



Capital Equipment Workshop

FY 2019 · October 17, 2018

Introduction



Wave Hill Generator

- What is capital funding
- Define capital eligibility
- Obtaining the Certificate to Proceed (CP)
- The procurement process
- Post delivery responsibilities

DCLA Capital Goals

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



Queens Botanic Garden Sweeper

**YOUR ORGANIZATION CONTRIBUTES TO THESE GOALS
– THAT'S WHY YOUR PROJECTS HAVE BEEN FUNDED!**

Capital Projects Fund

- The funding you received was allocated as part of the City's Capital Budget. The Capital Budget is funded through the sale of municipal bonds.
- The NYC Comptroller, through the Bureau of Public Finance, and the Mayor, through the Office of Management and Budget (OMB), share the responsibility for issuing bonds and notes backed by the City's General Obligation.
- OMB helps implement the City's borrowing and bond programs and conducts legal reviews of capital projects for financing with bond proceeds.

Capital Funding Governance

City funded Equipment Projects are primarily governed by:

- NYC Comptroller's Accounting Directive 10
- NYS Local Finance Law – Sections 10 and 11
- Chapters 9 and 13 of the City Charter
- NYC Procurement Policy Board Rules

As such:

- Must be used for an organization's public purpose for at least 5 years or more depending on its estimated useful life as determined by OMB
- Must be capitably eligible
- Cost should be fair and reasonable
- Equipment will either be the property of the City of New York (most cases) *or* the City will retain an interest in the equipment (typically a UCC lien)

Funding Conditions

Funding allocation does not guarantee:

- All equipment requested will be deemed capially eligible
- Required approvals by government entities will be granted
- Project will occur according to your anticipated timeline



St. Ann's Warehouse



**FUNDS ARE NOT SAFE
FROM BUDGET CUTS**

Organization Responsibilities

Organization must:

- Comply with City requirements
- Respond to City requests for information in a timely manner
- Use the equipment towards its public purpose
- Assume responsibility of insurance, maintenance, security, and operation of equipment
- Report annually to DCLA on condition of equipment in compliance with City requirements
- Notify the City in advance and receive prior approval when replacing, disposing, relocating, or removing equipment
- Relinquish equipment back to City if equipment is no longer in use

Capital Equipment Overview

Getting started



Roulette Intermedium, Inc. A/V System

Capital Equipment Process

Step 1

Certificate to Proceed



Scope Development



OMB Review

Step 2

Procurement



DCLA

DCAS



**Contract Registration
and Delivery**

Capital Eligibility

Equipment Systems (as per Directive 10)

- To be capially eligible, equipment systems must be composed of a group of related elements. The elements are considered related if they are mutually dependent upon each other, and physically connected or connected through a wireless network.
- Each system must be at least \$35K (\$250,000 if physically attached)
- Each system must have a minimum useful life of 5 years

Capital Eligibility

Types of systems:

- Information Technology (IT)
- Audio Visual
- Sound
- Projection
- Seating
- Vehicles and Heavy Equipment
- Telephone
- Theatrical Lighting
- Standalone systems
 - e.g. Piano or Copier



York Theatre Company Seating

Ineligible Equipment Items

Some examples include:

- Maintenance, service, extended warranty fees
- Training
- Laptops, tablets, smartphones, and handheld devices
- Spare or consumable items (e.g. batteries, lamps, gels)
- System components not integral to the operation of the equipment, such as stands, carrying cases, or projection screens
- Application software (i.e. database programs, productivity software)
- Capital construction: HVAC or Chiller Equipment, Elevators and chair lifts

Scope Development

The process begins with compiling documents that detail the scope of the project:

- Project Identification (PJID)
- Organization Background and Project Narrative
- OMB Questionnaire
- Exhibit A (equipment list)
- Quotes or Cut Sheets to support Exhibit A
- Useful Life Statement
- Proof of site control for the duration of the useful life
- If you do not own your space, your landlord must sign DCLA's personalty agreement, confirming they have no claim to the equipment

OMB Questionnaire

To help understand the project, the questionnaire provides OMB with detail on the system and how it will be used by the organization.

- How does each part or group of parts relate to the system? Why are these parts necessary for the system to function?
- Is the system, as a whole or in part, attached to real property?
- Will this equipment reside on City property? Do you own your property? If you lease, when does the lease expire?
- Do you have any current operating contracts with the City in which the requested equipment system will be used or available for use?
- Whether positively or negatively, how will this new equipment impact your organization's budget and programming?
- Do any of the components require or contain software? If so, provide the license agreement.

Software

Software generally falls into one of three categories:

- Operating Systems – system software that manages computer hardware and software resources, providing common services for computer programs
- Imbedded Software – software to control machines or devices that are not typically thought of as computers, i.e. drivers or firmware
- Added functionality – software that adds features beyond the base functionality and does not impact the base functionality of the equipment

Obtain a copy of the End User License Agreement from the manufacturer

When components of your system contain software, ask these two questions:

1. Is the software eligible?
2. If eligible, is the software transferable?

Software Licenses

Subscription Licenses

- License must be transferable at any point during the useful life plus anticipated deployment time
- Software licenses must be valid for at least 5 years with an initial payment
- The software vendor must not be able to change the contract provisions or terminate the agreement unilaterally without cause
- Penalties cannot exceed 10% of the total fees (e.g. cancellation, transfer)
- Software-as-a-service is not eligible: subscriptions have pricing models requiring periodic fees to access the product

Software: Transferable Example

- Transferable such as an OEM operating system
 - APPLE INC. SOFTWARE LICENSE AGREEMENT FOR macOS High Sierra
- 3. Transfer.
 - A. If you obtained the Apple Software preinstalled on Apple-branded hardware, **you may make a onetime permanent transfer of all of your license rights** to the Apple Software (in its original form as provided by Apple) to another party, provided that: (i) the Apple Software is transferred together with your Apple branded hardware; (ii) the transfer must include all of the Apple Software, including all its component parts and this License; (iii) you do not retain any copies of the Apple Software, full or partial, including copies stored on a computer or other storage device; and (iv) the party receiving the Apple Software accepts the terms and conditions of this License.

Software: Non-Transferable Example

- Non-transferable such as access point firmware
 - SonicWall End User General Product Agreement
- 2. Software License.
 - (a) General. Subject to the terms of this Agreement, Provider grants to Customer, and Customer accepts from Provider, **a non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to access and use the quantities of each item of Software** purchased from Provider or a Partner within the parameters of the license type (“License Type(s)”) described below in the quantities purchased (“License”). Except for MSP Licenses (as defined below), Customer shall only use the Software to support the internal business operations of itself and its worldwide Affiliates.

Exhibit A

Exhibit A - Organization prepares an equipment list detailing the requested equipment:

Item #	Item Type	Qty	Brand Specific or Equal	Make	Model	Color	Salient Characteristics/ Technical Specs	Unit Cost	Total Cost
1	Audio Console	1	Brand Specific or Equal	Yamaha	QL1	Black	18.4" x10.7" x22.1" 135w power 10" touch panel 32 mono/8 stereo inputs 16 faders/ mix buses 1 stereo bus 16 analog inputs 8 analog outputs	\$6,000	\$6,000
2	Speaker	4	Brand Specific or Equal	Meyer	UPJ-1P	Black	11.15"x22.43"x12.25" 100-240VAC Female XLR input with male XLR loop output	\$5,120	\$20,480

Brand Specific or Equal

- Equipment list should indicate whether an item is “Brand Specific or Equal”
- “Brand Specific or Equal” allows vendors to substitute equivalent items by other manufacturers
- Majority of City purchased items are made as “Brand Specific or Equal”

BRAND SPECIFIC
ITEMS REQUIRE A
LENGTHY
DETERMINATION
PROCESS

AND
MAY **NOT** BE
APPROVED

Capital Equipment Process

Step 1

Certificate to Proceed



Scope Development



OMB Review



Harlem School of the Arts Pianos

OMB Review

DCLA sends the Certificate to Proceed (CP) request to Office of Management and Budget (OMB) for review

OMB will review the CP request for:

- Capital eligibility
- System justification and cost estimate
- Appropriate legal agreements

The CP gives the managing agency spending authority

Legal Agreements

Every City-funded equipment purchase is subject to a legal agreement which sets forth the terms and conditions of an organization's acquisition and use of the equipment

- The type of agreement necessary is determined by the procurement method
 - A **Capital Equipment Letter Agreement** (CELA) is most common, and is used for equipment procured by the City for use by the organization
 - A **Funding Agreement** (FA) is only used for certain projects funded by the Borough President and/or City Council, where the organization is responsible for bidding and procurement of the equipment

Capital Equipment Process

Step 1

Certificate to Proceed



Scope Development



OMB Review

Step 2

Procurement

Determination of Procurement Method

All City procurements must use one of the methods authorized by the City's Procurement Policy Board (PPB Rules)

Local Laws that may apply to the procurement:

- Equal Employment Opportunity (Executive Order 50)
- Environmentally Preferable Purchasing (Local Laws 119 and 120 of 2005)
- Minority and Women-owned Business Enterprise (Local Law 1 of 2013)

Determination of Procurement Method

Procurement method and cost of system determines the agency that will manage the project (DCLA or DCAS)

DCLA determines the procurement method based on several factors, including but not limited to:

- Type of equipment
- Cost of system
- Source of funding
- Organizational capacity

Capital Equipment Process

Step 1

Certificate to Proceed



Scope Development



OMB Review

Step 2

Procurement



DCLA

DCLA Managed

Standard Purchase Process:

- DCLA procures the equipment for organization's use
- Each equipment system is bid and purchased separately
- Procurement may be either:
 - Competitive bid
 - Purchase from a City requirements contract or NY State centralized contract
- If no bids are received, the project may be re-bid, or a CP amendment may be needed
- Equipment will be City-owned

DCLA Managed <\$100K

Small Purchase:

- Vendors are randomly selected from the City vendor list
- DCLA awards contract to the lowest responsive and responsible bidder
- Contracts require registration by the Comptroller (reviewed for 30 days)
- Once registered, DCLA issues purchase order to the vendor

DCLA Managed <\$150K

M/WBE Purchase:

Purchases up to \$150,000 may be awarded to NYC certified Minority and Women-Owned Business Enterprises (M/WBE)

- Requires three bids from M/WBE certified firms
- Award to responsible vendor who provides fair and reasonable price
- Comptroller registration not required; public hearing and notice of award for awards >\$100K

Online directory of certified M/WBE firms: <http://www.nyc.gov/buycertified>

DCLA Managed FA <\$100k

DCLA Discretionary Purchase through a Funding Agreement (FA):

- Used only for certain projects funded by Borough President and/or City Council; DCLA will determine whether this method will be used
- All vehicles are purchased through a Funding Agreement
- Organization is responsible for bidding and procurement of the equipment (including vendor payment) per the terms of the FA
- Extensive legal documentation is required (Funding Agreement, Security Agreement, lien search and UCC financing statement, legal opinion, etc.)
- Organization receives City funding on a reimbursement basis after vendors are paid and requisitions submitted to DCLA

DCLA Managed FA >\$100k

Procurements >\$100K will also require:

- Public Hearing
- PASSPort Enrollment (formerly VENDEX)
- Compliance with Executive Order No. 50 (EEO)
 - Requires City contractors to comply with federal, state, and local equal employment opportunity (EEO) laws and regulations

Capital Equipment Process

Step 1

Certificate to Proceed



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Procurement



DCLA

DCAS

DCAS Managed

Department of Citywide Administrative Services (DCAS) Competitive Sealed Bid Process, two stage process:

1st Stage: DCLA

- Obtains CP (Certificate to Proceed)
- Determines procurement method and prepares documents
- Submits equipment package to DCAS

2nd Stage: DCAS

- Publicly advertises invitation to bid for not less than 15 days
- Legal review, vendor responsibility determination, PASSPort, etc.
- Awards to lowest responsive and responsible bidder

Capital Equipment Process

Step 1

Certificate to Proceed



Scope Development



OMB Review

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Procurement



DCLA

DCAS



**Contract Registration
and Delivery**

Purchase and Delivery

- Upon delivery, open and check all equipment ASAP
- Report any damaged or faulty equipment to vendor and DCLA project manager
- For City procurements, return Equipment Receipt & Notification Form to DCLA along with packing slips
- For Funding Agreements, submit payment requisitions to DCLA with packing slips, invoices, and proof of payment

Capital Equipment Overview

Using the Equipment



Manhattan Theatre Club lighting equipment

Annual Certification of Use

Annually certify use of equipment to DCLA for a minimum of 5 Years:

- Equipment has been used in accordance with the terms and conditions of the Capital Equipment Letter Agreement or Funding Agreement, as applicable
- Equipment has not been destroyed, replaced, disposed of or removed to another location (except temporary removal as necessary for maintenance or repair) without the City's consent
- Equipment has been used and maintained in a responsible and lawful manner by the Organization for its City Purpose or such other purpose approved by the City, and not for personal, family or household use
- Equipment has not been damaged or destroyed, lost or stolen, in whole or in part by fire or other casualty without immediate notification to the City
- Equipment has not become subject to any lease, lien, mortgage, assignment, interest or other encumbrance
- Provide current proof of insurance evidencing the coverage required under the Capital Equipment Letter Agreement or Funding Agreement

Relinquishment and Disposal

Contact DCLA for information as to the proper disposal of equipment after the end of its useful life

- Request DCLA consent to destroy, replace, dispose of, relocate, or remove equipment
 - For any eligible electronic equipment: City coordinates disposal using the City's Safe Handling of Waste vendor

Next Steps

- ☐ DCLA will send document templates
- ☐ Schedule meeting with project manager
- ☐ Submit initial CP Document drafts
- ☐ Respond in a timely and complete manner to all questions & requests



ISCP Audio System

List of Abbreviations

- **ACCO** Agency Chief Contract Office
- **DCAS** Dept. of Citywide Administrative Services
- **DCLA** Dept. of Cultural Affairs
- **DLS** Division of Labor Services (unit of SBS)
- **DMSS** Division of Municipal Supply Services (unit of DCAS)
- **DOI** Dept. of Investigation
- **EEO** Equal Employment Opportunity
- **EPP** Environmentally Preferable Purchasing
- **MOCS** Mayor's Office of Contract Services
- **M/WBE** Minority and Women-owned Business Enterprise
- **NYS OGS** NYS Office of General Services
- **OMB** Office of Management and Budget
- **PASSPort** Database of vendor/contract management info (formerly VENDEX)
- **PPB** NYC Procurement Policy Board
- **SBS** Dept. of Small Business Services

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