



Discretionary Funding Policies and Procedures

New York City Council

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City Council Discretionary Funding

POLICIES AND PROCEDURES

Preface

Starting in 2006, the City Council began to implement a series of reforms in the use of “discretionary funds” – funds that Members of the Council allocate to non-profit, community-based social service providers to meet local needs and fill gaps in City agency services.

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 free from conflicts of interest.

The City Council has instituted a comprehensive set of measures to improve transparency and accountability in the use of discretionary funding:

In 2006, the Council began publishing a complete list of organizations receiving discretionary funds, along with the amount, the sponsoring Member or Members, and a brief description of how the funds were to be used.

Beginning in 2008, working in conjunction with the Mayor’s Office of Contract Services and City agencies, the Council implemented a thorough vetting process for each applicant for discretionary funds. Recipients of Council discretionary funds must demonstrate integrity, compliance, and a successful track record in providing the services for which they are funded.

In addition, at the Council’s request, the City’s Conflicts of Interest Board clarified the rules governing discretionary funds in 2009. All organizations receiving funds are subject to these rules, and Council Members provide signed conflict of interest disclosure forms with each vote to approve funding.

This guide outlines the policies and procedures that govern the use of discretionary funds for fiscal year 2012. It is intended for use by non-profit organizations seeking Council discretionary funds, Member offices, and the public.

I believe the New York City Council has instituted the most thorough and comprehensive system for protecting the integrity of this small but important source of public spending that exists in the nation.

We value tremendously our community partners and the important work they do for our constituents, and we thank you for working with us and our partners in government to implement measures critical to ensuring the future of the services you provide.

Christine C. Quinn
Speaker

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 non-profit organizations to receive funding as an alternative to funding programs through competitive procurement.

Unlike competitively-awarded Agency contracts, discretionary funds contracts may only extend 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.

Local Initiatives – Member: Each Member of the Council receives an amount each year to be used at the Member's discretion to meet local needs in the Member's district. These are referred to as "local initiatives". The amount is determined by various factors, including local needs, the Member's request, and other considerations, but is not less than \$80,000 per district. 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.

Local Initiatives – City Council: 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 a fixed annual amount to fund senior services in his or her district through the Department for the Aging. Currently each Member receives \$108,750.

Member Youth Discretionary Funds: Each Member also receives \$151,714 annually for the provision of services for youth through the Department of Youth and Community Development.

Initiatives: The Council may also initiate programs for the purpose of addressing community needs that it feels are not met by existing Agency programming, or to extend the reach of agency programs to underserved communities or populations. In most, but not all, cases, the Council will provide funding to specific non-profit providers. Initiatives are almost always citywide in scope, although they may be targeted to meet specific high-need communities or populations. The method of allocating funding varies by initiative. In some cases, for example, an historical provider or providers is renewed annually. In other cases individual members or borough delegations may allocate initiative funds in an amount determined by an analysis of community need.

Reporting on Discretionary Funds

Allocations of Council discretionary funding are fully disclosed at the time the budget is adopted and updated periodically to reflect changes.

Schedule C

When the budget for the coming year is adopted by the City Council in June, the Finance Division prepares a supporting schedule detailing the changes made to the Mayor's Executive Budget by the Council – known as Schedule C.¹ Schedule C lists all the discretionary designations that have been made at the time of adoption, including, for initiatives, a short description of the initiative's programmatic goals. In addition, Schedule C lists all restorations of City funds to cuts proposed by the Mayor in the Executive Budget (known as PEG Restorations – for Program to Eliminate the Gap). PEG restorations are not discretionary funding – they are simply actions to restore agency funding to deliver agency services that the Council wishes to protect in the budget.

Transparency Resolutions

Some initiatives are funded in the Adopted Budget, but specific designations of non-profit providers are made later in the year. The vehicle for making new designations, as well as any changes or corrections to previous designations, is via resolution of the Council, known as Transparency Resolutions. Transparency Resolutions are approved by the Finance Committee and then voted on by the whole Council. All new designations and changes to previous designations – including changes to the purpose or amount of funding – must be approved in a Transparency Resolution.

On-line Database

An on-line database on the Council's website makes searching for up-to-date information on discretionary allocations convenient. Information in the on-line database is updated to reflect any changes or additions made up through the most recent approved Transparency Resolution. The database also indicates whether an organization has been approved for funding. The database for Fiscal Year 2011 is available at <http://council.nyc.gov/html/budget/council-disclosure-fy11.shtml>.

What Types of Organizations May Receive Discretionary Funds?

Discretionary funds may only be allocated to not-for-profit, community-based social services providers.

In order to receive discretionary funds directly, an organization must be incorporated as a not-for-profit and registered with the New York State Attorney General's Charities Bureau, unless exempt.

¹ 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 provide supporting detail on the amounts appropriated in the budget by agency and unit of appropriation. Note that the Administration usually includes changes in the Adopted Budget in addition to those made by the Council in Schedule C.

Small neighborhood associations that are not incorporated may receive discretionary funds indirectly (through a fiscal conduit or fiscal agent), provided they are a not-for-profit.

What Types of Organizations May Not Receive Discretionary Funds?

For-profit entities may not receive discretionary funds, except when the primary non-profit contractor subcontracts with a for-profit entity as part of the delivery of services. Such subcontracts, however, must be only an ancillary part of the program to be funded, not the primary basis for the discretionary award, and must be approved by the contracting agency.

2. Applying for Discretionary Funding

This section provides an overview of the steps involved in applying for discretionary funds. Beginning with Fiscal Year 2012, applications must be submitted on-line. The application and detailed instructions can be found on the Council's website, at <http://council.nyc.gov/html/budget/fy2012.shtml>.

Who Must Apply?

All organizations that wish to receive discretionary funding must submit a Council organization qualification application (OQA). The application elicits information about an organization's experience, qualifications, and integrity, and the project or service for which the organization is requesting support.

For organizations seeking Member or City Council local initiative funding or Member Youth or Aging discretionary funds, the application process generally begins in early- to mid-February. The deadline for submitting applications is usually in late March. The Council's website will provide information on the schedule for submitting applications.

Organizations receiving funding under an initiative may not be required to submit the Council application if they have been pre-qualified for discretionary funding by the Mayor's Office of Contract Services (see below). Any organization that has received pre-qualification approval in a previous year does not need to re-apply for pre-qualification, but will be required to certify as to the accuracy of information in their original pre-qualification submission as of the date of their contract in subsequent years. Additional information and pre-qualification status is available on the MOCS website (www.nyc.gov/mocs).

Application and Pre-Qualification

In addition to the Council application, all organizations that are allocated more than \$10,000 in total discretionary funding must also submit a pre-qualification application. The application is maintained by the Department of Youth and Community Development on behalf of MOCS and all contracting agencies (www.nyc.gov/dycd), and is available continually. Organizations that have received pre-qualification approval in a prior fiscal year are not required to submit a new pre-qualification application.

Note that organizations receiving \$10,000 or less are generally only required to submit the Council application form.

In either case, organizations must demonstrate eligibility and integrity in order to receive discretionary funding. The Council and MOCS vetting includes:

- An organization's status as a not-for-profit entity;
- Compliance with State Charity registration requirements or certification that the organization is exempt from the registration requirements;
- Possession of an active EIN number from the IRS;
- A review of an organizations' past evaluations of contract performance by funders;
- Description of the program to be provided and in the case of awards of over \$10,000, references from prior funding sources.

Once an organization has been pre-qualified by MOCS, the pre-qualification approval is generally valid for three fiscal years beginning with the year in which funding is first received. The funded organization will be asked to certify any changes to the information provided in their original pre-qualification application in subsequent years as part of the contracting process.

All organizations, regardless of amount, are subject to review by the Council for public purpose and other criteria.

Subcontractors

Subcontractors of organizations that receive discretionary funding are not generally required to submit an OQA or pre-qualification application (see below). They are, however, subject to conflict of interest disclosure requirements (see section 4, Conflicts of Interest).

Department of Cultural Affairs Funding

In addition to the Council's Organization Qualification Application, non-profit cultural organizations that wish to receive funding through the Department of Cultural Affairs (DCLA) must also submit an application to DCLA's Cultural Development Fund (see www.nyc.gov/dcla for details, application period, and the application form). Organizations that are found by DCLA to be eligible for a CDF award may receive discretionary funding through DCLA. Note that an organization does not need to actually receive an award from the CDF, only to be found eligible. Cultural organizations that do not submit a CDF application may receive funding 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 be used for a City purpose. In general, a City purpose is defined as an activity or service that is open to all members of the public, regardless of race, creed, gender, religious affiliation, etc., without restriction, and which does not promote a particular religion.

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 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.

Funds may only be allocated for a public purpose and may not support political activities and private interests.

The Office of the General Counsel reviews all applications to ensure funded organizations meet public purpose criteria.

Newly-Funded and Newly-Created Organizations

Certain restrictions apply to organizations that have not received funding (either discretionary or through competitively-awarded agency contracts) within the last 2 years, or which have been newly formed or incorporated within the last 2 years.

Newly-Funded Organizations. Existing organizations that have not received funding from the City (either discretionary funds or City agency contracts) within the last 2 years will be asked to submit additional information, including other sources of funding, references and evaluations, and a description of prior experience in the service area.

Newly-Created Organizations. Organizations whose legal existence began within the last 2 fiscal years may not receive funding in excess of \$15,000 total (and no more than \$7,500 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 been recently “spun off” as an independent entity. These exceptions are considered on a case-by-case basis.

Fees

In the interest of promoting the broadest public access to programs and services funded by the Council, it is the Council's policy that the charging of fees for programs supported with Council discretionary funds should be minimal. If fees are charged, they should be either low enough to not discourage access to any member of the community, or it should be the funded organization's policy and practice to waive or reduce fees in cases of need. The charging of fees must be disclosed and will be reviewed on a case-by-case basis.

Agency policies regarding fees may differ from the Council's. In cases where the Council provides the majority of public funding for a program, the most restrictive policy (whether the Council's or the agency's) applies. Where Council funding provides less than half of program funding, the agency policy applies.

4. Conflicts of Interest

To prevent abuse or mis-use 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 spelled out in Conflicts of Interest Board (COIB) Opinion no. 2009-2:

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

The following are general guidelines. Questions regarding the application of conflicts rules to specific cases should be directed 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*).
- 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 discretionary funded organization 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 will not be approved without a completed conflict of interest form.

Any conflicts must be reported immediately to the General Counsel's office and the Mayor's Office of Contract Services.

Subcontractors

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

5. Contracting

No organization may receive funding until it has been listed in Schedule C or in a Transparency Resolution approved by the whole Council which includes the organization's legal name, EIN, sponsoring member (if applicable), amount, purpose, and contracting agency. If the funding is to be distributed through a fiscal conduit, the fiscal conduit must also be named, along with its EIN (see Section 6 below for more information on fiscal conduits). Agencies will not begin the contracting process until the funds have been designated either in Schedule C or a Transparency Resolution.

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 the Mayor's Office of Contract Services.² MOCS periodically updates the "cleared list" of organizations that have met the requisite requirements including either prequalification or City Council vetting and are in compliance with all applicable requirements and in good standing with the City of New York. Funded organizations may track the status of their award on the MOCS website (<http://www.nyc.gov/html/mocs/html/vendors/council.shtml>).

Both the Council's designation and MOCS pre-qualification approval are necessary before agencies will sign, and the Comptroller will register, a contract.

All discretionary awards are contracted through City agencies, and are subject to the same contracting 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 before a contract is signed.

All requirements must be met to the agency's satisfaction, and no Member, officer or official of the Council may waive any requirement set by the agency that is a normal and regular part of its contracting process.

² In cases where the Council is responsible for approving an organization's application (i.e., generally awards totaling \$10,000 or less), the Office of the General Counsel 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.

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 is made.

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 Transparency Resolution must be made in a 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. Fiscal Conduits

Smaller organizations that lack administrative capacity to handle the requirements of the City contracting process may receive their discretionary allocation(s) via a fiscal conduit.

The role of a fiscal conduit is to provide administrative and technical assistance to the organization on whose behalf it serves as conduit. This may include assistance with required paperwork, review and submission of vouchers to City funding agency, receipt and disbursement of contract payments, oversight of program and program documentation, bookkeeping and auditing, and capacity building consultations and trainings.

Use of fiscal conduits is limited. Only organizations receiving less than \$10,000 total in discretionary funding may use a fiscal conduit.

Organizations wishing to act as fiscal conduits are subject to a separate pre-qualification process. Organizations may be pre-qualified as either "Neighborhood" or "Citywide" conduits:

Neighborhood Fiscal Conduits

- may act as fiscal conduits for a maximum of 10 organizations;
- are limited to providing services to organizations within the same borough;
- are limited to providing services to organizations which deliver similar services or programs.

Citywide Fiscal Conduits. Organizations that qualify as a Citywide Fiscal Conduit

- may act as fiscal conduit for up to 25 organizations, and
- must have the provision of technical assistance and support to other organizations as part of their mission statement

A Neighborhood Fiscal Conduit may charge a total of up to 5% of the value of the awards it administers or \$5,000 per fiscal year (whichever is less), as an administrative fee. A Citywide Fiscal Conduit may charge up to 10% of each award for which the organization serves as the fiscal conduit, so long as it provides non-administrative technical assistance services. If it does not, the charge is subject to the same limitation as for a Neighborhood Fiscal Conduit.

DYCD Fiscal Agent

In addition, even for stand-alone awards that do not go through fiscal conduits, DYCD uses a “fiscal agent” to handle the invoice and payment process for its smaller discretionary awards. The agency handles the initial contracting process itself, after which the fiscal agent takes over to accept and approve the funded organization’s documentation of the provision of services and to make the resulting payments.

7. Training

Certain organizations receiving discretionary funding are subject to a training requirement. The training is a one-day session run by the Mayor’s Office of Contract Services’ Capacity Building and Oversight Unit. The training covers topics relevant to non-profits receiving City funds, including legal compliance, board development, internal controls and contract management. Trainings are conducted throughout the City in different locations.

MOCS will notify any funded organization that is subject to the training requirement. As a general rule, for FY 2012, 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 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, including 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. (By the same token, if the departing certified employee joins a new organization that is subject to the training requirement, the certification accompanies her, 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.)

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.
