CAPITAL BUDGET WORKSHOP
FY16

DEPARTMENT OF CULTURAL AFFAIRS
NYCULTURE
CITY OF NEW YORK

July 28th, 2015

THE PURPOSE OF TODAY

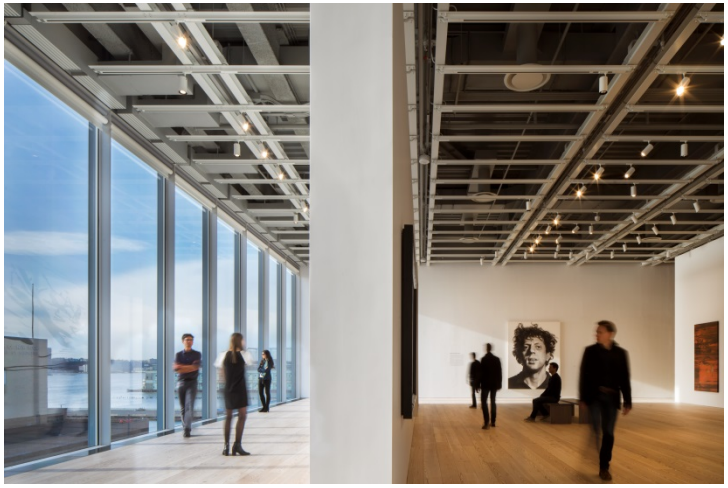
- **Overview the capital funding process**
  - What makes a cultural organization's capital project successful
  - Funding constraints & time frames

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

Recent Capital Projects

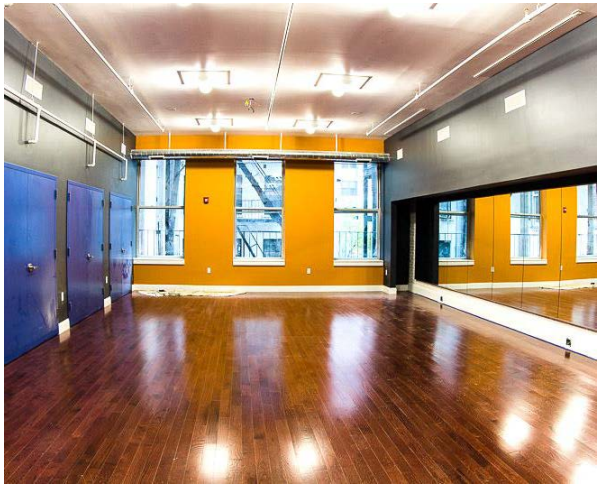
Staten Island Zoo's carousel

Mind-Builders



The new Whitney

New pathway at Queens Botanical Garden



IATI Theater rehearsal space

Weeksville

DCLA'S GOALS FOR CAPITAL PROJECTS

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

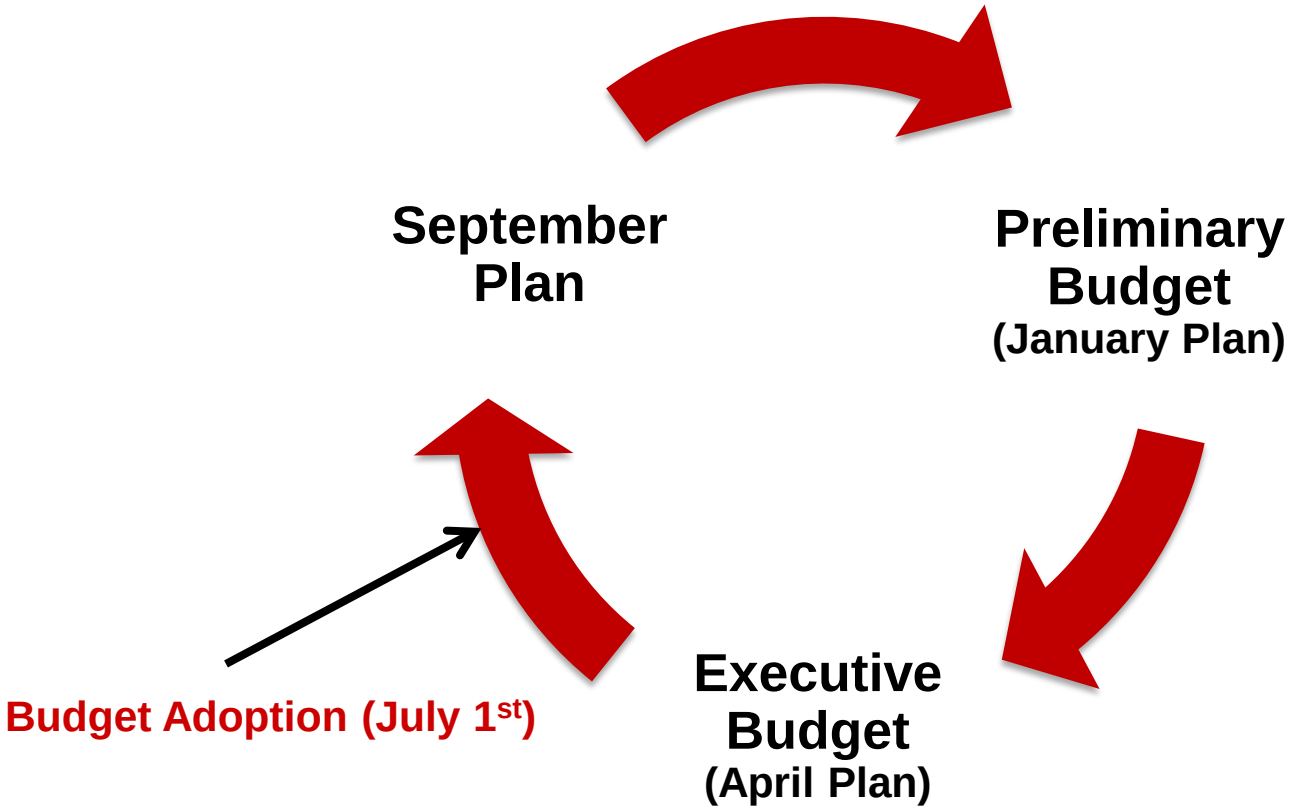
- Increase public access to cultural programming throughout the City
- Contribute to the vibrancy and diversity of the City's communities and maximize the effectiveness of public/private partnerships
- Preserve and promote the highest quality cultural facilities, programs and collections

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

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

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.



INITIAL REQUIREMENTS
and
EXPECTATIONS

PUBLIC PURPOSE

Every project must <u>further a public purpose</u>, as well as establish a legal interest in the City funded asset by

- **enhancing City Owned Property *or***
- **on non-City owned property, by including the following:**

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

  - **Security Agreement**

    When capital funds are being used to invest in movable equipment or systems (e.g. computer system, furniture) **(City owned AND non-City owned property)**

  - **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 **(non-City owned property)**

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

FUNDING 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 DCLA and respond to City requests for information in a timely manner

- **Your funding allocation does <u>NOT</u> guarantee:**
  - Approval by government entities
  - Disbursement of funding according to a pre-conceived timeline
  - Disbursement of funding for a pre-conceived, unapproved scope of work or equipment purchase

FUNDS ARE NOT SAFE FROM BUDGET CUTS

FULLY FUNDING THE PROJECT

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

- Board Donations
- State and/or Federal Funds
- Cash-in-hand
- Other Non-City Funding

ORGANIZATION RESPONSIBILITIES

- **Get design approvals for all city-funded capital projects**
  - DCLA approval at design phase milestones (Schematic Design, Design Development, Construction Documents)
  - DCLA 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

- **DCLA approval of donor credit, naming rights, press announcements and signage**

GETTING STARTED WITH YOUR CAPITAL PROJECT

Bronx River Art Center's (BRAC) groundbreaking ceremony in June 2014

THE FOUR KEY REVIEW STAGES

1 DCLA	2 DDC/EDC/DCLA/DCAS	3 OMB	4 COMPTROLLER
Scope Review & Approval	Administration & Management	Project Review & Approval	Project Review & Approval
Establishes project eligibility and feasibility	Works with architects, engineers and the organization to manage the design and construction process	Reviews the project for capital eligibility and issues necessary funding approvals	Reviews and authorizes capital projects for conformity with applicable accounting standards and directives

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 (e.g. bolted down seat systems)

CAPITAL ELIGIBILITY: DETAILS

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

- Construction/renovation: at least $500K (for non-City owned property)
- Non-moveable equipment: at least $250K
- Moveable equipment: at least $35K

DIRECTIVE 10: CHARGES TO THE CAPITAL PROJECTS FUND

In order to attain capital eligibility, a project <u>must</u> comply with the Comptroller's Directive 10 and its definition of <u>comprehensive betterment:</u>

- 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

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

OVERVIEW: LOCAL LAWS & CITY POLICIES

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

- Local Law 1: M/WBE
- Local Law 58: Accessibility/ADA
- Local Law 77: ULSD & BAT
- Local Law 86: Green Buildings Law
- Local Laws 118, 119, 120 &121: EPP
- Interfund Agreement Fees (IFA)
- Wick's Law
- Project Labor Agreements (PLA)
- State/City Environmental Review Act (SEQRA/CEQR)
- Tropical Hardwoods
- Landmarks Preservation Commission (LPC)
- Public Design Commission (PDC)
- Department of Buildings (DoB)
- LL 84/85/87/88: Greater, Greener Building Plans
- OneNYC

LOCAL LAWS & CITY POLICIES

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

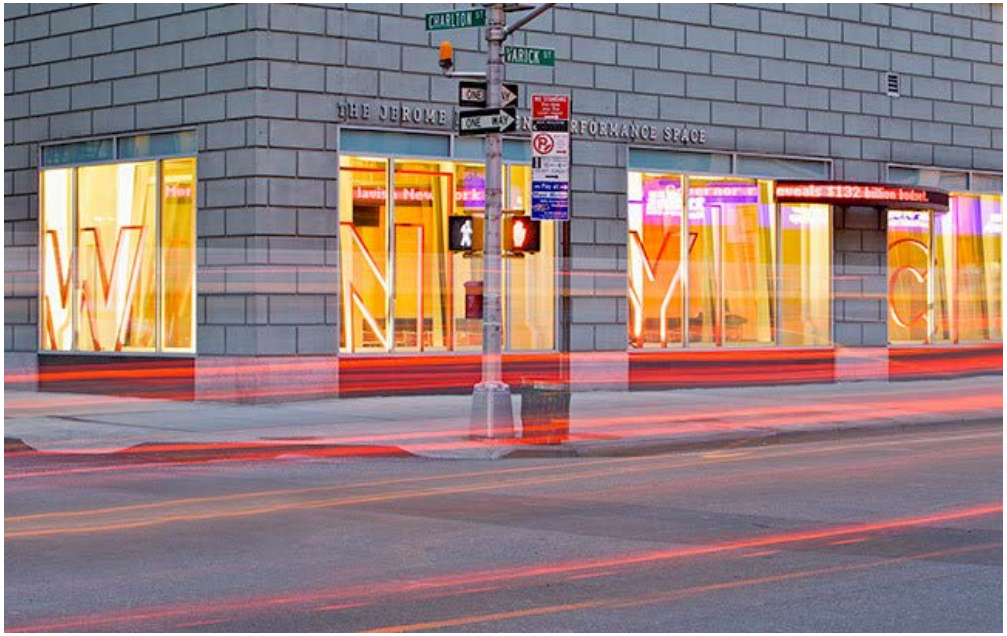
PROJECT ADMINISTRATION & MANAGEMENT

The team for South Street Seaport Museum's Wavertree restoration project

PROJECT MANAGEMENT METHODS

There are <u>five</u> ways cultural capital projects are managed:

1. DDC Managed
2. Cultural Capital Grant (CCG)
3. EDC Funding Agreement (FA)
4. EDC Managed
5. Equipment



The Jerome Greene Performance Space at WNYC

DETERMINING THE MANAGING AGENCY

STEP 1

DCLA, 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

DCLA & the cultural organization finalize the "Program" or equipment list

<u>The Program</u>:
DCLA template document that describes the scope of the project, overall development plan and a project funding

STEP 3

DCLA sends the program to the appropriate managing agency

DDC | **EDC**
DCAS | **DCLA**

PROCESS OVERVIEW

Based on a project's needs, DCLA transfers a project to the appropriate managing Agency:

1. DDC Managed (Design + Construction)

DDC

2. Cultural Capital Grant (CCG)

DDC

3. Funding Agreement (FA)

4. EDC Managed

EDC

5. Equipment purchase through:

DCLA

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 <u>not</u> 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 MANAGED: DETAILS

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

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

DDC MANAGED: EXAMPLES

Snug Harbor Building E's exterior restoration

South Street Seaport Museum's Wavertree leaving for the dry dock

Brooklyn Children's Museum's new roof canopy

DDC MANAGED: DESIGN PROCESS

DDC can contract for design in four ways:

Design & Construction Excellence

- A quality-based selection for procurement of design services.
- Allows the City to hire firms based on their qualifications and 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.
- Visit the DDC website for the 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 In-house Design

- **Pilot program starting this fiscal year**
- Intended as time-efficient solution for straight-forward projects
- Will apply to clearly defined, limited scope (e.g. parking lot)
- Details forthcoming

DDC MANAGED: CONSTRUCTION PROCESS

DDC contracts for construction in TWO ways:

Public BID

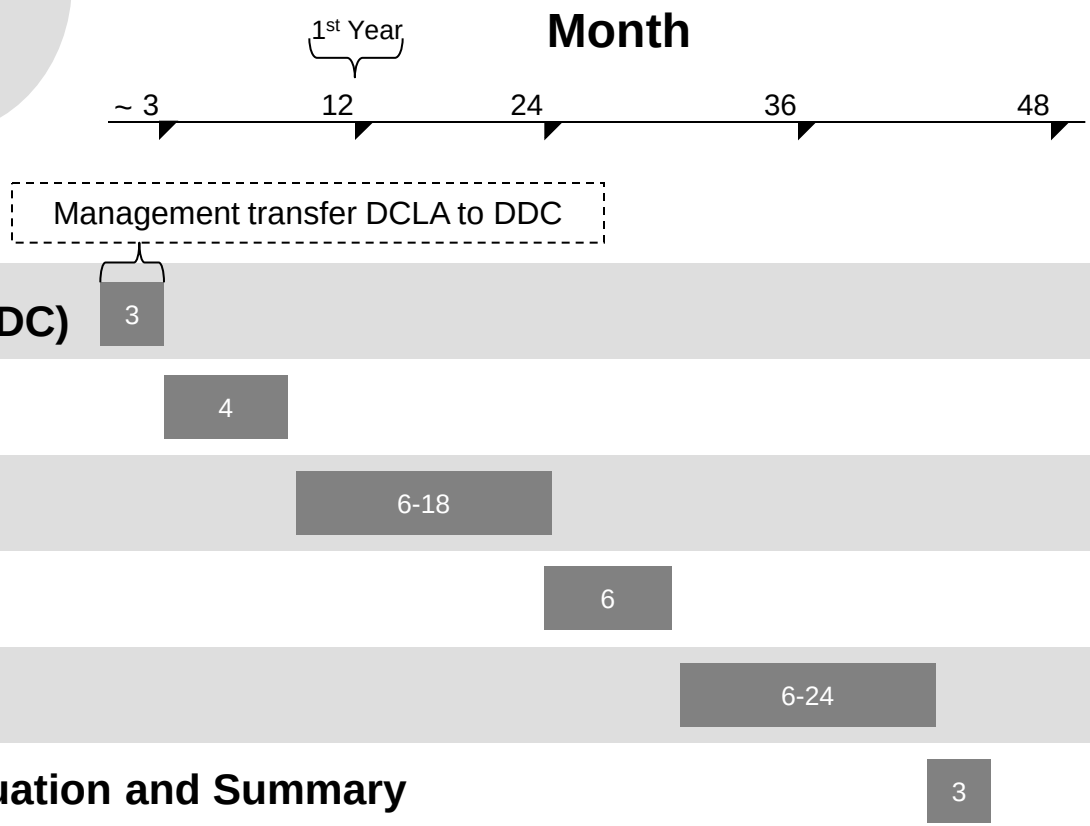
- The DDC openly and competitively bids the project
- Selection Time: 5-6 months
- Construction Schedule varies, typically 1-2 years
- DDC manages project in-house or supplements management with a construction manager

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 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.



DDC CULTURAL CAPITAL GRANT (CCG)

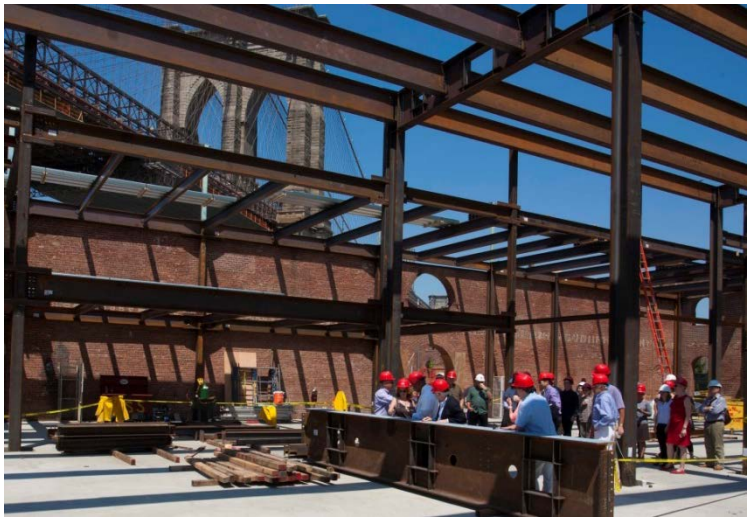
A Cultural Capital Grant allows a cultural organization to manage its own project while protecting the City's investment of public dollars. A CCG:

- 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

CCGs: EXAMPLES

BBG's Discovery Garden opened in June 2015



St. Ann's Warehouse is scheduled to open in fall 2015

The Weill Music Institute at Carnegie Hall opened in fall 2014

Installation at the Cooper Hewitt Smithsonian Design Museum

DCLA REVIEW FOR CCG ELIGIBILITY

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

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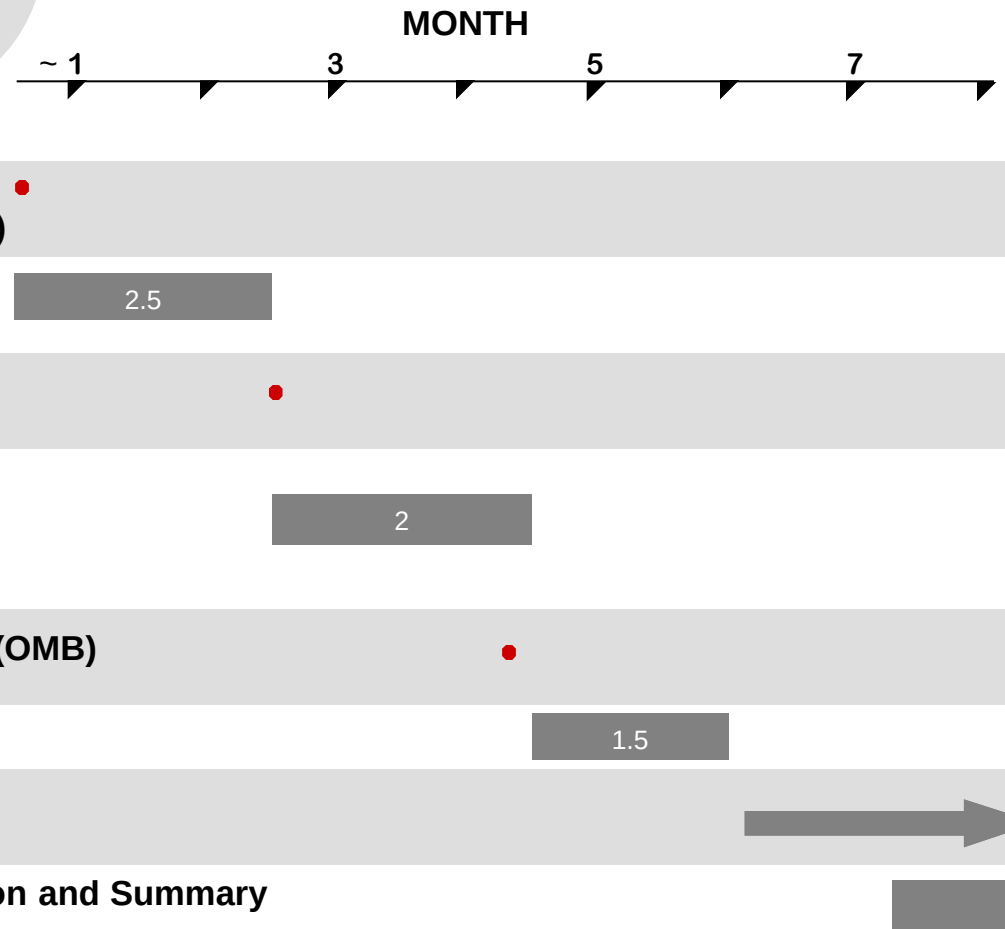

EDC FUNDING AGREEMENT

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

The Whitney opened its new downtown home in May 2015

- 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: EXAMPLES

Spaceworks Williamsburg

Whitney Museum of American Art

EDC FUNDING AGREEMENT: TIMELINE

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

EDC MANAGED

- Projects should include an **economic development focus** (e.g. located within a redevelopment area and/or opportunity for job creation)
- Project is **technically complex** and/or has **special scheduling needs**
- Generally smaller **cultural organizations that do not have the financial and operational resources** to manage capital projects benefit from EDC's project management resources
- Ideal for **projects with limited private funding** or where the organization pays for design
- Design is procured through a **Request for Proposal (RFP)**; construction is managed by a pre-selected **Construction Manager** and a shortlist of contractors
- Typically applies only to organizations on City-owned property

EDC MANAGED: EXAMPLES

BRIC's Downtown Brooklyn location by night

Museum of the Moving Image's Screening Room

EDC MANAGED: TIMELINE

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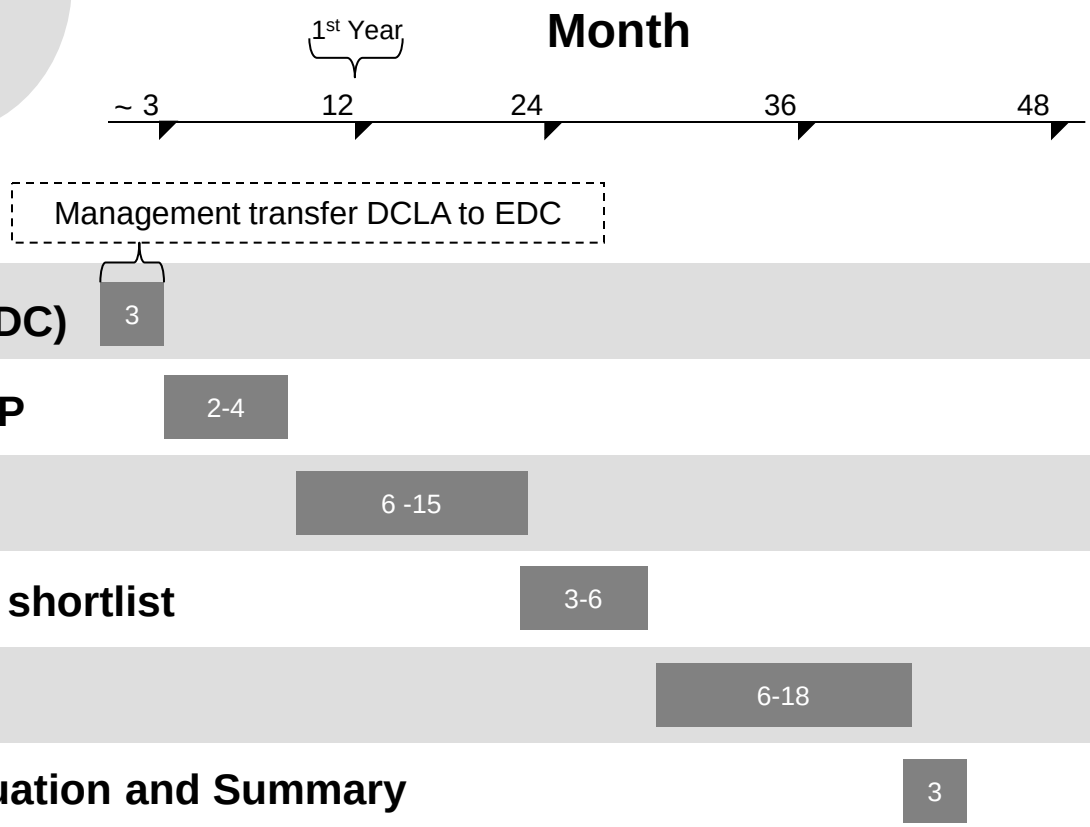


EQUIPMENT: BASICS

All equipment contracts are governed by:

- New York City's Comptroller's Directive 10
- NYS Local Finance Law
- NYC Charter Chapters 9 & 13
- NYC Procurement Policy Board Rules

DCTV: Shared Media Storage System

EQUIPMENT: GUIDELINES

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

The cultural organization must have site control for at least 5 years from the time equipment is purchased.

EQUIPMENT: CAPITAL ELIGIBILITY

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
Tuesday September 22nd, 2015 at DCLA

EQUIPMENT: PROCUREMENT

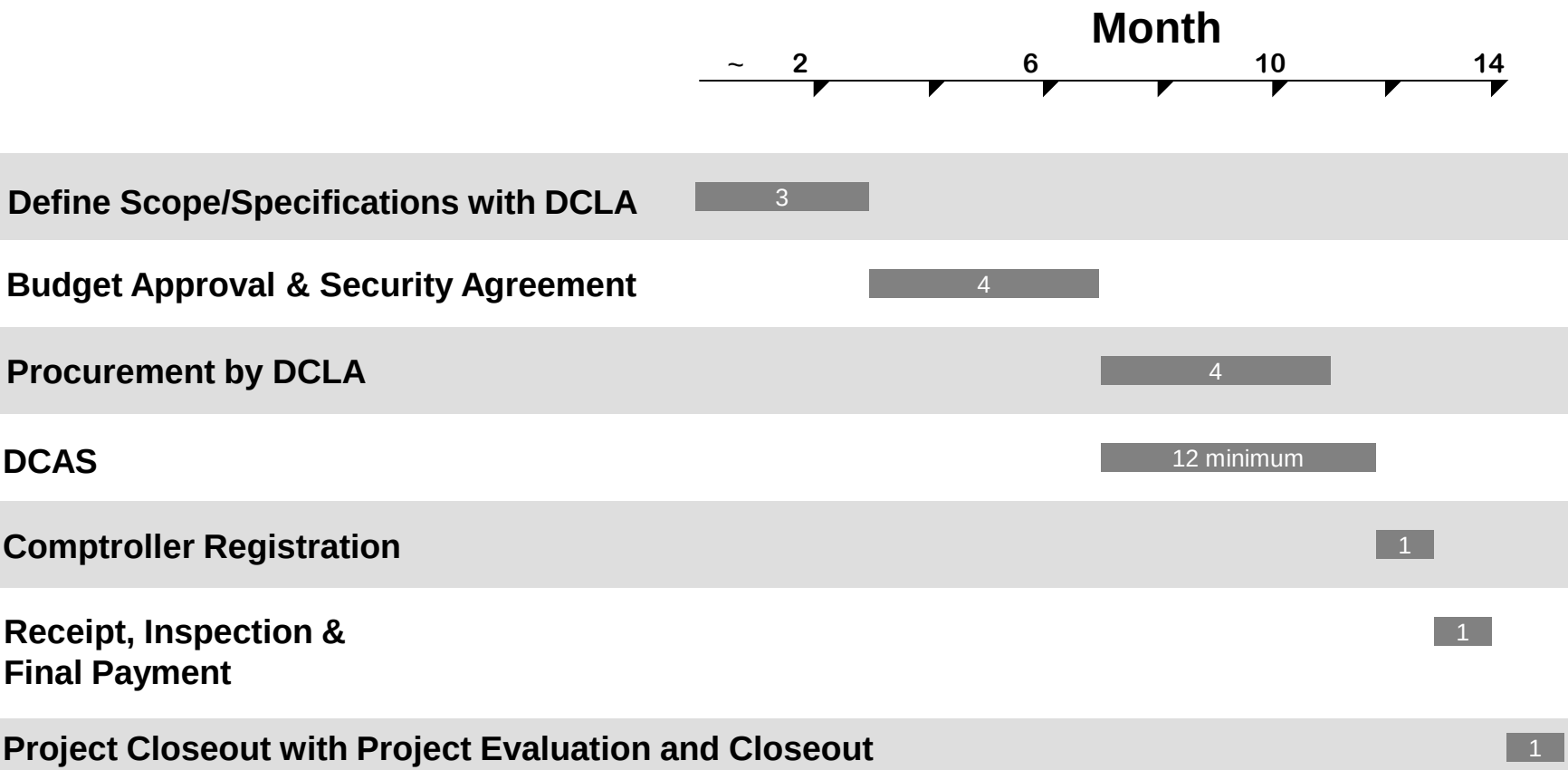
Who manages the equipment procurement process?

Contract <$100K	DCLA
Contract >$100K	DCAS
Vehicles	DCLA

Lower Eastside Tenement Museum Interactive Multimedia System

EQUIPMENT: TIMELINE

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



OMB (OFFICE OF MANAGEMENT AND BUDGET)

- **The Office of Management and Budget (OMB) reviews all 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 90 days**

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

COMPTROLLER

With the CP at hand, the Managing Agency (DDC/EDC/DCLA) prepares compliance paperwork and awards the design consultant or contractor. The project is submitted to the Comptroller for registration.

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

The Weeksville Heritage Center recently received the "Best New Building" award, the Municipal Art Society's highest honor.

KICK OFF &
CAPITAL PROJECTS IN PROGRESS

Caribbean Cultural Center's groundbreaking in September 2014

CAPITAL PROJECTS IN PROGRESS

Finally, design/construction commences. Alternatively, equipment is purchased or the requisition process begins.

- **Managing Agency is in charge of day-to-day project management.** You will have a dedicated Project Manager at both agencies (DDC & DCLA or EDC & DCLA).
- **The organization's responsibilities are:**
  - **Attend all meetings** (e.g. bi-weekly design and construction meetings for DDC and EDC managed projects)
  - **Follow City requirements** on procurement, reporting and reimbursement (CCG/FA)
  - **Respond in a timely matter** to questions and RFI's (Request for Information)

NOTE: Project timeline and budget can shift due to unforeseen field conditions and/or scheduling constraints.

Scope changes during the design or construction phase can cause delays and more often than not lead to cost increases.

AT LAST: RIBBON CUTTING!

The Smithsonian Cooper Hewitt Design Museum reopened after an extensive renovation in December 2014.

DCLA CAPITAL UNIT CONTACTS

Andrew Burmeister
Assistant Commissioner
(212) 513-9333
aburmeister@culture.nyc.gov

Angela Blocker
Director of Capital Projects
(212) 513-9337
ablocker@culture.nyc.gov

Maj-Britt Jungjohann
Capital Projects Manager
(212) 513-9330
mjungjohann@culture.nyc.gov

David Bryant
Capital Program Manager
(212) 513-9334
dbryant@culture.nyc.gov

Victor Metoyer
Deputy Director
(212) 513-9332
vmetoyer@culture.nyc.gov

Sei Young Kim
Capital Equipment Manager
(212) 513-9314
skim@culture.nyc.gov

David Loewy
Capital Budget Analyst
(212) 513-9335
dloewy@culture.nyc.gov

Carolyn Sarkis
Capital Projects Manager
(212) 513-9360
csarkis@culture.nyc.gov

www.nyc.gov/culture

APPENDIX

LOCAL LAWS & CITY POLICIES

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

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

LOCAL LAWS & CITY POLICIES

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

Local Law 58: Accessibility/ADA

- 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%

LOCAL LAWS & CITY POLICIES

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

LOCAL LAWS & CITY POLICIES

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 (PDC)

- 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)

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LOCAL LAWS & CITY POLICIES

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 Agreements (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