

Discretionary Funding Policies and Procedures

New York City Council

January 2019

City Council Discretionary Funding

POLICIES AND PROCEDURES

Preface

Each year, Members of the Council allocate discretionary funds to not-for-profit organizations in order to meet local needs and fill gaps in City agency services. Thus, discretionary spending is a critical tool in meeting needs in our communities.

As with all taxpayer funds, the public deserves to know that discretionary funds are going to organizations with the capacity and integrity to provide quality services. The City Council has instituted a comprehensive set of measures to improve transparency and accountability in the use of discretionary funding including:

- publishing a complete list of organizations receiving discretionary funds, including the amount, the sponsoring Member or Members, and a brief description of how the funds are to be used;
- working in conjunction with the Mayor's Office of Contract Services (MOCS) and City agencies, a thorough vetting process is in place to review each organization allocated discretionary funds to assess integrity, compliance, and a track record in providing the services for which they have been selected to provide; and
- ensuring that recipient organizations and Members comply with the specific set of rules and guidelines that govern discretionary funds which the City's Conflicts of Interest Board (COIB) clarified at the Council's request. All organizations receiving funds are subject to these rules, and Council Members provide signed conflicts of interest disclosure forms with each vote approving funding.

This guide outlines the discretionary funding policies and procedures of the New York City Council. It is for use by not-for-profit organizations seeking Council discretionary funds, Member offices, and the public.

We tremendously value community partners and the important work accomplished in the constituencies. Thank you for working with us and our partners in government to implement measures critical to ensuring the future of the services you provide.

Speaker
Corey Johnson

1. What is Discretionary Funding?

Discretionary funding is a duly appropriated sum of money in the City's expense budget allocated to an eligible not-for-profit organization by the Council or a Member of the Council under section 1-02(e) of the rules of the Procurement Policy Board (PPB).

PPB Rule 1-02(e) allows certain elected officials – including Council Members and Borough Presidents (but not the Mayor or City agencies) – to designate specific not-for-profit organizations to receive funding as an alternative to funding programs through competitive procurement.

Unlike competitively awarded Agency contracts, awarded discretionary funds contracts are for a single fiscal year.

Types of Discretionary Funding

There are several categories of discretionary funding used by the City Council, each serving different purposes. The following categories have developed through Council practice over the years, and are subject to change in the future.

Member Local Initiatives: Each Member of the Council receives an amount each year to meet local needs in the Member's district, known as "*local initiatives*". Borough Delegations also allocate funding. Various factors including local needs, the Member's request, and other considerations determine the amount. Uses of local initiative funding are not limited to any particular purpose or agency, except as otherwise restricted by Council policy, PPB rules, and applicable law.

City Council Local Initiatives: Organizations may apply for funding directly to the Speaker, or Members may request that the Speaker fund an organization whose scope of services exceeds their individual ability to fund or which serves a larger geographical area. This is often referred to as the "Speaker's list."

Member Aging Discretionary Funds: Each Member receives an annual amount to fund senior services in his or her district through the Department for the Aging.

Member Youth Discretionary Funds: Each Member receives an annual amount for the provision of services for youth or community development through the Department of Youth and Community Development.¹

Anti-Poverty Initiative:

Council Members receive additional discretionary funding based on the number of people in their districts below the Federal Poverty Line; compiled by the American Community Survey (ACS). ACS is a continuous survey that individuals respond to throughout the year. Poverty

¹ For youth programs, services may only be provided outside of school hours. In-school programming must be funded through the Department of Education, with the agreement and consent of the principal(s) of the school(s) where services will be provided.

statistics presented in ACS reports and tables adhere to the standards specified by the Office of Management and Budget (OMB). Based on these figures, Council Members will receive additional funds ranging from \$25,000 (Lowest Poverty Figures) to \$100,000 (Highest Poverty Figures) in \$25,000 increments.

Citywide Initiatives: The Council may also initiate programs for addressing community needs that it feels are lacking by existing agency programming. To extend the reach of agency programs to underserved communities or populations. In most cases, the Council will provide funding to specific not-for-profit providers. Initiatives are usually citywide in scope, although they may focus on high-need communities or populations. The method of allocating funding varies by initiative and is at the discretion of the Council.

Council Reporting on Discretionary Funds

At budget adoption, allocations of Council discretionary funding are disclosed. Periodic updates occur to reflect any changes to the adopted budget.

Schedule C

At budget adoption for the upcoming fiscal year, the City Council Finance Division prepares a supporting schedule the *Schedule C*; detailing the changes made to the Mayor's Executive Budget by the Council's allocation of discretionary funds.² Schedule C lists all the discretionary designations that at the time of adoption, including, for initiatives, a short description of initiative programmatic goals.

Transparency Resolutions

Some initiatives are funded in the Adopted Budget, but specific designations of not-for-profit providers are made later in the year. New designations, alterations and/or corrections occur via Transparency Resolutions. The Finance Committee approves Transparency Resolutions, which the entire Council votes on. All new designations and changes to previous designations – including changes to the purpose or amount of funding – must be approved in a Transparency Resolution before such change can take effect.

Expense Budget Modifications

Expense Budget Modifications are a requirement by the New York City Charter in order to make certain changes to the Adopted Budget midyear. Pursuant to section 107(b) of the Charter, an Expense Budget Modification is required when funding is: 1) transferred between agencies, or 2) when funding within a unit of appropriation is increased or decreased by more than five

² The document is referred to as "Schedule C" because the Mayor's Office of Management and Budget prints two supporting schedules – A and B – that respectively detail the changes to the budget between the Executive Budget and the Adopted Budget by agency and unit of appropriation. These schedules reflect the changes set forth in Schedule C, as well as negotiated adjustments to the budget and other technical adjustments made by the Administration.

percent or fifty thousand dollars, whichever is greater. These modifications are submitted by the Mayor to the Council after which the Council has thirty days from receipt of the modification to disapprove it. When the Council makes or changes designations in a Transparency Resolution that requires shifting/moving funding, described in one of the above-listed categories, such funding shift cannot take effect until Council approval via an Expense Budget Modification.

On-line Database

An on-line database on the Council's website makes it convenient to search for information on discretionary allocations. Periodic updates of information in the online database will reflect any changes and/or additions made by approved Transparency Resolutions (note that the database may not be updated immediately). The database also indicates whether an organization is designated to receive funding from the Council. The Council database is available at <http://council.nyc.gov/html/budget/database.shtml>.

Council clearances **do not** reflect clearances made by MOCS.

What Types of Organizations May Receive Discretionary Funds?

Discretionary funding is allocated only to not-for-profit; community-based social services providers. Eligibility criteria include an organization being incorporated as a not-for-profit current registration with the New York State Attorney General's Charities Bureau (unless exempt) and have a valid Federal Employer Identification Number (EIN).

There are numerous types and categories of not-for-profits as defined by the IRS. The most common recipients of discretionary funding are 501(c)(3) organizations, but there are numerous other types of 501(c) not-for-profits. For example, War Veterans' Organizations are a 501(c)(19), Civic Leagues and Social Welfare Organizations are a 501(c)(4), and Horticulture Associations are a 501(c)(5).

Subcontractors and Consultants

An organization that receives discretionary funding must itself deliver the services of the funded program. Subcontractors or consultants may not be the primary service providers for programs funded by discretionary awards. In limited circumstances, the Council may permit an organization to utilize the services of subcontractors or consultants as an ancillary/supplemental part of the delivery of services. In addition, subcontractors and consultants must be approved by the contracting agency prior to any work commencing. Payments made to subcontractors and consultants prior to receiving the contracting agency's approval may be impermissible by the agency and in that case shall not be reimbursed. Subcontractors and consultants are not required to submit a Council application; however, they are subject to conflict of interest disclosure requirements (see section 4, Conflicts of Interest).

What Types of Organizations May Not Receive Discretionary Funds?

For-profit entities may not receive discretionary funds, except when the primary not-for-profit

contractor subcontracts or consults with a for-profit entity as part of the delivery of services. Such subcontracts and consultants must be only an ancillary part of the funded program funded, not the primary basis for the discretionary award.

2. Applying for Discretionary Funding

This section provides an overview of the steps involved in applying for discretionary funds. Since Fiscal 2013 (calendar year 2012), all applications must be submitted on-line via the Council's website. The application process opens annually in early January and closes in late February. (Fiscal years begin on July 1 and end on June 30).

Who Must Apply?

All organizations wishing to receive any one of the six types of discretionary funding directly from the Council, described above in Section 1, must submit a Council Discretionary Funding Application. The application solicits information about an organization's experience, qualifications, and integrity, and the project or service for which the organization is requesting support. The Council's website will provide information on the schedule for submitting applications.

Application for Pre-Qualification

Please note starting with FY2020, all organizations will be required to be prequalified in HHS Accelerator, regardless of award amounts. HHS Accelerator is an online-system operated by the Mayor's Office of Contract Services, designed to improve the City's contracting process. Organizations receiving funding solely through the Department of Cultural Affairs do not need to be prequalified in HHS Accelerator.

The HHS Accelerator Prequalification Application contains two parts: a Business Application and at least one Service Application and is continually available at:

<https://www1.nyc.gov/site/mocs/systems/about-go-to-hhs-accelerator.page>

The Business Application collects information to verify each organization's ability to establish or maintain a business relationship with the City. The Service Application gathers documentation to establish an organization's service experience and capabilities. An application checklist is at:

https://www1.nyc.gov/assets/mocs/downloads/pdf/NonProfit/Provider%20Discretionary%20Checklist%202019%20final_website.pdf

The application is valid for 3 years, as long as the organization submits proof on an annual basis to HHS Accelerator that they are in good standing with the Charities Bureau. After three years, organizations will need to re-apply for prequalification to HHS Accelerator.

New York City Council Vetting

All organizations must demonstrate eligibility and integrity in order to receive discretionary funding. The Council has an extensive vetting process, which includes, but is not limited to the following:

- Not-For-Profit Business Records Searches
- News article searches
- Potential conflicts of interest
- Tax Warrant database searches
- Status as a not-for-profit entity;
- Compliance with State Charity registration requirements or certification that the organization is exempt from the registration requirements;
- Active Federal Employer Identification Number (EIN) from the IRS
- Current IRS tax exempt status;
- Past evaluations of contract performance by funders; and
- Review of Use of Funds and Public Purpose

Department of Cultural Affairs Funding

Not-for-Profit cultural organizations that wish to receive funding/be contracted through DCLA must also submit an application to DCLA's Cultural Development Fund (CDF) (see www.nyc.gov/dcla for details, application period, and the application form). Organizations that DCLA finds eligible for a CDF award may receive discretionary funding/contract through DCLA. (Note that an organization does not actually receive an award via CDF; only that the entity meets eligibility requirements.) Cultural organizations that do not submit a CDF application may receive funding/contract through another agency through the process described in this guide.

3. Restrictions on the Use of Discretionary Funds

The Council has imposed certain restrictions on the awarding and use of discretionary funds, described below.

Public Purpose

All public funds, however awarded, must have a public purpose. In general, a public purpose is defined as an activity or service that is open to all members of the public, regardless of race, creed, gender, sexual orientation, religious affiliation, etc., without restriction, and which does

not promote a particular religion. Allocated funds are only for a public purpose and may not support political activities (including but not limited to lobbying, campaigns or endorsements) and/or private interests. The New York City Council's Office of Compliance reviews all applications to ensure funded organizations meet public purpose and other criteria.

Programs and services provided by religious or religiously affiliated organizations (such as a parochial school) must be able to demonstrate that the program is open to non-members, is not a religious program, and does not promote the religion.

Closed membership groups – those to which membership is restricted or subject to eligibility based upon prohibited factors – may generally not receive funding. Groups that serve a particular population – for example, youth aged 12 to 16 in a particular community – are not considered a closed membership group, as long as the program is open and accessible to all youth within that age bracket in the community. Similarly, tenant organizations in public housing may also receive funding, as long as they provide equal access to all residents of the public housing units they serve.

Newly Created Organizations

Certain restrictions apply to organizations that are newly formed or incorporated within the last two years. Organizations whose legal existence began within the last two fiscal years may not receive funding in excess of \$20,000 total (and no more than \$10,000 from a single member). This restriction may be waived under certain circumstances, such as an organization that has been in existence as a subsidiary to another organization and has become an independent entity. All exceptions will be considered on a case-by-case basis.

All newly created organizations must submit a Council Supplementary Application form and a Federal Employer Identification Number issuance letter from the IRS.

New to New York City Council Organizations (Organizations That Have Not Previously or Recently Received Council Discretionary Funding)

Organizations that have not received discretionary funding from the Council within the last three fiscal years may not receive funding in excess of \$50,000 total (and no more than \$25,000 from a single member). This restriction may be waived in exceptional circumstances. All exceptions will be determined on a case-by-case basis.

4. Conflicts of Interest

To prevent abuse or misuse of the Council's discretionary funding authority, strict rules govern conflicts of interest between Members, their staffs, family, and associates, and organizations receiving discretionary funds.

The specific rules governing conflicts of interest are in Conflicts of Interest Board (COIB) Opinion no. 2009-2, available at:

http://archive.citylaw.org/coib/AO/arch%202009/AO2009_2_Council_discretionary_funding.pdf.

The following are general guidelines. Please direct questions regarding the utilization of conflicts rules to specific cases to the Council's Office of the General Counsel or to COIB.

- Council Members are prohibited from sponsoring discretionary funding for an organization at which the Member serves as an employee, officer, or board member (except *ex officio*).
- Council Members may sponsor funding for an organization where an "associated" person (a family member or other person with whom the Member has a financial or business relationship) is an officer or employee so long as the associated person will not benefit, or appear to benefit, from the funding.
- At the time of voting, Members are required to disclose on the record any potential conflicts of interest with organizations funded by other members.
- Organizations are required to disclose any potential conflicts of interest at the time of their application, updated annually.

Every organization receiving discretionary funding is required to file a disclosure form identifying any relationships between its board or employees and elected officials. All organizations must submit a conflict of interest disclosure form annually, regardless of their pre-qualification status. Applications are not approved without a completed conflict of interest form.

Any conflicts must be reported immediately to the Council's Office of the General Counsel.

Subcontractors

Subcontractors and consultants (including independent contractors) of funded organizations are also subject to conflicts of interest rules. During the contracting process, organizations will be asked to provide a list of subcontractors and consultants to the contracting agency, accompanied by conflicts of interest disclosure forms completed by the subcontractors and consultants. Subcontractors and consultants are subject to the same restrictions as primary contractors.

5. Contracting

No organization may receive discretionary funding from the Council, and the relevant agency will not begin the contracting process, until the organization has been designated funds in Schedule C or in a Transparency Resolution approved by the whole Council. Such designation must include the organization's legal name, EIN, sponsoring member (if applicable), amount, purpose, and contracting agency.

In addition, before agencies are authorized to process a discretionary funds contract with an organization, it must appear on the list of cleared organizations maintained and distributed to agencies by MOCS.³ MOCS periodically updates the “cleared list” of organizations that have met the requirements of: (i) prequalification in HHS Accelerator; (ii) submission of a Doing Business Data Form; (iii) a valid Capacity Building Training Certificate (if applicable); and (iv) confirmation of City Council vetting. Funded organizations may track the clearance status of their award on the MOCS website at:

<https://www1.nyc.gov/site/mocs/partners/discretionary-award-tracker.page>

All discretionary awards are contracted through City agencies, and are subject to the same procedures and must adhere to the requirements of a standard agency contract. Agency procedures may differ in specifics, but in general, all organizations receiving discretionary awards will be required to submit a detailed scope of services, a budget, and other required documentation to the Agency before contract finalization.

All requirements must be met to the agency’s satisfaction, and no Council Member, officer or official of the Council may waive any requirement set by the Agency that is a normal and standard part of the Agency is contracting process. In almost all instances, no contract funds are released until services have been, or have begun to be delivered. Agencies typically require verifiable documentation of expenses before payment.

In sum, recipient organizations need to complete the following steps before disbursement of funds the Council awarded:

- 1) City Council designation;
- 2) City Council vetting and clearance;
- 3) HHS Accelerator prequalification and/or DCLA approval;
- 4) MOCS clearance;
- 5) Executed contract with a City agency or grant with DCLA, and
- 6) Registration by the Comptroller.

Upon discretionary award approval, as part of the budget process, posting in Schedule C or a subsequent transparency resolution, Council Members are prohibited from controlling the expenditure of discretionary funds allocated to organizations. Council Members and their staff may not be involved in planning the details of how an organization will implement services or in procuring or paying the organization’s vendors. Organizations should contact Charles Davis, the Council’s Chief Compliance Officer at (212) 788-6894 or cdavis@council.nyc.gov if a Council

³ The Council’s Finance Division provides MOCS with a list of approved organizations, which is then incorporated into the list MOCS provides to contracting agencies, which includes both the organizations pre-qualified by MOCS and those cleared by the Council. No approvals made by the Council are communicated directly to Agencies.

Member or his/her staff instructs or makes recommendations on how or where to use discretionary funds.

In almost all instances, no contract funds are released until services have been, or have begun to be delivered. Agencies typically require verifiable documentation of expenses before payment. Please note that the Council reserves the right to increase, decrease or rescind funding at any time before an organization enters into a valid contract with the City.

Changes to Contracts

Any change in the purpose or scope of services from that described in the organization's application for funding and reported in Schedule C or a prior Transparency Resolution must be made in a later Transparency Resolution. Agencies will not process contracts where the scope of services or purpose of funds submitted by the funded organization appears to differ from the published and approved purpose.

6. Training

Certain organizations receiving discretionary funding are subject to a training requirement. The training covers topics relevant to not-for-profits receiving City funds, including legal compliance, board development, internal controls and contract management. Trainings are conducted in person three times a year and available everyday online.

MOCS will notify any funded organization that is subject to the training requirement. Generally, organizations subject to the training requirement are those that receive more than \$10,000 in discretionary funds, but have entered into contracts with City agencies with a total value of less than \$1 million.

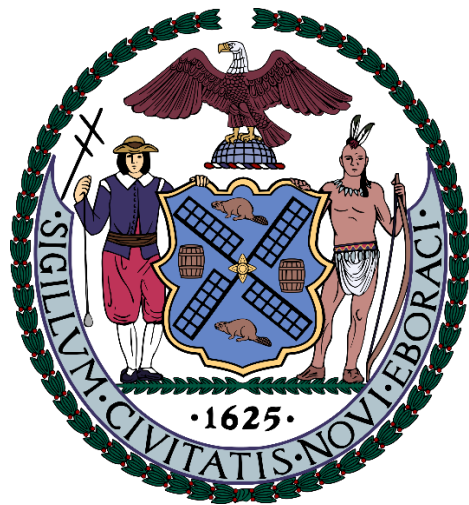
The training must be completed by an officer or executive or Board Member of the funded organization. More than one employee of the organization may take the training, subject to space availability.

Upon completion of the training, a certificate is issued to each participant. This certificate is good for three fiscal years, following the year in which the training is completed. The certification is conferred on the person completing the training, not the organization. Thus, if an organization has only one certified employee and that person leaves the organization's employ, the organization must send a new employee to be trained in order to receive designated funds for that fiscal year. (Similarly, if the departing certified employee joins a new organization that is subject to the training requirement, the certification accompanies that person and the organization is deemed to have fulfilled the training requirement for the duration of the certification, as long as the certified employee remains at the organization.)

Upon the expiration of the certification, re-certification will be possible in person or online. Organizations should maintain active certification to avoid delays in registration. MOCS will

contact organizations whose certification is due to expire to conduct re-certification training.

Under certain limited circumstances, an organization may request a waiver from the training requirement. Each such request will be reviewed on a case-by-case basis. Generally, an organization with more than \$10 million in annual revenues that provides regular training to its senior staff and board in the areas of legal compliance, board development and internal controls may apply for an exemption from the training requirement.



January 2019
