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COMPTROLLER'S MEMORANDUM
#14-02

To: Agency Heads/Fiscal Officers

From: Michele Mark Levine
Deputy Comptroller for Accountancy / Chief Accountant

Date: March 11, 2014

Subject: Updates to Comptroller's Memorandum #13-01 *Construction costs for additional related work which extends beyond the time when a Capital Asset is placed into service for purposes of minimum cost eligibility*

The City of New York's (City) capital spending policy is governed primarily by Chapter 9 of the New York City Charter and Sections 10 & 11 of the New York State Local Finance Law (LFL). These laws require, among other things, that only assets that meet the definition of Capital Assets in accordance with generally accepted accounting principles (GAAP) may be charged to the Capital Projects Fund to be financed with long-term debt. This update to Comptroller's Memorandum #13-01 is issued pursuant to the Comptroller's authority as established in Chapter 5, Section 93 of the New York City Charter, in particular Sections 93(h) & 93(m).

Capital spending and the classification and control of Capital Assets held by the City are subject to periodic audit by the Comptroller. This Comptroller's Memorandum (CM) updates a provision of Comptroller's Memorandum # 13-01, *Construction costs for additional related work which extends beyond the time when a Capital Asset is placed into service for purposes of minimum cost eligibility* (April 12, 2013). CM 13-01 updated Directive 10, *Charges to the Capital Projects Fund*, Section 3.2, *Minimum Costs.*

CM 13-01 directed a six-month cut-off period for when it would be permissible—to maintain capital eligibility—to combine additional costs with the costs of a Capital Project. It further directed that the count-down period was to commence on the date that the building, structure or facility was placed within service.

We have reevaluated the practical effect of this directive. Capital work on a project may sometimes be delayed six months or more beyond the in-service date because of contractual disputes arising out of defective work and the like. City agencies should be encouraged to assert their rights under contract, including by demanding that defective work be remediated. Agencies should not be effectively penalized for doing so. This CM therefore amends the six-month cut-off period by tolling it until the resolution of pending litigation, arbitration or other ongoing disputes that delay the submission of orders for additional work. Such additional work, however, must be within the scope of the original Capital Project, and must be required by settlement agreement or court order as constituting corrective action to remediate defective work to resolve such disputes.

The corresponding Section of Directive 10 Section 3.2 has been reproduced in its entirety showing all new language in *italics.* Please keep this CM with your copy of CM 13-01 and Directive 10, for future reference.

This CM is effective immediately.

> **§3.2 Minimum Cost**
> The cost of a Capital Project must be $35,000 or more. The $35,000 minimum refers to the total cost of the project, excluding the cost of initial outfitting and surface treatments (such as painting and carpeting), if any. If the Capital Project involves improvements to real property and the work within different areas of a building, facility or element of infrastructure is comprehensive, as defined in section 4.1, the improvements combined must cost at least $35,000. If the project is not comprehensive, as defined in section 4.1, the improvements to the different areas of the building, facility or element of infrastructure must each meet the $35,000 minimum cost. If the Capital Project

involves equipment, each unit of equipment must have a unit cost of $35,000, unless the equipment is part of an initial outfitting, as defined in Section 5.0.

Capital Projects often have construction costs for additional related work which extends beyond the time when the building, facility, structure or other Capital Asset is placed into service. For purposes of minimum cost eligibility, orders for the additional work must be within the scope of the original Capital Project and be made within six months of the date that the building, structure, facility or other Capital Asset is placed into service in order for the additional costs to be combined with the costs of the Capital Project. The cost of orders for additional work made after six months from the date that the building, structure, facility, or other Capital Asset is placed into service must meet the minimum costs as a stand-alone capital improvement in order to be capital eligible. *However, if such additional work constitutes corrective action to remediate defective work ("Corrective Work"), which Corrective Work, if performed, would resolve pending litigation, arbitration, or other ongoing disputes that delay the submission of orders for Corrective Work, such six-month period is tolled until such time the dispute is resolved. Such resolution includes Corrective Work stipulated by settlement or required by court order, and the six-month period commences upon the date such settlement is executed or such court order is "so ordered."*

When additional related work must be performed to remediate a decline in the service utility of a building, structure, facility or other Capital Asset, a determination must be made as to whether a write-down is appropriate. Agencies should consult Directive 30, Capital Assets, Section 6.0, Impairment, in making this determination.

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