

ICAP COMPLIANCE BRIEFING

FOR DEVELOPERS, GENERAL CONTRACTORS AND SUBCONTRACTORS
(EXCEEDING \$1M IN CONTRACT VALUE)

SUMMARY

The Industrial Commercial Abatement Program (“ICAP”) is a New York City property tax abatement offering taxpayers a partial tax savings for a term of 8-25 years. ICAP projects with a total cost exceeding \$2,500,000 must satisfy certain requirements in furtherance of seeking project approval from the New York City Department of Small Business Services, Division of Labor Services.

QUICK TAKEAWAYS

1. Contractors shall not commence any new construction without acknowledgment of their DLS approval status from Herrick.
2. Contractors must make an effort (and are strongly encouraged) to award construction contracts to New York City certified M/WBE’s.
3. DLS requires the viewing of a Pre-Award video.
4. ICAP project Contractors must provide site access to representatives of DLS and DOF.

DEFINITIONS

Construction Employment Report (“CER”)

Department of Finance (“DOF”)

Department of Labor Services (“DLS”)

Equal Employment Opportunity (“EEO”)

Family and Medical Leave Act (“FMLA”)

Less Than \$1 Million (“LT\$1M”)

Minority Women Business Enterprises (“M/WBE”)

Pre-Award Conference (“PAC”)

Sexual Harassment Policy (“SHP”)

Supply and Services Employment Report (“SSER”)

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DETAILED GUIDELINES

M/WBE SUBCONTRACTORS

ICAP requires the solicitation of three “Certified M/WBE NYC Subcontractors” for each construction trade.

- Herrick will coordinate services with the GC in an effort to obtain M/WBE contract bids.
- DLS can assist in qualifying Subcontractors as M/WBE’s and can fast track cross certifications from other NYC or NYS agencies.
- It is **strongly recommended** that the GC award a “meaningful” number of contracts to M/WBEs.
- Although actual M/WBE participation is not currently a requirement, DLS may exercise discretion in project approval if it’s determined that the Developer did not make a good faith effort or did not procure “meaningful” M/WBE participation in the project.
- A list of NYC certified M/WBE’s can be found here: [Online Directory of NYC](#)

ANTI-DISCRIMINATION REQUIREMENTS

Developers, General Contractors and Subcontractors may not discriminate against any applicant for employment or against any employee for any employment decisions including but not limited to recruiting, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff termination and all other terms and conditions of employment on the basis of the New York City protected classes.

Developers, General Contractors and Subcontractors may not discriminate in the selection of its Contractors based on the NYC protected classes.

Additionally, Developers, General Contractors and Subcontractors must specify in all solicitations or advertisements of employees placed by or on behalf of Contractors that all qualified applicants will receive consideration for employment opportunities with regard to the M/WBE protected classes.

ANTI-DISCRIMINATION REQUIREMENTS (CONTINUED)

New York City recognizes the following 10 protected classes for the anti-discrimination requirements:

NYC'S 10 PROTECTED CLASSES:

Race	Creed
Color	National Origin
Sex	Age
Disability	Marital Status
Sexual Orientation	Citizen Status

EQUAL OPPORTUNITY EMPLOYMENT

Contractors must provide written notification of their equal opportunity commitments in connection with any work related to a project to each labor organization or representative of workers with which it has a collective bargaining agreement, other contract or memorandum of understanding.

ANTI-SEXUAL HARASSMENT REQUIREMENTS

Contractors must send written notification of their anti-sexual harassment policy in connection with any work related to the project to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding.

Sexual harassment or discrimination of any kind, including sexual harassment by employees, managers, vendors and customers, will not be tolerated on the job site. Sexual Harassment is defined as any harassment based on a person's sex, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature, including offensive remarks about a person's gender is strictly prohibited.

FAMILY MEDICAL LEAVE ACT

Developers and Contractors are required to adhere to the FMLA. Employees are permitted to balance their work and family life by taking reasonable unpaid leave under certain conditions.

The FMLA makes it unlawful for any employer to:

1. Interfere with, restrain or deny the exercise of any right provided under FMLA;
2. Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

The FMLA applies to all private sector employers who employ 50 or more employees for at least 20 work weeks in the current or preceding calendar year and who are engaged in or affect commerce - including joint employers and successors of covered employers.

PRE-AWARD CONFERENCE (“PAC”) TRAINING VIDEO

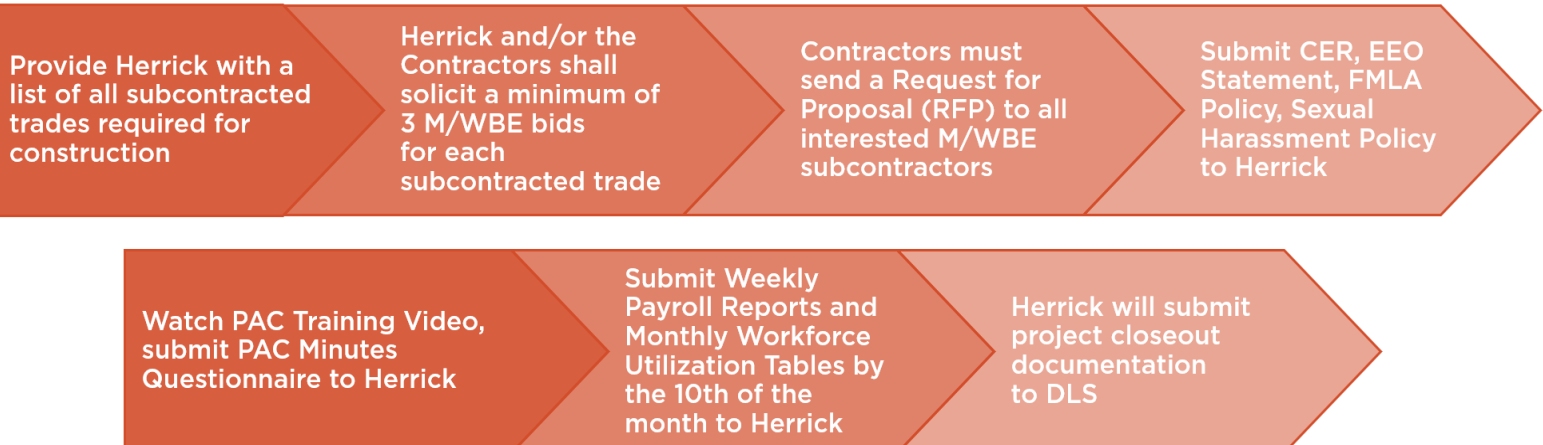
DLS has implemented an online video procedure to expedite the PAC process. The PAC video discusses the requirements, liabilities and anti-discrimination laws related to ICAP. DLS requires all applicants and contractors to view the PAC video as a pre-condition to receiving a PAC certificate.

A link will be provided with a questionnaire at the conclusion of the video, which must be completed to obtain a “Certificate of Completion”. The Certificate of Completion should then be forwarded to the Project Administrator at Herrick.

Please note that if the Applicant or Contractor have been issued a PAC certificate within the prior three years, it will not be necessary to rewatch the video.

PROCEDURES

ICAP COMPLIANCE REQUIREMENTS FOR DEVELOPER, GENERAL CONTRACTOR AND SUBCONTRACTORS WITH CONTRACTS EXCEEDING \$1,000,000



PROCEDURES (CONTINUED)

Contractors **cannot** award any subcontracts or commence construction until the above requirements have been completed.

The above requirements also apply to second-tier Subcontractors with a contract value greater than or equal to \$1,000,000.

ICAP COMPLIANCE REQUIREMENTS OF SUBCONTRACTORS WITH A CONTRACT VALUE LESS THAN \$1,000,000

Complete and submit a LT\$1M Certificate to DLS.

Subcontractors with a contract value less than \$1,000,000 cannot commence construction until after their LT\$1M Certificate has been submitted to DLS.

SUPPLY AND SERVICE PROVIDERS

ICAP COMPLIANCE REQUIREMENTS OF SUPPLY AND SERVICE PROVIDERS		
	Contract value equal to or greater than \$100,000	Contract value less than \$100,000
50 employees or more	Complete and submit a SSER	No action needed
Less than 50 employees	Complete and submit a Less Than 50 Employees Certificate	No action needed

Supply and Service providers are Subcontractors that manufacture and/or supply material to the project and have no onsite laborers.

M/WBE solicitations are not required for Supply and Service providers.

CONTRACTOR OBLIGATIONS

Contractors must acknowledge and covenant to the following rules and obligations:

- Must permit DLS access to the project site, records and certified payroll reports;
- Acknowledge that DLS has the right to suspend work on the project for a contractor's failure to allow DLS access to their workforce;
- Will not transfer employees from one job site to another in order to create the appearance of compliance;
- Provide Applicant and Herrick copies of all contracts, plans and other construction documents upon request;
- Provide Applicant and Herrick periodic project status updates upon request; and
- Shall promptly provide Herrick with a breakdown of the final construction costs upon completion of construction.

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