Mark, On the whole this is great legislation. I ~~[illegible]~~ wish it would be made permanent for all public works projects. I like the prequalification of bidders, joint bidding of public works, OCIPs and broad acceptance of Intergovt agreements. I could do without the requirement for apprenticeship programs on jobs over $1 million (I guess they had to give the unions something), M/WBE requirement and use of ultra-low sulphur fuel. F.J.

MEMORANDUM

To: Commissioner Chris Ward

From: Mark Lanaghan

Re: Mayor's Program Bill: the Coordinated Construction Act for Lower Manhattan

Date: November 28, 2003

The Department of Consumer Affairs is developing legislation intended to streamline the contracting and construction process for all projects related to the redevelopment of lower Manhattan.

The bill has several key components:

1. Allows pre-qualified bidding for all projects related to lower Manhattan redevelopment.
2. Allows agencies involved in development to require telecommunications and energy infrastructure at no cost to the agency.
3. Allows agencies to secure bonds or insurance contracts which are normally the responsibility of the contractor.
4. Allows public agencies to "act individually or jointly to effectuate contracts for lower Manhattan redevelopment projects."

The Mayor's Office hopes to submit this bill for introduction in Albany in January. The draft bill attached here has been vetted and approved by Department of Design and Construction, Parks, and the Law Department.

DEP will not have direct oversight over any project related directly to redevelopment and therefore this bill will not impact our contracting and construction process. Any water and sewer design, contracting and construction related to lower Manhattan redevelopment will, like all new water and sewer main construction, be overseen by DDC.

After review of this bill by the BEE, BWSO, the DEP ACCO, and DEP Legal staff, it appears that this bill will have no adverse impact on DEP operations.

MEMORANDUM IN SUPPORT

LEGISLATIVE REFERENCE

TITLE AN ACT in relation to the redevelopment and revitalization of lower Manhattan.

SUMMARY OF PROVISIONS

Section One designates the law as the "Coordinated Construction Act for lower Manhattan".

Section Two states the legislative finding that the city and state of New York have a compelling interest in the quick, safe, fair and cost effective redevelopment of lower Manhattan, the area of New York City that suffered most grievously from the attack on the World Trade Center on September 11, 2001.

Section Three defines the agencies, the area, and the projects covered by the act.

Paragraph a defines the covered agencies as all State and New York City agencies and all public benefit corporations, public authorities and the school district of the City of New York.

Paragraph b defines the boundaries of lower Manhattan for the purpose of this Act.

Paragraph c defines the lower Manhattan redevelopment projects as those projects that are certified before January 1, 2014 as in lower Manhattan or as benefiting lower Manhattan and funded wholly or in part by the federal appropriations to facilitate recovery from and response to terrorist acts.

Paragraph d defines the scope of work entailed in projects.

Paragraph e defines public service providers.

Section Four contains provisions that will permit speed and fairness in the issuance of contracts for lower Manhattan redevelopment projects.

Paragraph a allows public agencies awarding contracts for lower Manhattan redevelopment to pre-qualify bidders, and establishes the criteria that will be used to pre-qualify. Such criteria include ability to handle particular types of complex work, financial capacity, compliance with labor standards, history of maintaining labor harmony, and compliance with equal employment requirements. It also requires that no fewer than five bidders be on each list and requires annual advertising to create the lists of pre-qualified bidders.

Paragraph b requires that contracts for all lower Manhattan redevelopment projects costing more than one million dollars include apprenticeship agreements that have been registered and approved by the State Department of Labor.

Paragraph c requires that all contracts awarded pursuant to this Act for lower Manhattan redevelopment projects follow the existing State law (Article 15-A of the Executive Law) in establishing procedures to ensure the participation of certified minority and women-owned businesses.

Paragraph d authorizes public agencies to include within a contract for a lower Manhattan redevelopment project any work to be done on non-publicly owned energy, telecommunications or other privately owned facilities that are located within or adjacent to the project construction area if the public agency deems it necessary or desirable to include such work for the successful completion of the project. The cost of such work shall not be assumed by the public agency except as otherwise provided by Chapter 357 of the Laws of 1988.

Paragraph e authorizes public agencies to secure any surety bond or insurance contracts that any contractor or subcontractor could ~~obtain~~. **Notwithstanding section 25 (2-a) of the** Worker's Compensation Law, alternate dispute resolutions can be used until January 1, 2014 for any lower Manhattan project for which a public agency procures a surety bond or insurance contract

Paragraph f mandates that public agencies require contractors and subcontractors to use only low sulfur fuel to power diesel-powered non road vehicles with engine horsepower rating of 60 HP and above on any lower Manhattan redevelopment projects and, where practicable, to reduce pollution emissions by retrofitting such vehicles with pollution control technology.

Paragraph g authorizes public agencies to act individually or jointly to effectuate contracts for lower Manhattan redevelopment projects with other public agencies, local development corporations, public service providers, or the Port Authority of New York and New Jersey. Before soliciting bids or proposals, public agencies that collaborate on projects pursuant to this authority must enter into a memorandum of understanding that identifies the procurement policies that will be followed.

Paragraph h includes a severability clause for any provision found to be unconstitutional.

Section 5 provides that the act would become effective immediately.

REASONS FOR SUPPORT

The city and state of New York have a compelling interest in the redevelopment of lower Manhattan, the area of New York City south of Houston Street, which suffered most grievously from the attack on the World Trade Center on September 11, 2001. In response to the damage caused by the attack, the federal government has thus far committed approximately $6 billion over a 10-year period for projects in lower Manhattan to improve infrastructure and transportation systems, create new residential neighborhoods and commercial development opportunities, and develop public spaces such as parks and cultural centers. The compelling interest in lower Manhattan's redevelopment requires that these federal funds, and any funds committed to lower Manhattan by the State and local governments, be invested wisely. This will require the public and private organizations involved in the redevelopment to coordinate their efforts to construct the projects quickly, safely, fairly, and cost effectively. The coordinated effort will encourage private sector firms now located in lower Manhattan to remain, and stimulate much-needed private sector investment in the area.

Some of the existing restrictions on the procurement activities of city and state public agencies will prevent a coordinated investment of public funds. If left unmodified, these restrictions will delay the economic revival of lower Manhattan and inhibit its contribution to the economies of the city, region, and state at a time when speed and the economic contribution are most needed. The bill exempts public agencies in the city and state from some procurement restrictions for publicly-funded projects while also assuring competitive processes that will secure the best work at the lowest possible cost in a timely and safe manner.

Before the September 11, 2001 attack on the World Trade Center, lower Manhattan was the third largest business district in the nation, accounting for more than $114 billion in economic output and about 15 percent of New York City's tax revenues. An extensive public transportation network, including subway and train lines, bus routes, and ferry terminals, connected lower Manhattan to the rest of city and region. This lower Manhattan economy had a multiplier effect, particularly on the travel, hotel, restaurant, and real estate industries.

The attack on the World Trade Center took 2,792 lives. Lower Manhattan sustained economic losses of more than $80 billion, including the loss of infrastructure, utilities, 100,000 jobs, 14 million square feet of office space, and half a million square feet of retail space. Despite federal aid, insurance proceeds, and other forms of reimbursement, lower Manhattan will sustain a net loss of at least $16 billion and approximately 60,000 jobs. These losses, traced directly to the World Trade Center attack, significantly compounded the effect of the national economic downturn on lower Manhattan. Since reaching a peak in the summer of 2000, the securities industry—the dominant force in lower Manhattan's economy—has seen a 70 percent decline in earnings. Vacancy rates for the office space that remains in lower Manhattan have grown at the fastest rate in the city, reaching 13.3 percent—and nearly 17 percent for Class A space—in the first quarter of 2003.

Recent evidence indicates that in the absence of quick and decisive public action to retain the existing companies and attract new ones to the area, these losses will continue and generate a devastating downward spiral. Neither the city nor the state can afford lower Manhattan turning into a ghost town. Public agencies have acted quickly and effectively in many areas, such as restoring the damaged Path and IRT subway lines.

Nevertheless, despite the high vacancy rates and relatively low rents in lower Manhattan, the great majority of the companies that were in the World Trade Center on September 11 have relocated outside the area and 20 percent have relocated outside the city and state. A survey of commercial tenants in lower Manhattan at the end of 2002 found that half were not sure they would renew their leases when they became due, primarily because of infrastructure-related concerns. One quarter of those who said they would not renew their leases, planned to leave the city and state. More recently, the chief executives of three major corporations cited transportation and infrastructure weaknesses as major problems facing businesses in lower Manhattan and stressed the danger that companies will leave as their leases expire. Moreover, even companies that remain or return to lower Manhattan have concluded that they will need to disperse their operations, keeping a smaller proportion of their workforce in the area. This workforce can be replaced only with private investments to bring in new companies, hotels, stores, and restaurants.

This legislation will strengthen coordination among the public and private sector organizations that will be responsible for the redevelopment of lower Manhattan. The purpose of the coordination is to assure that the redevelopment occurs expeditiously and with a speed that is compatible with safety, labor harmony, and fairness. By saving time, coordination also saves money, thereby assuring that the redevelopment projects will be constructed in the most cost-effective way to maximize the return on public funds.

The public organizations responsible for the redevelopment include New York City and New York State agencies, state and multi-state authorities, and not-for profit corporations, including the New York City Economic Development Corporation, and the lower Manhattan. Development Corporation whose jurisdiction is also the area below Houston Street. The private sector organizations include utility companies, construction contractors, building and construction trades, and hoteliers and housing developers. Together the public and private sectors are responsible for multiple projects concentrated in a small geographic area and with little time to accomplish all that is needed.

The legislation promotes coordination among these public and private organizations in two ways. First, it will make uniform the procurement requirements for all public agencies. Currently, one set of rules applies to city agencies, another to state agencies, and still another to each of the public authorities and nonprofit corporations. The legislation provides that all of the public agencies are subject to the same rules in contracting with the construction trades, conducting work with the public utilities, soliciting bids from contractors, ensuring participation by minority and women owned businesses, implementing interagency purchases, and obtaining insurance. Second, the more uniform rules facilitate cooperation or coordination among the public agencies and between them and the private sector organizations. The uniform rules are compatible with the public's interest in competitive processes that secure the best work at the lowest possible cost in a timely manner.

Several of the provisions are designed to directly promote speed while maintaining safety, high quality work, and fairness. In authorizing agencies to solicit bids only from prequalified contractors, the legislation aligns the rules governing city and state agencies and the Metropolitan Transportation Authority with those that govern the Port Authority. Prequalifying bidders will ensure that the critical work of reconstructing lower Manhattan is performed only by high quality firms with a proven track record in completing similar projects safely, harmoniously, and on time. Prequalifying bidders also will ensure that the work is performed only by firms with a demonstrated commitment to diversity in both the workforce and contracting community. The agencies are required to use contractors with approved apprentice training programs, promoting opportunity as well as high quality work. The legislation also requires the agencies to follow the current requirements of state law in establishing procedures to assure participation of minority and women owned businesses in construction projects in lower Manhattan. State agencies currently must establish goals for participation of certified minority and women owned businesses and, through outreach and monitoring, ensure that contractors make a good faith effort to attain those goals. This provides a uniform set of rules that has been designed and implemented over many years to promote fairness in the public procurement process.

Many of the provisions are designed to directly promote coordination and thereby to assure speed and cost effectiveness. The provision to permit the agencies responsible for infrastructures to include the work of the utilities in their solicitations will permit the city agencies and the utilities to coordinate their work on street reconstruction and repair, eliminating duplication, reducing public inconvenience, promoting speed, and saving costs. Savings can also be achieved through the provisions on insurance, which authorize the agencies to coordinate their procurement of insurance by purchasing one policy to cover multiple projects, thereby saving costs in premiums. The legislation also extends, for lower Manhattan redevelopment projects, the procedures for alternate dispute resolution set forth in state workmen's compensation law through January 1, 2014, when this legislation will expire.

The provisions also encourage cooperative interagency purchasing by specifically authorizing all of the public agencies to enter into cooperative agreements. Current State law authorizes such agreements in part and the legislation clarifies that such agreements are both permissible and to be encouraged. The legislation requires the public agencies to reduce the harmful emissions from the non-road vehicles that will be used in lower Manhattan construction by requiring the use of low sulfur diesel fuel and, where practicable, the retrofitting of such vehicles with state-of-the-art pollution control equipment. Since the state agencies and public authorities have already agreed to these measures, the city agencies will be able to join them in the purchases, thereby fostering environmental safety in a cost effective manner.

The ultimate goal of all of these provisions is for the public and private sectors to bring to the redevelopment of lower Manhattan the same sense of purpose and urgency that they brought to the clean up at the World Trade Center site.

AN ACT in relation to the redevelopment and revitalization of lower Manhattan

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known as the Coordinated Construction Act for Lower Manhattan.

§2. Legislative findings.

The city and state of New York have a compelling interest in the redevelopment of lower Manhattan, the area of New York City that suffered most grievously from the attack on the World Trade Center on September 11, 2001.

The legislature recognizes the historic importance of lower Manhattan to the economy of the city, State, and region. Before the attack, lower Manhattan was the third largest business district in the nation, accounting for more than $114 billion in economic output and about 15 percent of the city's tax revenues. As a result of the attack, 2,792 lives were lost, and lower Manhattan sustained losses of more than $80 billion. The economic losses have continued in the years since the attack. The legislature recognizes that decisive action is needed to prevent these losses from generating a devastating downward spiral.

In response to the damage caused by the attack, the federal government thus far has committed approximately $6 billion over a 10-year period for redevelopment projects in lower Manhattan. The public interest will be served by ensuring that these projects, as well as any projects in the area funded by the State and city governments, are constructed quickly, safely, fairly, and cost effectively. Assuring that public funds are spent wisely will, in turn, encourage private sector firms now located in lower Manhattan to remain, and stimulate other firms to invest in the area. This effort requires an unprecedented level of coordination among the public and private organizations responsible for the redevelopment. The purpose of this legislation is to make that coordination possible.

By allowing public agencies to plan their work with the utilities and make joint purchases, the legislation will promote speed, reduce public disruption, and lower costs. By subjecting public agencies to rules that promote high quality work, environmental safety, and fairness, we will further promote the public interest. The agencies will be able to solicit competitive bids from pre-qualified bidders with a record of specific performance, and of harmonious labor relations, on previous projects. For large projects, they will utilize contractors that have state-approved apprentice training programs, assuring opportunity as well as high quality work. By using low sulfur diesel fuel and, where practicable, retrofitting construction machinery, the agencies will reduce harmful emissions and protect our environment. And by requiring the agencies to establish procedures that assure participation of minority and women owned businesses, the legislation will promote fairness in the construction of these projects.

Ultimately, these provisions will help the public and private sectors to bring to the redevelopment of lower Manhattan the same sense of purpose, urgency, and harmony that they brought to the clean up at the World Trade Center site.

§3. Definitions. As used or referred to in this act, unless a different meaning clearly appears from the context:

a. "Public agency" shall mean any agency of the state of New York or the city of New York, the school district of the city of New York, any public benefit corporation, and any public authority.

b. "Lower Manhattan" shall mean the area to the south of and within the following lines: a line beginning at a point where the United States pierhead line in the Hudson river as it exists now or may be extended would intersect with the southerly line of West Houston street in the borough of Manhattan extended, thence easterly along the southerly side of West Houston street to the southerly side of Houston street, thence easterly along the southerly side of Houston street to the southerly side of East Houston street, thence northeasterly along the southerly side of East Houston street to the point where it would intersect with the United States pierhead line in the East river as it exists now or may be extended, including tax lots within or immediately adjacent thereto.

c. "Lower Manhattan redevelopment project" shall mean any project that has been certified prior to January 1, 2014 by the governor of the state of New York, the mayor of the city of New York, or the lower Manhattan development corporation, as a project whose realization will further the purposes of this act and that is in lower Manhattan, or is related to lower Manhattan and funded in whole or in part with federal funding pursuant to the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States, P.L. 107-38; the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, P.L. 107-206; or such subsequent federal appropriations as are made to facilitate recovery from and response to terrorist attacks.

d. "Project" shall include design, construction and reconstruction, rehabilitation, restoration, and modernization of buildings, structures and monuments and memorials on land or in water, including landfill or any pilings, piers, platforms, or decks, streets, transit facilities, ferry terminals, bikeways, parks and park facilities, telecommunication facilities, parking facilities, system replacements, and landscaping, and in addition, any dredging or filling or other activities related thereto.

e. "Public service provider" shall mean an entity providing one or more services that are subject to the jurisdiction of the New York state public service commission pursuant to section five or two hundred sixteen of the public service law or to the jurisdiction of the federal communications commission.

§4. a. Notwithstanding any general, special or local law or rule or regulation to the contrary, a public agency awarding a contract for a lower Manhattan redevelopment project may establish guidelines governing the qualifications of bidders entering into contracts for a lower Manhattan redevelopment project. The bidding may be restricted to those who have qualified prior to the receipt of bids according to standards fixed by the public agency. In determining whether a prospective bidder qualifies for inclusion on a list of pre-qualified bidders, the public agency shall consider the experience and record of performance of the prospective bidder in the particular type of work; as well as (1) the prospective bidder's ability to undertake the particular type and complexity of work; (2) the financial capability, responsibility and reliability of the prospective bidder for this type and complexity of work; (3) the record of the prospective bidder in complying with existing labor standards and maintaining harmonious labor relations; and (4) the prospective bidder's compliance with equal employment opportunity requirements and anti-discrimination laws, and commitment to working with minority and women-owned businesses through joint ventures or subcontractor relationships. The public agency may also consider such other factors as it deems appropriate. The public agency shall, not less than annually, publish in a newspaper of general circulation in the city of New York, an advertisement requesting prospective bidders to submit qualification statements. Lists of pre-qualified bidders shall be reviewed and updated not less than annually by the public agency. Lists of pre-qualified bidders may be established on a project-specific basis; provided, however, that any such list shall have no less than five bidders. The public agency procedures for prequalifying bidders shall include an appeals process for those denied a place on a pre-qualified list. The public agency may move forward on the contract award during such appeals.

b. Notwithstanding any general, special or local law or rule or regulation to the contrary, for lower Manhattan redevelopment projects that exceed one million dollars, the public agency shall require contractors and subcontractors to have, prior to entering into such contracts, apprenticeship agreements appropriate for the type and scope of work to be performed, that have been registered with and approved by the commissioner of the department of labor.

c. Contracts awarded pursuant to this act are contracts subject to the requirements of article 15-A of the executive law. For the award of contracts pursuant to this act, the city of New York shall be considered a state agency under article 15-a (or its successor) of the executive law for purposes of establishing goals for the participation of certified minority- and women-owned business enterprises in contracts for lower Manhattan redevelopment projects.

d. Notwithstanding any general, special or local law or rule or regulation to the contrary, to facilitate the timely and cost effective completion of utility work in lower Manhattan, the public agency may include in any contract for a lower Manhattan redevelopment project any work that it deems necessary or desirable for the completion of such project that requires the maintenance, support, protection or other accommodation of energy,

Joint Bidding utility work Diamond Asphalt out telecommunications or other private facilities or structures not publicly owned which are located within, traversing or adjacent to the construction area of such project, whether above, below or at ground level, including the removal, relocation, alteration, replacement, reconstruction or improvement of such facilities or structures, provided that the costs of work performed pursuant to this paragraph, including any incremental or administrative costs attributable to such work, shall not be borne by such public agency except as otherwise provided by chapter three hundred fifty-seven of the laws of nineteen hundred eighty-eight.

e. Notwithstanding the provisions of section twenty-five hundred and four of the insurance law, a public agency may, with respect to any lower Manhattan redevelopment project, negotiate, make application for, obtain or procure any surety bond or contract of insurance which can be obtained or procured by any contractor or subcontractor. Notwithstanding the provisions of subdivision 2-c of section 25 of the workers compensation law, until January 1, 2014 alternate dispute resolution procedures may be used for any project in lower Manhattan in which a public agency is procuring such surety bond or contract of insurance.

NCIP

f. Notwithstanding any general, special or local law or rule or regulation to the contrary, a public agency shall require contractors and subcontractors to use only low sulfur diesel fuel to power the diesel-powered non-road vehicles with engine horsepower (HP) rating of 60 HP and above used on lower Manhattan redevelopment projects and, where practicable, to reduce the emission of pollutants by retrofitting such non-road vehicles with oxidation catalysts, particulate filters, or technology with comparable or better effectiveness.

g. A public agency may participate in, sponsor, conduct or administer contracts for a lower Manhattan redevelopment project by acting alone or in collaboration with one or more other public agencies, local development corporations, public service providers, or the port authority of New York and New Jersey. When a public agency acts in collaboration with another entity as authorized by this section, they shall enter into a memorandum of understanding prior to soliciting bids or proposals which shall identify the procurement policies to be followed for the particular project.

h. Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§5. Effective date. This act shall take effect immediately.

COORDINATED CONSTRUCTION ACT FOR LOWER MANHATTAN
SUMMARY

To speed the rebuilding of Lower Manhattan, reduce costs, and promote safety and fairness, the City is pushing legislation at the State level. The proposed Coordinated Construction Act applies only through 2014 and only to public agencies constructing projects in lower Manhattan—the area south of Houston Street—and projects benefiting the area that are funded by federal funds for recovery from terrorist attacks.

The provisions of the bill are as follows.

Good

- **Allow public agencies to pre-qualify bidders.** This will assure high-quality work as well as speed. The required criteria include technical and financial ability to handle particular types of work, history of maintaining labor harmony, commitment to working with minority and women-owned businesses, and compliance with EEO requirements. At least five bidders must be on each list and the agencies must advertise every year to create the lists.

- **Require contracts over $1,000,000 to include NYS-approved apprenticeship agreements.** State law authorizes agencies to require such agreements; this bill requires it for large projects in order to promote safe, high-quality work and opportunity.

- **Require all public agencies to establish procedures for participation by minority and women owned businesses.** The bill requires all the agencies to follow existing state law in establishing goals for MWBE participation, conducting outreach, and monitoring contractors' good faith efforts to achieve the goals.

good

- **Allow Joint Bidding on infrastructure repair projects**. The bill would amend state law to authorize joint bidding for the work of the city and the utility and telecommunications companies in street reconstruction. The purpose is to streamline the procurement process and assure the lowest cost for both the city and the companies.

good

• **Allow agencies to procure owner controlled insurance (OCIPs).** The bill amends state law to allow OCIPs, and also extends the current law allowing alternate dispute resolution for workers' compensation through collective bargaining agreements—both of which reduce insurance costs.

• **Require agencies and their contractors and subcontractors to use ultra-low sulfur diesel fuel**. The provision applies to non-road vehicles above 60 HP and also requires the agencies to retrofit the vehicles wherever practicable.

good

• **Encourage and facilitate cooperative, interagency purchasing.** Another cost saving measure.