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# DEPARTMENT OF CULTURAL AFFAIRS

Capital Budget Workshop  
FY 2015

October 23<sup>rd</sup>, 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

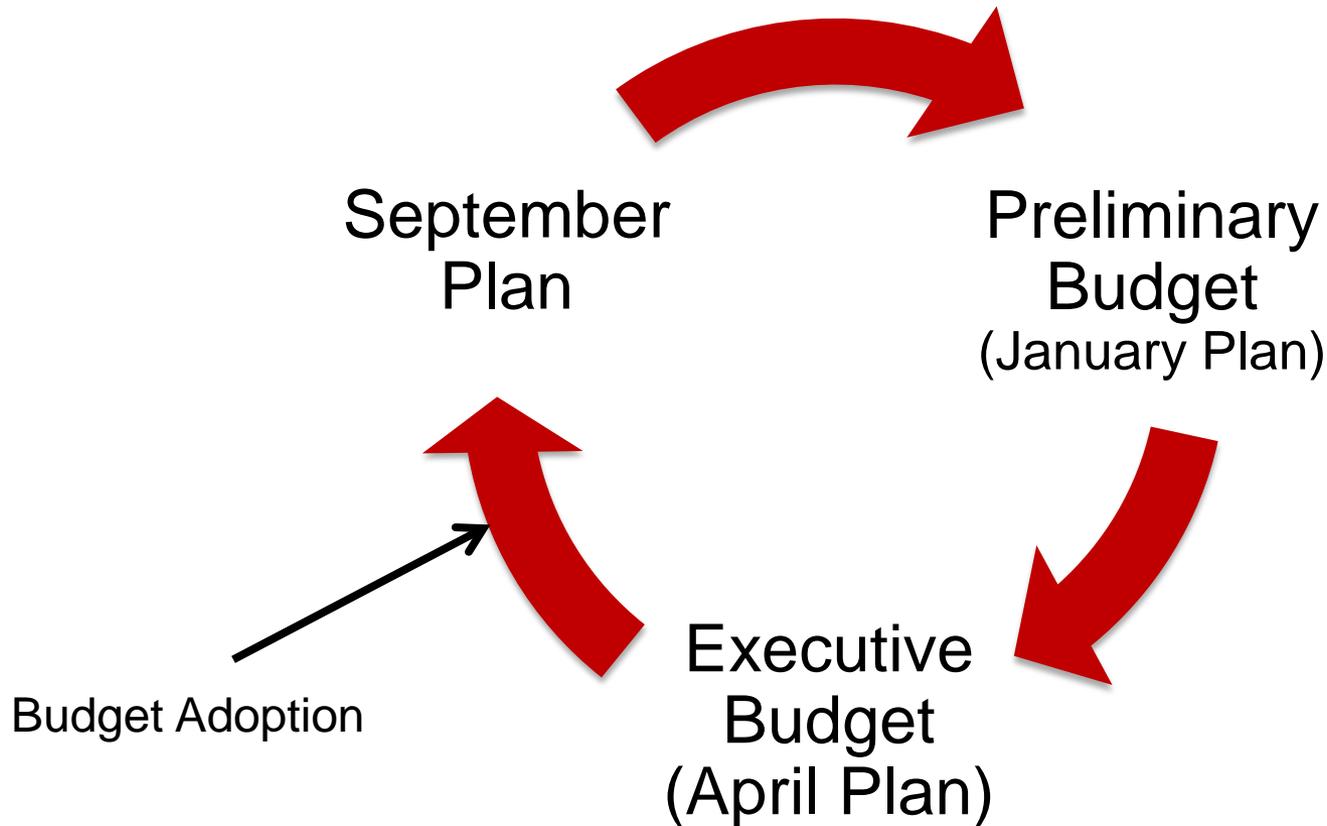


Atlantic Theater's state-of-the-art renovation of their main stage theater

# THE CITY'S BUDGET CYCLE

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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**
- ⊙ **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) **(all capital projects)**
- ⊙ **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 city-funded 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 26<sup>th</sup>, 2014. The \$10 million renovation is expected to be completed in 2016.

# 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 Property 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.  
**NON-COMPLIANCE PUTS ALL CITY FUNDING AT RISK**

# 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
- Construction/renovation: at least \$500K (for non-City owned property)

# 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](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](http://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](http://www.dec.ny.gov) and [www.nyc.gov/html/oec/html/ceqr/technical\\_manual.shtml](http://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](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

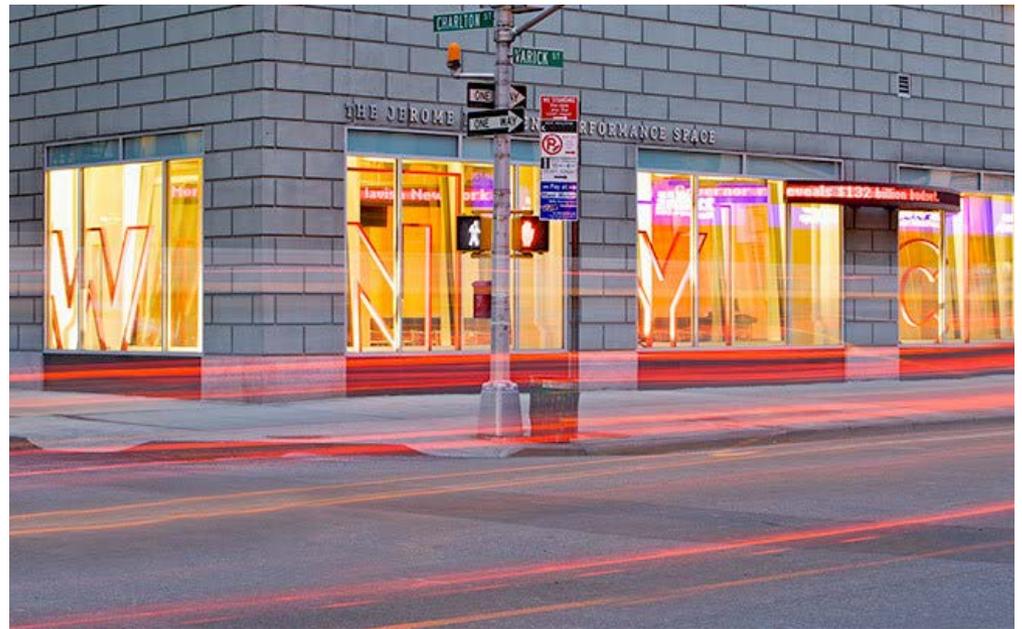
There are **FOUR** ways capital projects are managed:

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

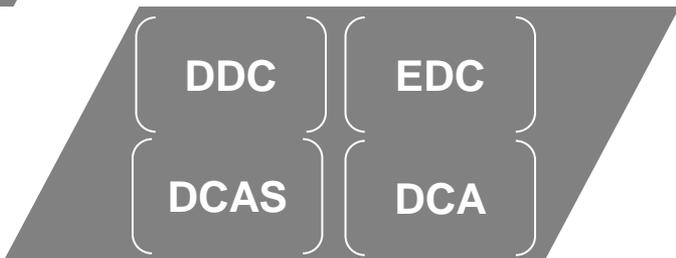
DCA & the cultural organization finalize the “Program” or equipment list

### 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)**

3

**Architect Procurement**

4

**Project Design**

17

**Construction Contract Bidding**

6

**Construction**

18

**Project Closeout with Project Evaluation and Summary**

3

# 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

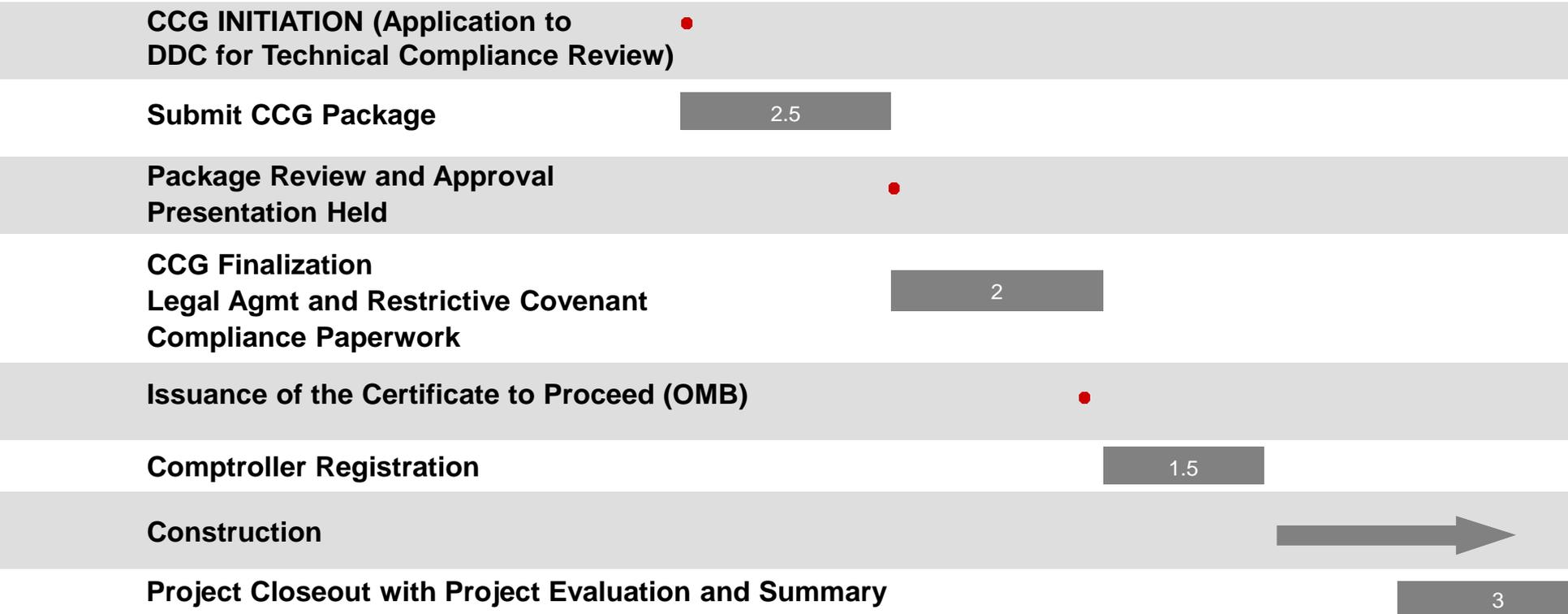
- Successful execution of mission
- An actively engaged Board
- Effective leadership/administration staff

## 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**

Organization must have **site control for at least 5 years** from the time equipment is purchased



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

2d

Administration & Management

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



Define Scope/Specifications with DCA

3

Budget Approval & Security Agreement

4

Procurement by DCA

4

DCAS

12 minimum

Comptroller Registration

1

Receipt, Inspection & Final Payment

1

Project Closeout with Project Evaluation and Closeout

1

⦿ **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)**

➤ **NEXT STEP**

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



DDC managed Snug Harbor Building E's exterior restoration project

# 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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