DEPARTMENT OF CULTURAL AFFAIRS

FY 2012 Capital Budget Workshop
WHY ARE WE HERE TODAY?

- To overview the capital funding process
  - What makes a cultural organization’s capital project successful
  - Funding constraints and time frames

- To initiate the process
  - Meet fellow cultural organizations and learn about City agencies (DCA, DDC, EDC, DCAS, OMB) involved in the process
  - Schedule a meeting with DCA project manager

David H. Koch Theater: Renovation
DCA’S GOALS FOR FUNDING CAPITAL IMPROVEMENTS

To enhance the public experience of cultural life in New York City through projects that:

- Increase accessibility to public cultural amenities throughout the City
- Contribute to the economic vibrancy of the City and maximize the effectiveness of public/private partnerships
- Preserve and promote the highest quality cultural facilities, programs and collections

Lillian and Amy Goldman Stone Mill at the New York Botanical Garden
Every project *must* establish a City interest by:

- **Restrictive Covenant**
  When capital funds are being used for a capital improvement (for non-City owned property)

- **Security Agreement**
  When capital funds are being used to invest in movable equipment or systems (e.g. computer system, furniture) (applies to all capital projects)
WHAT EXPECTATIONS GO ALONG WITH MY FUNDING?

Organization agrees to:
- Follow the City process, comply with all requirements, and obtain approvals in order to successfully complete the project
- Initiate project with DCA and respond to City requests for information in a timely manner

Your funding allocation does **NOT** guarantee:
- Required approval by government entities
- Disbursement of funding according to a pre-conceived timeline
- Disbursement of funding for a pre-conceived scope of work or equipment purchase

**FUNDS ARE NOT SAFE FROM BUDGET CUTS**

Noguchi Museum: Renovation
ORGANIZATION RESPONSIBILITIES

- Design approvals for non-City funded design or construction projects on city-owned property, and capital projects on privately owned property using City funds for design or construction
  - DCA approval at design phase milestones (Schematic Design, Design Development, Construction Documents)
  - DCA approval prior to submission to PDC or LPC
  - Include information on operating implications (increased costs, maintenance, security, etc.)

- Operational Responsibilities:
  - Filings with DOB, FDNY, etc.
  - Violations
  - Maintenance Plan
  - Certificate of Occupancy
  - Public Assembly permits

- DCA approval of donor credit, naming rights, press announcements and signage
WHERE ARE WE NOW IN THE CITY’S BUDGET CYCLE?

- Preliminary Budget (January Plan)
- Executive Budget (April Plan)
- September Plan

These plans occur three times during the fiscal year, when the City’s budget is updated to reflect current project funding needs.
RESTRICTIVE COVENANT & SECURITY AGREEMENT

- **Use Restriction**: The improved property or purchased equipment must be used consistently with the mission of the organization for the duration of the useful life of the improvement or equipment.

- **Recorded Against (Real) Property**: Any current and future owners (or lessors) of property are bound by use restriction (during the covenant term).

- **First Priority Lien**: Other liens against property (mortgages, financing, loans, etc.) must be subordinated to the City’s interest.

**YOUR ORGANIZATION MUST** agree to these conditions to receive capital funding.
FULLY FUNDING THE PROJECT

Before the project starts, any gap between funds available and total project cost **must** be closed through secure private sources such as:

- **Non-City contributions**
- **Bank financing**

St. George Theater: Equipment Procurement
CAPITAL CONSTRUCTION PROCESS

1. DCA
   - Scope Review & Approval
     - Establishes project eligibility and feasibility

2. DDC/EDC/DCA/DCAS
   - Administration & Management
     - Works with organization, consultants, and contractors to manage design and construction process

3. OMB
   - Project Review & Approval
     - Reviews the project for compliance and issues necessary funding approvals

4. Comptroller
   - Final Review & Approval
     - Reviews and authorizes capital projects for conformity with applicable accounting directives
In order to attain capital eligibility, a project must comply with the Directive 10 and its definition of comprehensive betterment.

- The Directive 10 defines **comprehensive betterment** as extensive, physically **connected**, and typically involved in all four trades. It specifically does not allow work in non-contiguous spaces unless they are functionally related, i.e. dependent upon each other and necessary for the asset to function for its primary purpose.

- If the project does not meet this definition of **comprehensive betterment**, the cost of renovations to different areas of a building or element of infrastructure must each be $35,000 minimum.
CAPITAL ELIGIBILITY

1. Scope Review & Approval

Comprehensive
- Creates new asset/systems
- Upgrade of existing asset

City Purpose
- Provides public benefit for improvement’s or equipment’s useful life

Long Term Investment
- Equipment: 5-10 years
- Construction/renovation: 10-30 years

Minimum City Contribution
- Moveable equipment: at least $35K
- Non-moveable equipment: at least $250K
- Construction/renovation: at least $500K
  (for non-City owned property)
PROJECTS WITH CAPITAL ELIGIBILITY

1 Scope Review & Approval

- Construction/Renovation
  - Construction of new facility
  - Expansion of existing facility
  - Upgrade/renovation of contiguous existing space
  - Upgrade/replacement of building system e.g. HVAC
  - $500K minimum initial City contribution for non-City owned property

- Equipment
  - Equipment systems or standalone equipment (at least $35K)
  - $250K minimum for non-moveable equipment

Exit Art: Equipment Procurement
INELEGIBLE CAPITAL COSTS

- **Maintenance**
  - Repair/Maintenance work e.g. roof patching
  - Painting and carpeting unrelated to capital project
  - Extended warranties
  - Maintenance agreements & service contracts

- **Operational**
  - Employees’ salaries
  - Administrative expenses
  - Training

- **Studies**
  - Environmental assessments (as a stand-alone item)
  - Feasibility studies

- **Fixtures**
  - Fixtures or equipment that requires attachment to the property is ineligible without a restrictive covenant
  - Organization-specific signage/donor plaques

- **Other**
  - Fundraising, financing, or legal fees
  - Work performed prior to the capital award
  - Organization’s project management costs
  - Custom databases
  - Owner’s representative fees
These Local Laws and City Policies may apply to your Capital project.

**Local Law 86: Green Buildings Law**
- Applies to capital projects with City contribution over $2M or >50% of project costs
- Sustainable design intended to reduce energy consumption
- LL86 analysis meeting held before design starts
- [www.nyc.gov/oec](http://www.nyc.gov/oec)

**Local Laws 118, 119, 120, & 121: EPP**
- Applies to projects > $15K and requiring a DOB permit but not covered by LEED requirements of LL86
- Requires Environmentally Preferable Purchasing of certain construction products cited in NYC EPP Minimum Standards
- Equipment purchases (<$100K) and emergencies are exempt

**Tropical Hardwoods**
- Maximum reduction of the use of tropical hardwoods
LOCAL LAWS AND CITY POLICIES

M/WBE Legislation

- Sets goals for participation of minority or women owned construction and professional service firms in City projects

Wick’s Law

- Contracts <$3M can use one General construction contract instead of 4 separate primes (typically General, Plumbing, HVAC & Electrical) previously required by Wick’s Law; contracts >$3M must comply with Wick’s Law
- General contractor must include names and prices of Plumbing, HVAC & Electrical sub-contractors

Interfund Agreement

Fees: IFA

- Applies to all capital projects
- An administrative fee that is deducted from your capital funding allocation
- Ranges from 2.5-14%
LOCAL LAWS AND CITY POLICIES

1 Scope Review & Approval

- Landmarks Preservation Commission: LPC
  - Applies to landmarked property
  - Conceptual, preliminary and final designs are reviewed and approved

- Public Design Commission
  - Applies to exterior work on or above City-owned property
  - Conceptual, preliminary and final designs are reviewed and approved

- Introductory Number 1010-A (FDNY)
  - As of June 29, 2009, inspections performed by the FDNY are subject to a fee paid for by the organization

- Department of Buildings (DoB)
  - Applies to all construction/renovation projects
  - Fees for inspections and permits performed by the DoB
Local Law 58:
- Mandates that the design and construction of buildings accommodate the needs of disabled persons, including appropriate routes of movement on the interior and exterior of the building, interior room modifications, and adjustment of facilities.

Greater, Greener Building Plans: Local Laws 84, 85, 87, and 88:
- Energy conservation laws apply to privately-owned commercial & mixed-use buildings that meet the following criteria:
  - Building is 50,000 gross square feet or more OR
  - Two or more buildings on the same tax lot that together exceed 100,000 gross square feet OR
  - Two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet.
There are **FOUR** ways to manage your project:

A. DDC Managed

B. DDC Cultural Capital Grant

C. EDC Funding Agreement

D. Equipment Procurement DCA, DCAS, or DDC

52nd Street Project at Archstone Clinton: Interior Improvement
DCA DETERMINES MANAGING AGENCY

1. Scope Review & Approval

Step 1
DCA, a representative from the proposed managing agency, and the cultural organization establish:
- Public purpose
- Capital eligibility
- Project complexity
- Organization capacity
- City requirements
- Project budget

Step 2
DCA/DDC & the cultural organization finalize the program or equipment list

Step 3
DCA sends the program to the appropriate managing agency

The Program:
DCA template document that describes the scope of the project, overall development plan and a project budget
Process Overview:

DCA sends the program to the appropriate managing agency:

DDC Managed
- Design + Construction

DDC Cultural Capital Grant

EDC Funding Agreement

Equipment Procurement Through:
- DCA
- DCAS
- DDC
DDC administers your project and its funding:

- Procurement and compliance of consultants, contractors, and construction managers if necessary
- Management contracts for design and construction
- Review and approval of design
- Regulatory approval review
- Construction progress
- Budget management and oversight
- Compliance and payment administration

Project Team: Cultural Organization, DCA, DDC and Consultants

DDC-managed projects use both in-house resources and private consultants and contractors
Note: Timeframes depend on the scale, budget, and complexity of the project. The timeline shown above represents optimal durations without delays, and is based on complete submissions + timely actions; RESTRICTIVE COVENANTS may require additional time to the schedule.
○ Cultural organization that would benefit from DDC’s project management and design resources

○ Project phases to be managed include design and construction (DDC does not manage design only)
A quality-based selection for procurement of design services.

This process allows the City to hire firms based on their qualifications and the established quality of their past work, rather than on the more traditional lowest bid methodology.

Selection and Award takes about 3 months.

Design Schedule varies from 9 months – 2 years depending on the size of the project.

A custom RFP and contract is written for projects that require special expertise.

Firm is chosen based on specific project needs and process typically exceeds 6 months.

Design Schedule varies greatly depending on project size, but it is recorded in the contract with the architect.

Specialized firms in mechanical, electrical, engineering, exterior, landmark and landscaping that are on retainer contract with DDC.

Selection takes 4–6 months

Design Schedule takes 6-12 months.
DDC can contract for construction in TWO ways:

**Public BID**

The DDC openly and competitively bids the project:

- Selection Time: 5-6 months.
- Construction Schedule varies, typically 1 – 2 years.
- DDC manages project in-house or supplements management with a construction manager.

**JOCS**

Job Order Contracting System:

- On-call, requirement contracts that are best used for small, simple projects.
- Construction Schedule varies, but is typically shorter because of small size of projects - 1 year or less.
A DDC Cultural Capital Grant allows a cultural organization to manage its own project while protecting the City’s investment of public dollars. A “CCG”:

- Guarantees scope at a fixed price
- Allows capital funds to be reimbursed to the organization; cost overruns are borne by the organization
- Assures robust public-private funding partnerships

Brooklyn Children’s Museum: Expansion
Note: Timeframes depend on the scale, budget, and complexity of the project. The timeline shown above represents optimal durations without delays, and is based on complete submissions + timely actions; RESTRICTIVE COVENANTS may require additional time to the schedule.
Pending DCA Review for CCG Eligibility

2B Administration & Management

Project Planning
- Clear rationale for project
- Comprehensive, recent master plan or strategic plan; project is technically complex and has special scheduling needs
- Compliance Paperwork (Vendex, Insurance, RC etc)
- Project types include major renovation and construction; contract mechanism is ideal for construction

Project Managerial Capacity
- Relevant project management experience
- Addresses future maintenance/operation changes
- Familiarity with approvals (ULURP, LPC, PDC, etc)
Organizational Managerial Capacity

- Successful execution of mission
- An actively engaged Board
- Effective leadership/administration staff

Financial Capacity

- Project requires significant private contribution
- Capacity to fully finance project / cover all cost overruns Capital campaign/plan with realistic goals
- Institutional track record of successful fundraising campaigns
- City funding is at least $1M in current fiscal year
Contract between EDC and a non-City organization allocated City capital funding that meets the following conditions:

- Project has an economic development focus
- Organization has capacity to implement and maintain its capital project
- Project is technically complex and has special scheduling needs
- Organization is responsible for any cost overruns
- Specific requirements, approvals and the Funding Agreement (FA) process in order to receive funds
- Project requires significant private contribution
- City funding is at least $500K and <50% of total project cost
Note: Timeframes depend on the scale, budget, and complexity of the project. The timeline shown above represents optimal durations without delays, and is based on complete submissions + timely actions; RESTRICTIVE COVENANTS may require additional time to the schedule.
All equipment contracts are governed by the NYC Comptroller's Directive 10-Charges to the Capital Projects Fund, NYS law, Chapter 13 of the City Charter and the Rules of the NYC Procurement Policy Board.
**CAPITAL EQUIPMENT PROCUREMENT: TIMELINE**

Note: Timeframes shown are optimal durations without delays and based on complete submissions and timely actions.

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<thead>
<tr>
<th>Month</th>
<th>Task Description</th>
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<tbody>
<tr>
<td>~2</td>
<td>Define Scope/Specifications with DCA</td>
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<tr>
<td>6</td>
<td>Budget Approval &amp; Security Agreement</td>
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<tr>
<td>10</td>
<td>Procurement by DCA</td>
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<td>12 minimum</td>
<td>DCAS (12 months min)</td>
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<td>14</td>
<td>Comptroller Registration</td>
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<td>Receipt, Inspection &amp; Final Payment</td>
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Administration & Management
What constitutes an equipment system project?

- Each system must be $35K or over
- If there are multiple components to the system, it must be demonstrated how each part or group of parts is interrelated and integral to the system
- Useful life of equipment must be at least 5 years
Equipment with Capital Eligibility

- Equipment Systems
  - Theatrical lighting
  - Audio Visual systems
  - Sound systems
  - I.T. systems
- Vehicles

Equipment WITHOUT Capital Eligibility

- Laptops, PDAs, other handheld devices
- Software

Ineligible in a system purchase
- Carrying cases
- Projection screens
- Equipment that needs to be attached or mounted to non-City owned property is ineligible without a Restrictive Covenant

An additional equipment meeting will be held in mid August
Who manages the procurement process?

- **Contract <100K**
  - Managed by **DCA, DDC, or EDC**

- **Contract >100K**
  - Managed by **DCAS**

- **Vehicles**
  - Managed by **DDC**
OMB reviews project documentation:
- Capitally eligible project scope
- Itemized Budget & Funding status
- Legal Agreement (contract)
- City ownership

- OR -
- If Non-City ownership,
  Restrictive Covenant and/or Security Agreement

Review time is estimated to be 60 days

If OMB approves the project, OMB will issue a Certificate to Proceed (CP)

Next Step:
- Prepare compliance paperwork and award
- Submit to Comptroller for registration
COMPTROLLER

○ Comptroller verifies procedural compliance and accuracy of agreement information

○ 30 days for Comptroller review

○ If the Comptroller gives approval, the contract or purchase order is registered or the grant is filled

Next Step:
• Design/construction commences
• Equipment is purchased
• Requisition process may begin

Signature Theatre Center: Construction
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