CAPITAL BUDGET SEMINAR
Construction/Renovation
FY19

July 25, 2018
www.nyc.gov/culture
INTRODUCTION

• **Overview the capital funding process**
  - What makes a cultural organization’s capital project successful
  - Funding constraints and 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
CAPITAL PROJECTS: DCLA 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

YOUR ORGANIZATION CONTRIBUTES TO THESE GOALS – THAT’S WHY YOUR PROJECTS HAVE BEEN FUNDED!
Each plan updates the City’s budget to reflect current project funding. There are three major updates to the capital budget during the course of a fiscal year.

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

**Budget Adoption** (July 1st)
INITIAL REQUIREMENTS and EXPECTATIONS
Every project must further a public purpose, and 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. Projects must 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
  - Security Agreement
    When capital funds are being used to purchase FF&E (e.g. computers, furniture, fixtures) (this is sometimes required on City owned property)

The cultural organization must have site control for the duration of the capital improvement’s useful life (10-30 years), measured from the date of substantial completion.
**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.

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YOUR ORGANIZATION MUST AGREE TO THESE CONDITIONS TO RECEIVE CAPITAL FUNDING NON-COMPLIANCE PUTS ALL CITY FUNDING AT RISK
FUNDING CONDITIONS

• **Organization agrees to:**
  
  o Follow the City’s process, comply with all requirements, and obtain approvals in order to successfully complete the project
  
  o Initiate the project with DCLA and respond to City requests for information in a timely manner

• **Your funding allocation does NOT guarantee:**
  
  o Approval by government entities
  
  o Disbursement of funding according to a pre-conceived timeline
  
  o 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 must 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 scope and design approvals for all city-funded capital projects
  o DCLA approval at design phase milestones (Scope Development, Schematic Design, Design Development, Construction Documents)
  o DCLA approval prior to submission to PDC or LPC
  o Include accurate information on operating implications (increased costs, maintenance, security, etc.)

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

• DCLA approval of donor credit, naming rights, press announcements (including capital funding announcements) and signage
GETTING STARTED
Since submitting your Capital funding request, things might have changed, e.g.
• Your project was not fully funded
• Design plans or your organization’s priorities changed
• You received a major grant other than from the city

The actual project scope can be different from the project described in your funding request.

The project scope should realistically reflect the funding available in the active fiscal year. Discuss your project in detail with your DCLA Project Manager as soon as possible so that we can initiate the administrative review and approval process.

Documents you should prepare for DCLA’s review:
• DCLA’s program form and itemized budget (all projects)
• Design documents and cost estimates (if applicable)
• FA and CCGs: Scope narrative, application package, board resolution, and program form
### THE FOUR KEY REVIEW STAGES

<table>
<thead>
<tr>
<th>1) DCLA</th>
<th>2) DDC/EDC/DCLA/DCAS</th>
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</thead>
<tbody>
<tr>
<td><strong>Scope Review &amp; Approval</strong></td>
<td><strong>Scope Review &amp; Project Administration</strong></td>
</tr>
<tr>
<td>• Establishes project eligibility and feasibility</td>
<td>• Works with architects, engineers and the organization to manage the design and construction process</td>
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<table>
<thead>
<tr>
<th>3) OMB</th>
<th>4) COMPTROLLER</th>
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<tbody>
<tr>
<td><strong>Project Review &amp; Approval</strong></td>
<td><strong>Project Review &amp; Approval</strong></td>
</tr>
<tr>
<td>• Reviews the project for capital eligibility and issues necessary funding approvals</td>
<td>• Reviews and authorizes capital projects for conformity with applicable accounting standards and directives</td>
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</tbody>
</table>
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. seating system attached to the floor)

FY19 Equipment Seminar will be held on Wednesday, October 17.
Capital Eligibility: Definitions

**Comprehensive**
- Create new asset/systems
- Upgrade existing asset

**City Purpose**
- Provides public benefit for useful life of improvement or equipment

**Long-Term Investment**
- Construction/renovation: 10-30 years

**Minimum City Contribution**
- Construction/renovation: at least $500K (for non-City owned property)
In order to attain capital eligibility, a project must comply with the Comptroller’s Directive 10 and its definition of comprehensive betterment:

- 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.

[Link to Directive 10](https://www1.nyc.gov/assets/ddc/downloads/not-for-profit/2-nyc-comptrollers-directive.pdf)
### INELIGIBLE CAPITAL COSTS

<table>
<thead>
<tr>
<th>Category</th>
<th>Eligible Costs</th>
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| Maintenance  | • Repair/Maintenance work, e.g. roof patching, floor repair  
• 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     | • Attached fixtures 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  
• Unique or excessively expensive |
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 77: ULSD & BAT
- Local Law 58: Accessibility/ADA
- Local Laws 84/85/87/88: Greener, Greater Building Plans
- Local Law 86: Green Buildings Law
- Local Laws 118, 119, 120 & 121: EPP
- Interfund Agreement Fees (IFA)
- State/City Environmental Review Act (SEQRA/CEQR)
- Tropical Hardwoods (NY State Finance Law § 165)
- Wicks Law
- Project Labor Agreements (PLA)
- Landmarks Preservation Commission (LPC)
- Public Design Commission (PDC)
- Department of Buildings (DoB)

Please see Appendix for links to resources.
Effective Date: **Local Law 51 took effect on January 1, 2018**, and applies to projects for which an application for construction document approval is filed with DOB on or after January 1, 2018

Threshold: Requires any city-funded capital project with an estimated baseline construction cost of **$950,000 or more** involving the construction or renovation of one or more “assembly areas” include the installation of an induction loop assistive listening system in at least one assembly area and “microlooping” each security, information or reception desk used for check-in

Definition of Assembly Area: Includes rooms/areas for assembly "in which audible communication is integral to the use of the space" - for example, areas used for entertainment, education or civil gatherings, including lecture halls, auditoria, theaters, concert halls, playhouses, centers for the performing arts, convention centers

Exemptions/Carve-Outs – Law does not apply:
- (i) to classrooms in schools, facilities to deploy first responders, courthouses, and outdoor facilities such as athletic fields and stadiums;
- (ii) to reconstruction of an assembly area if the estimated cost of installing an induction loop system or alternative system exceeds 5% of the baseline construction cost of the project;
- (iii) to assembly areas that are not owned by the City, unless 50% or more of the estimated cost of the project is funded by the City treasury or the City provides $1M or more in funding
Projects may be subject to additional approvals from the following agencies and commissions:

**Landmarks Preservation Commission (LPC)**
- Approval required for any alteration, reconstruction, demolition or new construction affecting landmarked property
- Documents, drawings and other materials describing proposed work reviewed and approved before issuance of permit
- Fees for LPC permits when work requires DoB permit

**Public Design Commission (PDC)**
- Approval required for exterior work **on or above** City-owned property
- Conceptual, preliminary and final designs are reviewed and approved

**Department of Buildings (DoB)**
- Reviews and approves plans and permits for construction and renovation projects
- Fees for inspections and permits performed by the DoB
• The Office of Management and Budget (OMB) reviews all project documentation:
  o Capitally eligible project scope
  o Itemized Budget & Funding status
  o Legal Agreement
  o City ownership
    -OR-
    o If Non-City ownership, Restrictive Covenant and/or Security Agreement

• Review time is estimated to be 90 days
• Project must be fully funded before OMB will begin their review
• If OMB approves the project, OMB will issue a **Certificate to Proceed (CP)**
With the CP in 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.
There are four ways cultural capital projects are managed:

1. DDC Managed (Design & Construction)
2. EDC Managed
3. Cultural Capital Grant (CCG): DDC
4. EDC Funding Agreement (FA)

Based on a project’s needs, and organization’s capacity, DCLA identifies an appropriate managing Agency.
DCLA sends the program to the appropriate managing agency:

DCLA template prepared by the organization that describes the scope of the project, overall development plan and a project funding

INITIATING THE PROJECT

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 and the cultural organization finalize the “Program”:

The Program:

Step 3
DCLA sends the program to the appropriate managing agency:
DDC MANAGED: CRITERIA

• Generally, smaller cultural organizations that do not have the financial and operational resources and in-house experience to manage capital projects benefit from DDC’s project management and design resources.

• Ideal for projects with limited private funding, where City funds must pay for design, or where city funds may be spread over multiple fiscal years.

• Design and construction phases are managed (DDC does not manage design only).
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
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.

Staten Island Zoo -- Aquarium
DDC can contract for design in four ways:

**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
- Intended as time-efficient solution for straightforward projects.
- Will apply to clearly defined, limited scope (e.g. parking lot).
- Details forthcoming
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 2-3 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 (1-2 years)
## DDC MANAGED: TIMELINE

<table>
<thead>
<tr>
<th>Event</th>
<th>Duration</th>
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</thead>
<tbody>
<tr>
<td>Project Scope Creation (DCLA &amp; DDC)</td>
<td>3 months</td>
</tr>
<tr>
<td>Architect Procurement (includes OMB approval)</td>
<td>6 months</td>
</tr>
<tr>
<td>Project Design</td>
<td>6-18</td>
</tr>
<tr>
<td>Construction Contract Bidding (includes OMB approval)</td>
<td>9-13</td>
</tr>
<tr>
<td>Construction</td>
<td>6-24</td>
</tr>
<tr>
<td>Project Closeout with Project Evaluation and Summary</td>
<td>3 months</td>
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</tbody>
</table>

**Note:** Timeframes depend on the scale, budget and complexity of the project. The timelines shown represent optimal durations without delays, and is based on complete submissions + timely actions. *Restrictive covenants may require additional time to the schedule.*
• Projects must 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: TIMELINE**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Duration</th>
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<tbody>
<tr>
<td>Project Scope Creation (DCLA &amp; EDC)</td>
<td>3</td>
</tr>
<tr>
<td>Architect Procurement through RFP (includes OMB approval)</td>
<td>4-6</td>
</tr>
<tr>
<td>Project Design</td>
<td>6-15</td>
</tr>
<tr>
<td>Construction Contract through CM shortlist (includes OMB approval)</td>
<td>6-9</td>
</tr>
<tr>
<td>Construction</td>
<td>6-18</td>
</tr>
<tr>
<td>Project Closeout with Project Evaluation and Summary</td>
<td>3</td>
</tr>
</tbody>
</table>

Note: Timeframes depend on the scale, budget and complexity of the project. The timelines shown represents optimal durations without delays, and is based on complete submissions + timely actions.

**RESTRICTIVE COVENANTS may require additional time to the schedule**
For City managed projects, it is very important to follow a clear line of communication:

- Cultural Organization
- DCLA
- Managing Agency: DDC or EDC
- Design Consultant
- Contractor
- Sub-Consultants
- Sub-Contractors
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
- Requires robust public-private funding partnerships
- 2% City Administration Fee
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
- Familiarity with Compliance Paperwork (PassPort, Insurance, RC etc.)

**Project Managerial Capacity**
- Relevant in-house 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, typically 50%
- 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
CCG: TIMELINE

- **CCG INITIATION (Application to DDC for Technical Compliance Review)**
- **CCG Package Prep for Submission to OMB**
- **CCG Scope Review and Approval by OMB**
- **CCG Finalization**
  - Legal Agreement and Restrictive Covenant
  - Compliance Paperwork
- **Issuance of the Certificate to Proceed (OMB)**
- **Comptroller Registration**
- **Construction**
  - Project Closeout with Project Evaluation and Summary

**Note:** Timeframes depend on the scale, budget and complexity of the project. The timelines shown represents optimal durations without delays, and is based on complete submissions + timely actions. RESTRICTIVE COVENANTS may require additional time to the schedule.
If City funding is allocated through a contract between EDC and a cultural organization, the following conditions apply:

- 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
- **2.5% fee with cap at 100k**
- Project requires significant private contribution
- City funding is at least $500K and <50% of total project cost
EDC FUNDING AGREEMENT: TIMELINE

<table>
<thead>
<tr>
<th>Month</th>
<th>Define Scope &amp; Budget</th>
<th>Prepare FA Document</th>
<th>Procurement</th>
<th>Compliance Documentation</th>
<th>OMB Review</th>
<th>Execute FA</th>
<th>Comptroller Registration</th>
<th>Requisition and Payments</th>
<th>Project Closeout with Project Evaluation and Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>~ 1</td>
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</tbody>
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RESTRICTIVE COVENANTS may require additional time to the schedule.
AT LAST: RIBBON CUTTING!

The Flea Theater ribbon cutting

"Raising a joyful hell in a small space!"
DCLA CAPITAL UNIT CONTACTS

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

<table>
<thead>
<tr>
<th>Local Law 86: Green Buildings Law</th>
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<tbody>
<tr>
<td>Applies to projects with City contribution over $10M or &gt;50% of project costs</td>
</tr>
<tr>
<td>Types of requirements: LEED rating level and/or energy cost and potable water reductions</td>
</tr>
<tr>
<td>LL86 analysis meeting held before design starts (DDC managed)</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Local Laws 118, 119, 120 &amp; 121:EPP</th>
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</thead>
<tbody>
<tr>
<td>Applies to projects &gt;15,000sf and requiring a DOB permit but not covered by LEED requirements of LL86</td>
</tr>
<tr>
<td>Requires Environmentally Preferable Purchasing of certain goods &amp; construction products cited in NYC EPP Minimum Standards</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Local Law 1: M/WBE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sets goals for participation of minority or women owned construction and service firms in City projects</td>
</tr>
<tr>
<td>LL1 expands upon LL129 with updated goals: elimination of $1M cap; counting prime and subcontracts &gt;$1M toward goal; inclusion of standard services as industry subject to M/WBE</td>
</tr>
</tbody>
</table>
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

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

Interfund Agreement Fees (IFA)

- **Applies to all capital projects. Does not apply to equipment purchases**
- An administrative fee that is deducted from your capital funding allocation
- IFA ranges from 2-14%
- Addressed in the NYC Comptroller’s Directive 10, Section 9.0
• Government agencies in New York are prohibited from purchasing or obtaining certain tropical hardwoods in any form for any purpose.

• 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

• GGBP targets energy efficiency in large existing buildings (>50,000 sf) with suite of laws:
  • LL84 Benchmarking: requires annual benchmarking of energy and water consumption
  • LL85 NYC Energy Conservation Code (NYCECC): requires buildings to meet the most current energy code for any renovation or alteration project
  • 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)
LOCAL LAWS & CITY POLICIES

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

Non-City Owned:
Wicks Law

- 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 provide names and prices of Plumbing, HVAC & Electrical subcontractors
- [https://labor.ny.gov/workerprotection/publicwork/PDFs/WICKS%20Reform%20202008.pdf](https://labor.ny.gov/workerprotection/publicwork/PDFs/WICKS%20Reform%20202008.pdf)

City Owned:
Project Labor Agreements (PLA)

- 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 City to enter into one General Construction contract vs. multiple primes of Wicks Law
- M/WBE goals still apply
**ADDITIONAL APPROVALS**

NOTE: Projects may be subject to additional approvals from the following agencies and commissions:

**Landmarks Preservation Commission (LPC)**
- Approval required for any alteration, reconstruction, demolition or new construction affecting landmarked property
- Documents, drawings and other materials describing proposed work reviewed and approved before issuance of permit
- Fees for LPC permits when work requires DoB permit

**Public Design Commission (PDC)**
- Approval required for exterior work **on or above** City-owned property
- Conceptual, preliminary and final designs are reviewed and approved

**Department of Buildings (DoB)**
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Thank You