

NOT-FOR-PROFIT EQUIPMENT AND VEHICLE PURCHASE GUIDE

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INTRODUCTION

CONGRATULATIONS! On behalf of Commissioner David J. Burney, AIA, we look forward to working with your group in purchasing a capital asset.

As you know, your group has been designated by an elected official of the City of New York to receive money from the City's Capital Budget for a defined City-related purpose. The Department of Design + Construction ("DDC") will be working with your group on satisfying all of the procurement and legal requirements before any funds may be released to your group. This guide provides an overview of the process and outlines the steps each group will have to follow.



There are many steps in the process. While some of the steps may be done concurrently, there are some steps that cannot be started until an earlier step in the process is completed. It is each group's responsibility to submit to DDC in a timely manner all of the necessary information in the format prescribed by DDC.

First, what is the City's Capital Budget and what is a Capital Project? The City's Capital Budget is the City's funding plan for the acquisition, construction, reconstruction, or installation of a capital asset. In general, the Capital Budget is financed by long-term borrowings by the City through the sale of bonds in the marketplace (typically, these bonds are referred to as general obligation bonds).

A Capital Project is a project that involves the construction, reconstruction or installation of a physical public improvement, or the purchase of land, buildings or equipment, with a minimum value as determined by State and City laws and a useful life of at least five (5) years. All Capital Projects must meet the legal eligibility requirements described in the New York State Local Finance Law, the New York City Charter, and any other legal requirements described in this guide.

For the purposes of this guide, the emphasis will be on the purchase of equipment and vehicles, and not construction or reconstruction (there are even more legal restrictions for this type of allocation).

THE PROCESS

1. *Notification and Information:*



An elected official or his or her staff will initially notify each group that it has been designated to receive a certain amount of money from the City's Capital Budget for the acquisition of equipment or vehicle(s).

Each group should receive a brief questionnaire from the elected official. It is very important that the questionnaire be filled out completely and sent back to the elected official.

DDC will not start working with the group until it receives a completed questionnaire from the City's Office of Management and Budget ("OMB"), which receives it from the elected official.

2. *The Budget Process:*

The City operates on a Fiscal Year calendar, which means its books open on July 1st and close on June 30th.

In September of each Fiscal Year, DDC gets a final list from OMB of the projects that DDC will handle. A Capital Project does not have to be completed by the end of a Fiscal Year, which is different from an expense project.

3. *Legal Eligibility Requirements:*

DDC will contact each group to discuss its project and whether it meets the legal eligibility requirements. The discussion will include a review of the items to be purchased and estimated prices.



The New York State Local Finance Law and the New York City Charter require, among other things, that only assets that meet the definition of a capital asset as described in accordance with generally accepted accounting principles could be purchased with funds from the Capital Budget. In addition, Directive # 10 describes the rules for determining whether a group's purchase meets the legal eligibility requirements (i.e., minimum cost, minimum useful life and other criteria). Directive # 10 is issued by the City's Office of the Comptroller.



4. *Additional Legal Requirements:*



Before DDC can release any of the City's funds to a group, there are a number of documents that have to be supplied by the group and, in certain instances, executed by the parties. Some of the key documents are the Funding Agreement, the Security Agreement, and an Opinion of Counsel. There are other documents that the group is responsible for providing to DDC and these documents will be discussed at the initial meeting with DDC.

i. The Funding Agreement:



Each group is responsible for purchasing the equipment or vehicles pursuant to the terms and conditions of the Funding Agreement. The City does not purchase the equipment or vehicles.

The Funding Agreement is a legally binding contract between the group and DDC. It describes the responsibilities of the group and the City. The terms and conditions of the Funding Agreement are standard Citywide.

One of the key elements in the Funding Agreement is the City purpose covenant. This contractual term is critical to the entire program because Capital Projects must be limited to the purposes set forth in the New York City Charter. The City purpose covenant describes how the equipment will be used for the betterment of the citizens of the City.

There are three (3) different versions of the Funding Agreement. The three (3) versions are: (1) a Funding Agreement for equipment only; (2) a Funding Agreement for Vehicles only; and, (3) a Funding Agreement for equipment and vehicles. DDC will work with your group to identify the appropriate Funding Agreement. DDC has posted these versions on the internet for informational purposes only. Please do not fill out or otherwise edit these documents. DDC will send to the group the appropriate agreement for its execution.

ii. The Security Agreement:



In order for a group to satisfy the legal eligibility requirements, each group must provide DDC with a Security Agreement. The Security Agreement provides the City a security interest in the items purchased for a set period of time.

In addition to the Security Agreement, each group will be responsible for providing the City with a lien report. The lien report will show any Uniform Commercial Code (“UCC”) statements, and judgments and tax liens filed against personal property owned or leased by the group.

In the case of an equipment purchase, each group is responsible for filing certain UCC forms with the New York State Secretary of State. For example, UCC-1 statement financing forms must be executed and filed by the group. This form will state that DDC has a financial interest (lien) in the item purchased with the City funds. In certain instances, a UCC-3 statement financing form will also have to be filed if there are any competing liens against the item purchased with City funds.

In the case of a vehicle purchase, DDC will file a Notice of Lien with the New York State Department of Motor Vehicles. Each group is responsible for

preparing the Notice of Lien and giving DDC a true and correct original of the Notice of Lien.

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iii. The Opinion of Counsel:

Each group must retain the services of an attorney admitted to practice law in New York State. The attorney shall provide the City an Opinion of Counsel letter that the group is a valid not-for-profit in New York and is qualified to conduct business in New York; the group has the power to execute and deliver the Funding Agreement, the Security Agreement and all other related documents; the execution and delivery of the Funding Agreement, Security Agreement and other related documents have been duly authorized by all necessary corporate action of the group; and, the Funding Agreement, the Security Agreement and all other related documents are legal, valid and binding obligations of the group and are enforceable against the group.

iv. Other Documentation:

The groups are also responsible for providing to the City prior to executing the Funding Agreement a true and correct copy of the group's certificate of incorporation or other organizational document, as the case may be, evidencing the group's status as a New York not-for-profit corporation.

In addition, all groups must provide a Certificate of Incumbency certified by the Chief Financial Officer that includes the specimen signature of the officer or director who will execute the Funding Agreement.

5. Certificate To Proceed ("CP"):

A CP is a document created and issued by OMB. It is requested by DDC and goes directly to DDC. This is a mandatory step in the budget process. Before DDC requests a CP from OMB it is necessary for the group to provide a detailed list of the equipment to be purchased and prices, and DDC has determined that the items to be purchased satisfy the legal eligibility requirements.



6. Life Expectancy (Useful Life of the Asset):

All equipment and regular vehicles must have a useful life of at least five (5) years or greater, while ambulances must have a life of at least seven (7) years.

The City's interest for equipment is captured through the filing of a UCC 1 form, while the City's interest in a vehicle is captured through the filing a Motor Vehicle Lien for Vehicles (this is found under the New York State Motor Vehicle Law).

7. Miscellaneous:

Please be advised that the process takes time. However, if the group takes the initiative and provides DDC with all of the necessary information in a timely manner, then the process will move quickly. The group will have to prepare and file [Vendex forms](#). Vendex forms are gathered of all entities that receive City dollars over a certain dollar threshold (receiving City funds equal to or greater than \$100,000).

In addition, there are Department of Investigations ("DOI") and Department of Labor Services ("DLS") issues that may need to be resolved. If insurance is required, the group is responsible for providing DDC with the proper Insurance Certificates in the appropriate amounts.

Finally, an executed Funding Agreement will be sent to the City's Comptroller's Office for registration. Once the Funding Agreement is registered, all of the security interest issues are resolved and DDC has received and approved of appropriate invoices, then DDC will be able to release the Capital Funds.