will be annexed to the passthrough contract as Exhibit "A". The cultural is obligated to furnish all guaranteed scope items at no additional cost to the City.

OPTIONAL SCOPE (EXHIBIT "B"). The optional scope takes the same format as the guaranteed scope; but lists scope items to which a balance of funds may be applied upon completion of the Exhibit "A" items, should there be a cost savings on the project. The optional scope of work, after receiving final approval by DDC, will be annexed to the passthrough contract as Exhibit "B". Neither the construction contingency nor the Project Reserve may be used to fund optional scope items until the City has approved the substantial completion of the project.

BOARD RESOLUTION. The cultural organization must submit a resolution of its Board of Trustees, or analogous body, (1) guaranteeing completion of the project at no additional cost to the City, and (2) committing the cultural organization to the maintenance of a Project Reserve of private funds totaling at least 10% of the estimated cost of the guaranteed scope. The Board Resolution will be annexed to the passthrough contract as Exhibit "C".

FUNDING PLAN. The funding plan must outline all current and anticipated sources of financial support for the project, both public and private. For each funding source listed, the plan must indicate its status, when funds are expected to be received, any restrictions placed on the use of the funds, and to which scope items the funds would be applied.

D. PROGRAM

Upon receiving a cultural organization's formal request for a passthrough contract, DCA and DDC will review the request materials to determine whether the proposed project is appropriate for a passthrough contract. Should the agencies decide to proceed with a passthrough contract, DCA will notify the cultural organization, and issue a Program to DDC. A Program is a formal explanation of the project.

E. TECHNICAL REVIEW

Once DCA issues a Program to DDC, the cultural organization must submit to DCA and DDC the following items:

- 8 sets of design documents (7 sets for DDC; 1 set for DCA);

ATTACHMENT 9 - CRITERIA FOR PASSTHROUGH CONTRACTS DIXON PLACE

- Detailed professional cost estimate adhering to the format set forth in the **Guide for Design Consultants** issued by DDC; and
- Description of the selection process for the construction team including copies of the bids submitted by all subcontractors.

DDC will then conduct a technical review of the design documents. The purposes of technical review are to (1) verify project costs, (2) assess how well the project relates to on-going projects and future capital needs, (3) minimize the need for field change orders during construction, and (4) ensure that the project has been designed in the most efficient way possible. As part of its review, DDC will perform a verification of the cost estimate submitted by the cultural organization. In the case of technically complex projects with privately funded designs, DDC may choose to engage an outside consultant to perform a value engineering study. The purpose of such a study is to evaluate the feasibility of the design and investigate possible cost savings. The cost for such consultant's services would be taken from the City capital appropriation for the project.

Following technical review, the cultural organization must comply with any revisions to project documents requested by DCA or DDC. The project cannot move forward until all revised documents are received by the two agencies.

F. COVENANT AGREEMENT

In order to meet City capital eligibility requirements, cultural organizations whose facilities are not owned by the City must enter into a "declaration of restrictive covenant" agreement with the City, whereby they promise to operate as a nonprofit cultural organization for a period of approximately thirty years.

G. NECESSARY REGULATORY APPROVALS

Prior to contract execution, the cultural organization, with input from DCA and DDC, must obtain all necessary regulatory approvals pertaining to design, such as approval by the Art Commission, the Landmarks Preservation Commission, or completion of the Uniform Land Use Review Process (ULURP). The regulatory approvals required vary from project to project. Cultural organizations unsure about the requirements for any specific project should consult DCA or DDC.

H. DRAFTING OF PASSTHROUGH CONTRACT

Following technical review, counsel for DCA and DDC will initiate discussion of the passthrough contract with counsel for the cultural organization. As indicated in §III(B) of these guidelines, certain required provisions are standard to City passthrough contracts. The City will not agree to changes in its standard provisions unless a particular case presents a highly compelling circumstance.

ATTACHMENT 9 - CRITERIA FOR PASSTHROUGH CONTRACTS
DIXON PLACE

V. PASSTHROUGH CONTRACT APPROVAL PROCESS

A. CONTRACT PROCUREMENT

EXECUTIVE CONSULTANT SELECTION COMMITTEE (ECSC) PRESENTATION. ECSC is an internal DDC Commissioner-level committee that must review and ratify all procurement decisions.

PUBLIC ADVERTISEMENT. Following ECSC, DDC must advertise the passthrough project in the *City Record*.

PUBLIC HEARING. Public hearings are held on a regular basis by the Mayor's Office of Contracts (MOC) and must be calendared at least three weeks in advance. Passthrough contracts go to public hearing as "sole source agreements," which are regarded as special cases in the Procurement Policy Board Rules.

REQUEST FOR AWARD (RFA). Following the public hearing, DDC must submit a Request for Award (RFA) to MOC. Since passthrough contracts are for amounts in excess of \$1 million, the RFA must be approved by the Deputy Mayor in addition to MOC.

B. BUDGET APPROVAL

During the procurement process, the Office of Management & Budget (OMB) must issue a Certificate to Proceed (CP) and Budget Modification approvals. For contracts in excess of \$10 million, approval must also be obtained from the Financial Control Board.

C. SUBMISSION OF VENDEX AND DLS FORMS

VENDEX and DLS submissions are discussed at length in § III(B) above.

D. REGISTRATION OF PASSTHROUGH CONTRACT

After all necessary approvals have been issued, the passthrough contract may be executed and registered by the City Comptroller.

E. AWARD OF PASSTHROUGH CONTRACT

The final step in the passthrough contract approval process is award of the contract. Following registration by the Comptroller, DDC, through its Agency Chief Contracting Officer (ACCO) officially awards the passthrough contract.

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VI. CONSTRUCTION

A. CONSTRUCTION KICK-OFF

The construction kick-off may take place immediately following the award of the passthrough contract.

B. REGULATORY COMPLIANCE

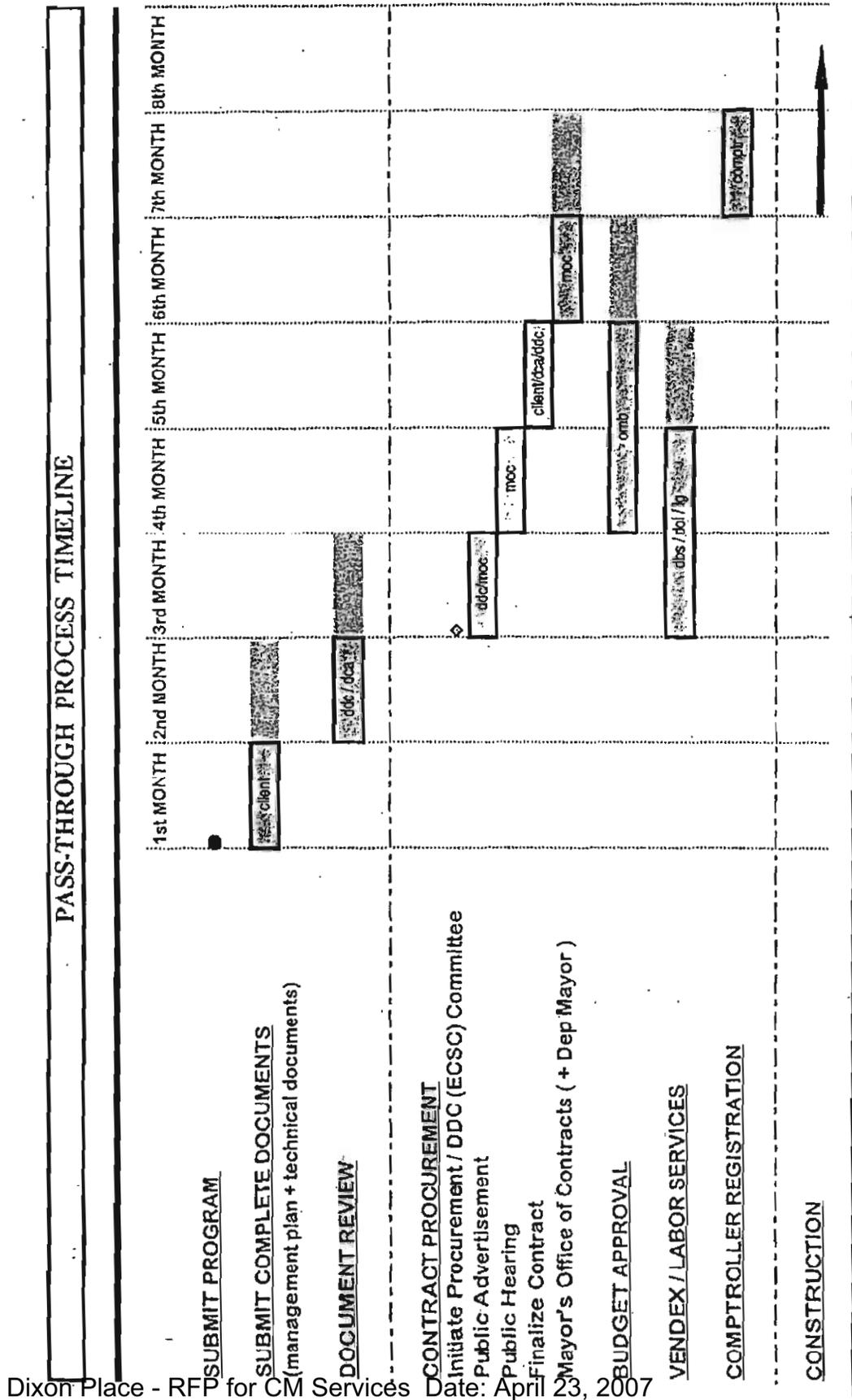
It is the responsibility of the cultural organization to comply with all Codes and obtain all necessary inspections and approvals, e.g., Department of Buildings (DOB), Fire Department (FDNY), Landmarks Preservation Commission, Art Commission, in a timely manner, prior to substantial completion.

VII. CONCLUSION

These guidelines do not seek to detail every single procedure that must be followed prior to the award of a passthrough contract. Nor do they seek to address in detail the manner in which passthrough contracts are to be implemented following award. Rather, the intent of these guidelines is to explain the criteria for the use of passthrough contracts and to summarize the principal procedural steps involved in passthrough contract negotiation and approval. Questions regarding these guidelines or other aspects of passthrough contracting may be addressed to the Capital Projects Unit at the Department of Cultural Affairs.

02/13/01

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note: timeframes shown above are optimal durations without delays, and based on complete submissions + timely actions

- Legend**
- dca = dept of cultural affairs
 - ddc = dept of design and construction
 - omb = office of management and budget
 - dbs = dept of business services
 - dol = dept of investigation
 - moc = mayor's office of contracts
 - ig = inspector general
 - compt = comptroller
 - ecsc = exec consultant selection committee