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DEPARTMENT OF CULTURAL AFFAIRS

Capital Budget Workshop
FY 2015

October 22nd, 2014

THE PURPOSE OF TODAY



The Whitney's new building under construction, opening spring 2015, will vastly increase their exhibition and programming space.

- ◎ **Overview the capital funding process**
 - What makes a cultural organization's capital project successful
 - Funding constraints & time frames

- ◎ **Initiate the process**
 - Meet fellow cultural organizations and learn about the City agencies (DCA, DDC, EDC, DCAS, OMB) involved in the process
 - Meet your DCA project manager

DCA'S GOALS FOR FUNDING CAPITAL UPGRADES

Enhance the public's experience of cultural life in New York City through projects that:

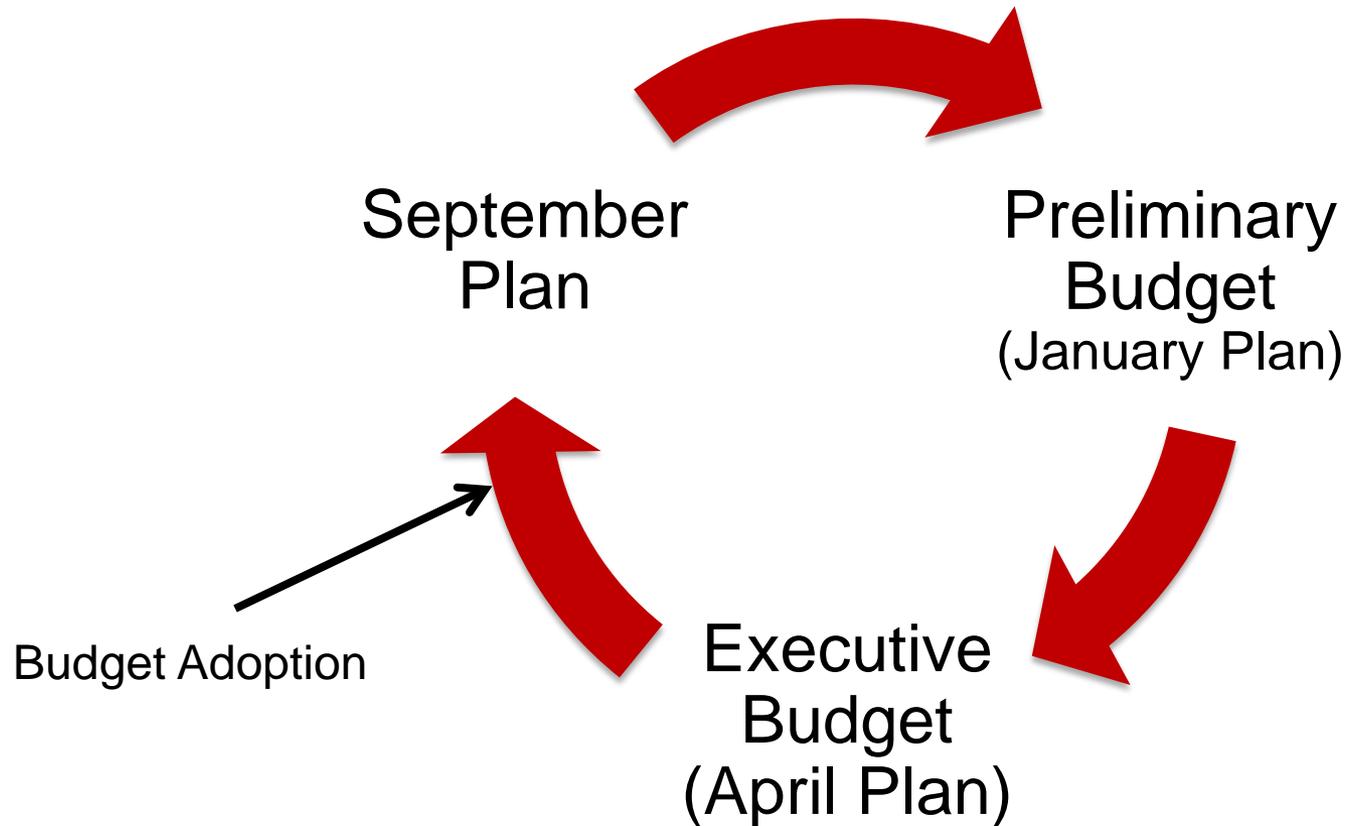
- Increase public access to cultural programming throughout the City
- Contribute to the vibrancy and diversity of the City's communities and maximize the effectiveness of public/private partnerships
- Preserve and promote the highest quality cultural facilities, programs and collections



Atlantic Theater's state-of-the-art renovation of their main stage theater

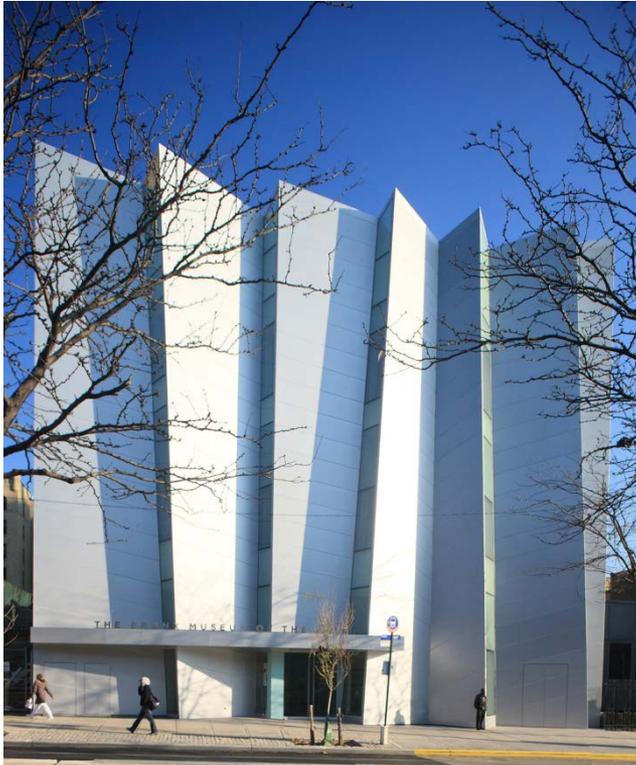
THE CITY'S BUDGET CYCLE

Each plan updates the City's budget to reflect current project funding needs, there are three major updates during the course of a fiscal year.



PUBLIC PURPOSE

Every project ***must*** further a public purpose, as well as establish a legal City interest in the City-funded assets by:



The Bronx Museum's pleated façade was part of a larger expansion project that included a double-height lobby, a main gallery, an education center, and a media lab.

- ⦿ **City-Owned Property**

- ⦿ **Security Agreement**

When capital funds are being used to invest in movable equipment or systems (e.g. computer system, furniture)

- ⦿ **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

CONDITIONS AND EXPECTATIONS

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

- ⦿ **Your funding allocation does NOT guarantee:**
 - 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



: The newly renovated BRIC theater located in the Brooklyn Cultural District was completed in fall 2013.

**FUNDS ARE *NOT* SAFE
FROM BUDGET CUTS**

ORGANIZATION RESPONSIBILITIES



Polonsky Shakespeare Center opened its doors in October of 2013. The Center is home to Theater for a New Audience and holds the first Shakespearean and classical drama specialized theater built since the 60's.

- ◎ **Get design approvals for all capital projects**
 - 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**

FULLY FUNDING THE PROJECT

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

- Board Donations
- State/Fed Funds
- Cash-in-hand
- Other Non-City Funding



Bronx River Art Center's (BRAC) groundbreaking ceremony, June 26th, 2014. The \$10 million renovation is expected to be completed in 2016.

CAPITAL PROCESS FOR CULTURAL ORGANIZATIONS

1 DCA

Scope Review & Approval

Establishes project eligibility and feasibility

2 DDC/EDC/DCA/DCAS

Administration & Management

Works with architects, engineers and the organization to manage the design and construction process

3 OMB

Project Review & Approval

Reviews the project for capital eligibility and issues necessary funding approvals

4 COMPTROLLER

Project Review & Approval

Reviews and authorizes capital projects for conformity with applicable accounting standards and directives

DIRECTIVE 10: CHARGES TO THE CAPITAL PROJECTS FUND

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** (electrical, plumbing, HVAC, and general construction)
- It specifically **does not allow work in non-contiguous spaces unless functionally related**, i.e. dependent upon each other and necessary for the asset to perform its primary purpose
- If a 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 a \$35,000 minimum.
- <http://www.nyc.gov/html/ddc/downloads/pdf/nfpp/Dir10-CapitalProjectsFund%5B1%5D.pdf>

CAPITAL ELIGIBILITY: BASICS

1

Scope Review & Approval

Comprehensive

- Create new asset/systems
- Upgrade existing asset

City Purpose

- Provides public benefit for useful life of improvement or equipment

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

ELIGIBLE PROJECTS

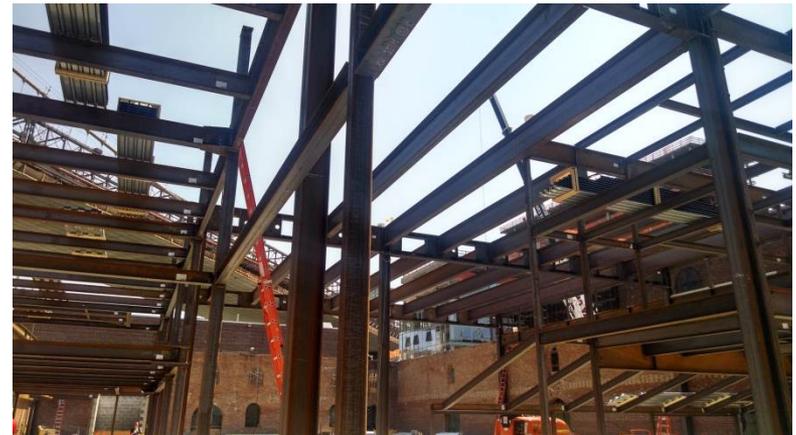
Two types of projects are eligible for funding:

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



St. Ann's Tobacco Warehouse construction.

INELIGIBLE CAPITAL COSTS

Maintenance

- **Repair/Maintenance work**, e.g. roof patching
- Painting & 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 require attachments to the property are ineligible without a restrictive covenant or security agreement
- Organization-specific signage/donor plaques

Other

- Owner's representative fees, fundraising, financing, or legal fees
- Work performed prior to the capital allocation
- Organization's project management costs
- Custom Databases

These Local Laws and City Policies may apply to your Capital Project and should be discussed with DCA.

Local Law 86: Green Buildings Law

- Applies to projects with City contribution over 10M or >50% of project costs
- Types of requirements: LEED rating level and/or energy cost and potable water reductions
- LL86 analysis meeting held before design starts (DDC managed)
- http://www.nyc.gov/html/oec/html/green/ll86_basics.shtml

Local Laws 118, 119, 120 & 121:EPP

- Applies to projects >15,000sf and requiring a DOB permit but not covered by LEED requirements of LL86
- Requires Environmentally Preferable Purchasing of certain goods & construction products cited in NYC EPP Minimum Standards
- www.nyc.gov/html/mocs/html/programs/epp.shtml

Local Law 1: M/WBE

- Sets goals for participation of minority or women owned construction and service firms in City projects
- LL1 expands upon LL129 with updated goals: elimination of \$1M cap; counting prime and subcontracts >\$1M toward goal; inclusion of standard services as industry subject to M/WBE
- <http://www1.nyc.gov/nyc-resources/service/2479/minority-and-woman-owned-business-enterprise-mwbe-program>

State/City Environmental Review Act (SEQRA/CEQR)

- Applies to **city-owned property**
- Evaluates a project's impact on the environment, e.g. purpose, appearance or condition of a structure or natural resource
- www.dec.ny.gov and www.nyc.gov/html/oec/html/ceqr/technical_manual.shtml

ADA Local Law 58

- Mandates that the design and construction of buildings **accommodate the accessibility needs of disabled persons**, including appropriate routes of movement in the interior and exterior of the building, interior room modifications, and adjustment of facilities
- <http://www.nyc.gov/html/mopd/html/laws/local.shtml>

Interfund Agreement Fees (IFA)

- **Applies to all capital projects**
- An administrative fee that is deducted from your capital funding allocation
- IFA ranges from 2-14%

Tropical Hardwoods

- Maximum reduction of the use of tropical hardwoods
- http://www.nyc.gov/html/om/pdf/tropical_hardwoods_report.pdf

ULSD & BAT Local Law 77

- Requires the use of ultra-low sulfur diesel (ULSD) and “best available technology” (BAT) for reducing emissions from non-road equipment used on City construction projects
- <http://www.nyc.gov/html/ddc/html/pubs/publications.shtml#sustainablereports>

Greater, Greener Building Plans

- GGBP targets energy efficiency in large existing buildings with suite of laws:
 - LL84 Benchmarking: requires benchmarking of energy and water consumption annually
 - LL85 NYC Energy Conservation Code (NYCECC): requires compliance for any renovation or alteration
 - LL87 Energy Audits & Retro-commissioning: conduct an energy audit and perform retro-commissioning every 10 years
 - LL88 Lighting & Sub-metering: upgrade lighting in nonresidential space to meet code & provide large commercial tenants with sub-meters (reports due by 2025)
- <http://www.nyc.gov/html/gbee/html/plan/plan.shtml>

Landmarks Preservation Commission (LPC)

- Applies to landmarked property
- Conceptual, preliminary and final designs are reviewed and approved
- <http://www.nyc.gov/html/lpc/html/home/home.shtml>

Public Design Commission

- Applies to exterior work **on or above** City-owned property
- Conceptual, preliminary and final designs are reviewed and approved
- <http://home2.nyc.gov/html/artcom/html/home/home.shtml>

Department of Buildings (DoB)

- Applies to all construction/renovation projects
- Fees for inspections and permits performed by the DoB
- <http://www.nyc.gov/html/dob/html/home/home.shtml>

NOTE: City-owned and non City-owned Projects will be subject to different requirements considering the following laws:

Wick's Law

Non City-owned:

- Wicks Law requires separate primes (typically General, Plumbing, HVAC & Electrical)
- Applies to DDC managed projects on non-city owned property
- Contracts >\$3M must comply with Wick's Law
- Contracts <\$3M can use one General construction contract; GC must include names and prices of Plumbing, HVAC & Electrical sub-contractors
- <https://labor.ny.gov/workerprotection/publicwork/PDFs/WICKS%20Reform%202008.pdf>

Project Labor Agreement (PLA)

City-owned:

- PLA is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a construction project
- Applies to DDC managed projects on City owned property
- PLA allows the City to enter into one General Construction contract vs. multiple primes of Wick's Law
- M/WBE goals still apply
- <http://home2.nyc.gov/html/mocs/html/vendors/pla.shtml>

PROJECT ADMINISTRATION & MANAGEMENT

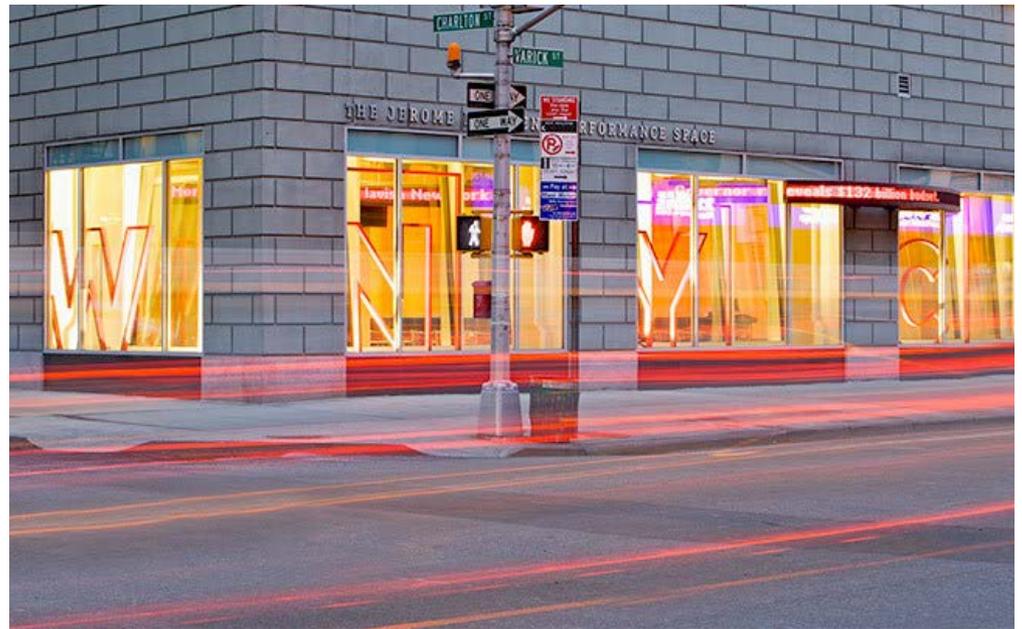
There are **FOUR** ways capital projects are managed:

a. DDC Managed

b. Cultural Capital Grant (CCG)

c. EDC Funding Agreement (FA)

d. Equipment



The Jerome Greene Performance Space

DCA DETERMINES MANAGING AGENCY

STEP 1

DCA, a representative from the proposed managing agency and cultural organization establishes:

- Public purpose
- Capital eligibility
- Project complexity
- Organization capacity
- City requirements
- Project budget

STEP 2

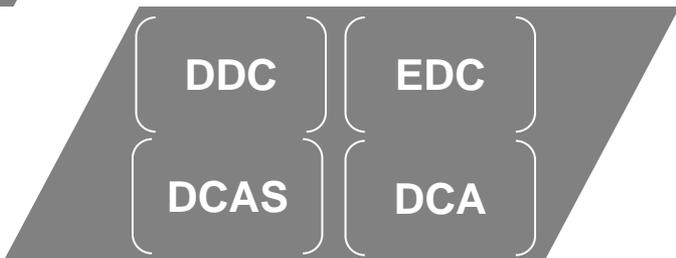
DCA & the cultural organization finalize the “Program” or equipment list

The Program:

DCA template document that describes the scope of the project, overall development plan and a project budget

STEP 3

DCA sends the program to the appropriate managing agency



PROCESS OVERVIEW

2

Administration & Management

Based on a project's needs, DCA sends the program to the appropriate managing Agency:

a. DDC Managed
(Design + Construction)

(DDC)

b. Cultural Capital
Grant (CCG)

(DDC)

c. Funding
Agreement (FA)

(EDC)

d. Equipment
purchase through:

(DCA)

Or

(EDC)

Or

(DCAS)

DDC MANAGED: CRITERIA

- Generally smaller **cultural organizations that do not have the financial and operational resources** and experience to manage capital projects benefit from DDC's project management and design resources
- Ideal for **projects with limited private funding** or where City funds must pay for design.
- **Design and construction phases** are managed (DDC does not manage design only)



The Brooklyn Children's Museum's expansion and renovation project was managed by DDC. BCM is the country's first LEED-certified children's museum.

DDC administers the project and its funding:

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



Museum of the Moving Image Screening Room

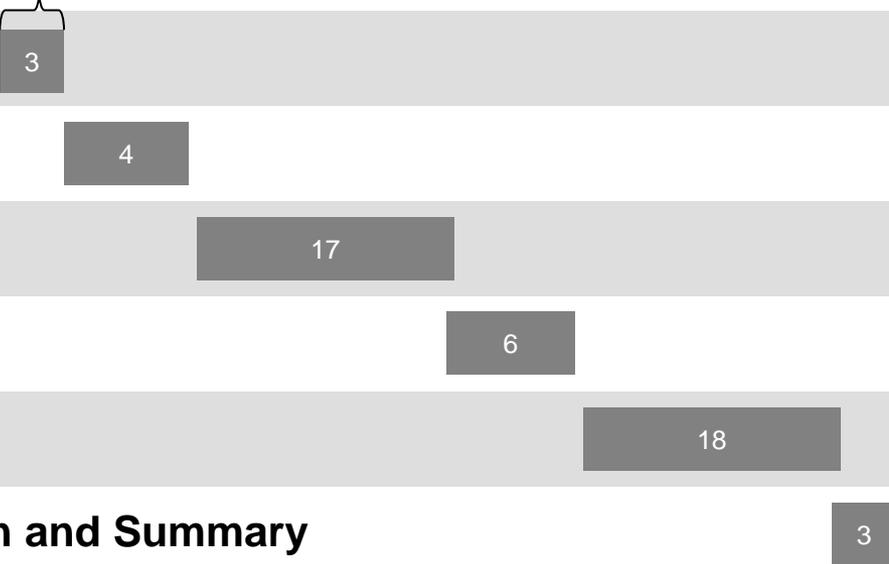
Project Team: Cultural organization, DCA, DDC and consultants
DDC Managed projects use both in-house resources and private consultants and contractors

DDC MANAGED: TIMELINE

Note: Timeframes depend on the scale, budget and complexity of the project. The timeline shown represents optimal durations without delays, and is based on complete submissions + timely actions; RESTRICTIVE COVENANTS may require additional time to the schedule.



Management transfer DCA to DDC



Project Scope Creation (DCA & DDC)

Architect Procurement

Project Design

Construction Contract Bidding

Construction

Project Closeout with Project Evaluation and Summary

DDC MANAGED: DESIGN PROCESS

DDC can contract for design in THREE ways:

Design & Construction Excellence

- A quality-based selection for procurement of design services.
- 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.
- [Current list of Design Excellence consultants](#)

Request for Proposal (RFP)

- 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.

Requirements Contract

- 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 contracts 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 typically shorter because of small size of projects - 1 year or less.

DDC CULTURAL CAPITAL GRANT (CCG)

2b

Administration &
Management

A 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



Carnegie Hall's Educational Wing opened in fall 2014.

DCA REVIEW FOR CCG ELIGIBILITY

2b

Administration &
Management

The following is a sample of requirements to establish organizational capacity to manage a project:

Project Planning

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

Project Managerial Capacity

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

Organization Managerial Capacity

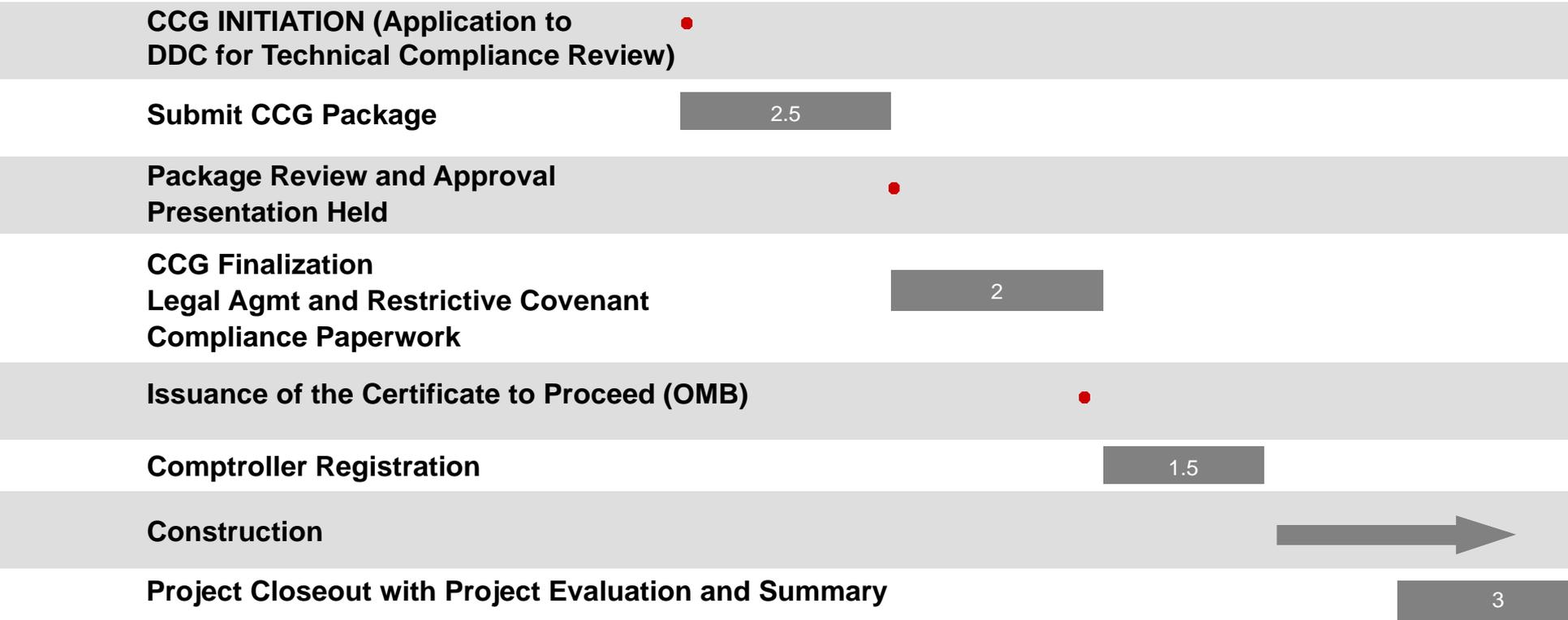
- Successful execution of mission
- An actively engaged Board
- Effective leadership/administration staff

Financial Capacity

- Project requires significant private contribution
- City funding is at least \$1 million in current fiscal year
- Capacity to fully finance project / cover all cost overruns
- Capital campaign/plan with realistic goals
- Institutional track record of successful fundraising campaigns

DDC CCG: TIMELINE

Note: Timeframes depend on the scale and complexity of the project. The timeline shown represents optimal durations without delays, and is based on complete submissions + timely actions; RESTRICTIVE COVENANTS may require additional time to the schedule.



EDC FUNDING AGREEMENT

2c

Administration &
Management

If City funding is allocated through a contract between EDC and a cultural organization, the following conditions apply:



Brooklyn Botanic Garden's new visitor center

- Project has an economic development focus
- Organization has the 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 must be complete in order to receive funds
- Project requires significant private contribution
- City funding is at least \$500K and <50% of total project cost

EDC FUNDING AGREEMENT: TIMELINE

2c

Administration & Management

Note: Timeframes depend on the scale 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.



Define Scope & Budget

2

Prepare FA Document

.5

Procurement

2

Compliance Documentation

5.5

OMB Review

3

Execute FA

<.5

Comptroller Review

1

Payments

1.5

Project Closeout with Project Evaluation and Summary

1

EQUIPMENT: BASICS

2d

Administration &
Management

All equipment contracts are governed by:

- New York City's Comptroller's Directive 10
- NYS law
- Chapter 13 of the City Charter
- Rules of the NYC Procurement Policy Board



David H. Koch Theater : Equipment



EQUIPMENT: GUIDELINES

2d

Administration &
Management

What constitutes an
equipment system project?

- Each system **must** be \$35K or over (\$250K minimum for non-moveable equipment)
- 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



Steinway piano purchase for Harlem School of the Arts

EQUIPMENT: CAPITAL ELIGIBILITY

2d

Administration &
Management

Capitally Eligible

- ✓ **Equipment Systems**
 - Theatrical lighting
 - Audio Visual systems
 - Sound systems
 - IT systems

- ✓ **Vehicles**

Not Capitally Eligible

- ⊘ **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 or Personalty Agreement

SAVE THE DATE:

**A mandatory equipment meeting will be held on
WEDNESDAY, DECEMBER 3, 2014 at DCA**

EQUIPMENT: PROCUREMENT

Who manages the equipment procurement process?

Contract
<\$100K

DCA

Contract
>\$100K

DCAS, EDC

Vehicles

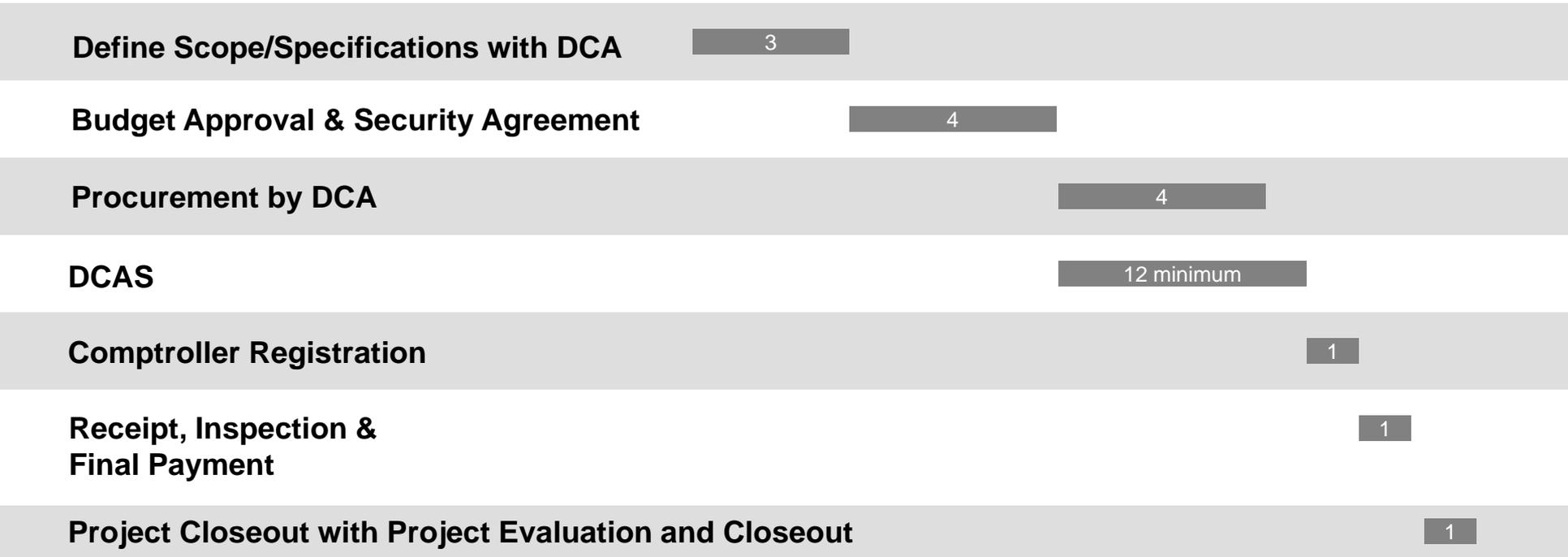
DCA



St. Ann's Lighting Equipment

EQUIPMENT: TIMELINE

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



⊙ **OMB reviews project documentation:**

- Capitably 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 90 days**

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



DDC-managed Snug Harbor Building E's exterior restoration project.

➤ **NEXT STEP**

- Prepares compliance paperwork and award
- Submits to Comptroller for registration

COMPTROLLER

4

Final Review &
Approval

- ⦿ **Comptroller verifies procedural compliance and accuracy of agreement information**
- ⦿ **Process includes 30 days for Comptroller review**
- ⦿ **Once Comptroller gives approval, the contract, purchase order, grant or funding agreement is registered**

➤ NEXT STEP

- Design/construction commences
- Equipment is purchased
- Requisition process may begin



The Weeksville Heritage Center recently received the “Best New Building” award, the Municipal Art Society’s highest honor.

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