

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Process of the Department of Cultural Affairs for Awarding Program Grants to Cultural Organizations

FL09-106A

December 30, 2009



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

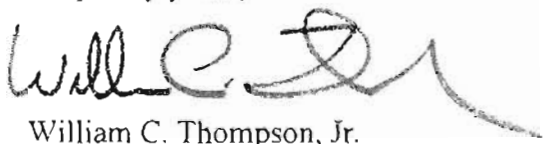
In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the process of the Department of Cultural Affairs (DCA) for awarding program grants to cultural organizations.

DCA is the largest public funder of culture in the country. It awards program grants to roughly 800 cultural institutions in all five boroughs and oversees operating funds for 34 City-owned cultural institutions as well as a capital program for cultural facilities. We audit agencies such as this as a means of ensuring that they comply with applicable procedures and operate with transparency and accountability.

The results of our audit, which are presented in this report, have been discussed with officials of DCA, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,



William C. Thompson, Jr.

WCT/fh

Report: FL09-106A
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ADDENDUM NYC Department of Cultural Affairs Response

*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Process of the
Department of Cultural Affairs for
Awarding Program Grants to Cultural Organizations
July 1, 2007–June 30, 2008**

FL09-106A

AUDIT REPORT IN BRIEF

The New York City Department of Cultural Affairs' (DCA) mission is to support and strengthen New York City's vibrant cultural life. Among its primary goals is the provision of public funding to nonprofit cultural organizations.

DCA is the largest public funder of culture in the country, providing support for nonprofit organizations representing the visual, literary, and performing arts disciplines, as well as zoos, botanical gardens, and historical and science museums. DCA awards program grants to roughly 800 cultural institutions in all five boroughs and oversees operating funds for 34 City-owned cultural institutions as well as a capital program for cultural facilities.

In January 2007, Mayor Bloomberg and Council Speaker Quinn announced an agreement that allocated \$30 million toward expanding the Cultural Development Fund (CDF)—a merit-based fund for cultural organizations. Expanding the CDF was intended to increase transparency and ensure a greater level of accountability for public money funding hundreds of cultural programs through DCA. The CDF expansion was intended to replace long-standing fixed entitlements to arts organizations with a competitive review process, giving more cultural groups access to public funds allowing them to provide quality public services.

For Fiscal Year 2008, DCA awarded \$35.5 million in program grants to 848 cultural institutions—\$25.1 million in CDF funds, \$6.2 million in Safety-Net funds, \$3.1 million in City Council Member-Item funds (discretionary funds), and \$1.1million in Local Arts Council funds.¹

¹ Local Arts Council funds are funds allocated to each borough for awarding grants to individual artists and organizational project support for public projects in the borough.

Audit Findings and Conclusions

DCA generally complied with its requirements related to awarding CDF grants to cultural programs. Proposals that received grants were complete and submitted within the required deadline, and grants were made only to programs operating in New York City. We found no grants for fund-raising activities or receptions.

However, we found that DCA asked that organizations alter their CDF Public Service Award Proposals to increase the amount requested to justify receiving Safety-Net and Member-Item funds in addition to the CDF funds. Altering proposals after receiving signed grant agreements, is not only improper but greatly diminishes transparency and accountability for public money that funds hundreds of cultural programs through DCA. Indeed, the practice has the appearance of possible misconduct. DCA also altered unsigned grant agreements to distribute excess funds that it had set aside for the appeals process, which invites the conclusion that certain cultural institutions are more entitled than others to receive additional funding.

We also noted some instances of noncompliance with DCA policy and procedures. These weaknesses include: payment by DCA of the entire award amounts to 381 organizations at the beginning of the fiscal year in violation of its procedures, the staffing of three panels not in accordance with DCA regulations, and the failure to submit for registration by the Comptroller's Office four agreements with cultural organizations that included Member-Item funding in excess of \$25,000 as required.

Audit Recommendations

To address these issues, we recommend that DCA should:

- Discontinue its practice of instructing organizations to alter the Synopsis Page of its Public Service Award Proposal to justify any addition of Safety-Net funds and Member-Item funds to the CDF Public Service Awards, if any. Safety-Net and Member-Item funds should instead be awarded through separate contracts, not commingled with competitively awarded CDF Public Service Awards.
- Discontinue its practice of altering grant agreements to distribute excess DCA funds.
- Ensure that it follows its own procedures and guidelines when making payments to awardees.
- Ensure that all panels are staffed in accordance with DCA guidelines.
- Ensure that all grant agreements are signed by all parties and maintained by DCA.
- Ensure that all contracts funded with \$5,000 or more in Member-Items (discretionary funds) be submitted for registration to the Comptroller's Office of Contract Administration.

INTRODUCTION

Background

The New York City Department of Cultural Affairs' mission is to support and strengthen New York City's vibrant cultural life. Among its primary goals is the provision of public funding to nonprofit cultural organizations, both large and small, in the City.

DCA is also an advocate for the nonprofit cultural community, providing technical assistance to individual organizations, developing promotional initiatives to boost participation in the City's cultural life, and articulating the profound impact of culture on the City's quality of life and economic well being.

DCA is the largest public funder of culture in the country, providing support for nonprofit organizations representing the visual, literary, and performing arts disciplines, as well as zoos, botanical gardens, and historical and science museums. DCA awards program grants to roughly 800 cultural institutions in all five boroughs and oversees operating funds for 34 City-owned cultural institutions as well as a capital program for cultural facilities.

In January 2007, Mayor Bloomberg and Council Speaker Quinn announced an agreement that allocated \$30 million toward expanding the Cultural Development Fund (CDF)—a merit-based fund for cultural organizations. Expanding the CDF was intended to increase transparency and ensure a greater level of accountability for public money funding hundreds of cultural programs through DCA. The CDF expansion was intended to replace long-standing fixed entitlements to arts organizations with a competitive review process, giving more cultural groups access to public funds allowing them to provide quality public services.

All organizations that are awarded grants from DCA, regardless of funding source, must first complete a Cultural Development Fund Public Service Award Proposal that outlines the scope of services to be funded, the dollar amount requested, and the total dollar cost of the project (which should be at least double the amount requested). The proposals are then evaluated by the appropriate DCA panels. These panels include peers in the organization's field and representatives of elected officials. Organizations with an operating income greater than \$250,000 are reviewed by a discipline-specific panel—i.e., Dance, Music, Theater, Museum—consisting of six representatives from the field and a designee of the City Council. Organizations with an operating income of \$250,000 or less are reviewed by a borough-specific panel consisting of representatives from the field, a designee of the City Council, and a designee of the respective Borough President. These panels determine whether the organizations and projects should receive CDF grants.

It should be noted that the Mayor's Office and the City Council leadership agreed that organizations would receive the same amount in Fiscal Year 2008 (Safety-Net funds) as they received in Fiscal Year 2007—or the allocation recommended by the panel (CDF funds), whichever was greater—so that organizations would not experience a drastic decline in funding as a result of the expanded competitive awards process. For all future years, these organizations will receive the allocations recommended by the panels. Organizations can also receive Member-Item funds—discretionary funds allocated to an organization by a City Council member.

For Fiscal Year 2008, DCA awarded \$35.5 million in program grants to 848 cultural institutions—\$25.1 million in CDF funds, \$6.2 million in Safety-Net funds, \$3.1 million in Member-Item funds, and \$1.1million in Local Arts Council funds.²

Objective

The audit objective was to determine whether DCA awarded Cultural Development Fund program grants to cultural programs in compliance with DCA’s requirements.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit covered the period July 1, 2007, through June 30, 2008 (Fiscal Year 2008).

To accomplish our audit objectives we:

- interviewed DCA’s Assistant Commissioner for Program Services and the Deputy Counsel and conducted walkthroughs to gain an understanding of the DCA’s review and award process, and
- reviewed DCA flowcharts and prepared memoranda outlining our understanding of these procedures and DCA’s internal controls.

In addition, we reviewed the following documents to obtain an understanding of the procedures and regulations pertaining to the review and awards process for the grants: Fiscal Year 2008 Cultural Development Fund Public Service Award Proposal (Proposal Guidelines), panel materials for the Fiscal Year 2008 Cultural Development Fund, Procedures for Log-in of Fiscal 2008 Proposals, Law Department Opinion 9-93,³ Comptroller’s Memorandum #95-09,⁴ Law Department form “Approval as to Form of Contract By Standards Type of Class,” Financial Management System (FMS) Office of Contract Administration policies and procedures, and other applicable guidelines.

² Local Arts Council funds are funds allocated to each borough for awarding grants to individual artists and organizational project support for public projects in the borough.

³ Law Department Opinion 9-93 letter dated December 29, 1993, concerning the treatment of DCA’s funding of cultural organization as grants rather than procurements.

⁴ Comptroller’s Memorandum #95-09, dated November 21, 1995, “Encumbrance and Registration Procedures for Line Item Grants.”

For Fiscal Year 2008, DCA received 1,071 CDF Public Service Award Proposals. To determine the total population, we requested a list of proposals received by DCA and reconciled it with DCA's Fiscal Year 2008 Proposal Log, which DCA uses to log in the receipt of all proposals. It should be noted that we received two copies of the list—one hard copy and one electronic. We used the electronic copy because it contained the most-up-to-date information concerning actual award amounts.

To determine whether DCA complied with the criteria and procedures in its Proposal Guidelines and CDF panel materials, we randomly selected 50 proposals—38 proposals that were awarded grants for Fiscal Year 2008 and 12 that were not. For all 50 proposals, we determined whether:

- Proposals were received or postmarked no later than Monday, March 26, 2007—DCA's established deadline. According to the CDF Service Award Proposal Guidelines, DCA "**will make no exceptions to this deadline.**" (Emphasis in original.)
- Proposals were complete. Proposals must include the following items: original signed and completed proposal form, copy of Internal Revenue Service (IRS) 501(c)(3) determination letter, applicable financial documents based on the organization's Fiscal Year 2005 operating budget, list of staff, list of Board members, funding plan, and relevant background materials,
- Proposals were assigned to the appropriate panels, according to operating budget, discipline, and borough,
- Panels were staffed in accordance with DCA guidelines. According to CDF Public Service Award Proposal Guidelines, discipline-specific panels include six representatives from the field and a designee of the City Council. Borough-specific panels include representatives from the field, a designee of the City Council, and a designee of the respective Borough President,
- Awards were based on panel recommendations,
- Grants were made only for programs based in New York City,
- Grants were made for fund-raising events or receptions, a violation of DCA procedures,
- Agreements were properly executed and agreements for more than \$100,000 were registered with the Comptroller's Office, as required by Comptroller's Memorandum #95-09, "Encumbrance and Registration Procedures for Line Item Grants," and
- Payments were made in accordance with DCA guidelines.

We also selected and performed the same tests on the following additional sample of 49 judgmentally selected proposals, of which 48 were awarded grants:

- Twenty proposals that had the largest increase in panel ranking scores from Round 1 to Round 3,⁵
- Five proposals that received the largest Safety-Net-funded awards in terms of dollars,
- Five proposals that received the largest Member-Item-funded awards in terms of dollars,
- The remaining four Local Arts Council awards,⁶
- All five proposals awarded repeating grants to individual artists living in a particular borough and to organizational support of public arts projects based in a particular borough,
- Five proposals that had the largest differences between the requested amount and the awarded amount, and
- Five proposals in each of the two lists of awards provided by DCA that had the largest differences between dollar amounts on the lists.

Discussion of Audit Results

The matters covered in this report were discussed with DCA officials during and at the conclusion of this audit. A preliminary draft report was sent to DCA officials on October 8, 2009, and was discussed at an exit conference held on October 28, 2009. On November 19, 2009, we submitted this draft report to DCA officials with a request for comments. We received a written response from DCA's General Counsel on December 4, 2009.

DCA's General Counsel generally disagreed with the audit's recommendations and stated, in part:

"The Department of Cultural Affairs ("**DCA**" or "**Agency**") appreciates this opportunity to respond to the Draft Audit Report dated November 19, 2009 ("**Draft Report**") concerning the Agency's process for awarding Programs grants to cultural organizations. Although the Agency was pleased with the auditors' determination that DCA generally complied with its requirements relating to awarding Cultural Developments Fund ("**CDF**") grants, we remain concerned about several mischaracterizations of the CDF program, as well as several instances where the Draft Report mischaracterizes DCA's program grants as City procurements, which they are not." (Emphases in original.)

The specific comments raised by DCA's General Counsel and our rebuttals are contained in the relevant sections of this report.

The full text of the DCA General Counsel's response is included as an addendum to this report.

⁵ CDF Public Service Award Proposals are ranked by the respective panels in three separate rounds.

⁶ DCA provides grants to five Local Arts Councils, one for each borough. One of these councils, Bronx Council of the Arts, was selected in our random sample.

FINDINGS AND RECOMMENDATIONS

DCA generally complied with its requirements related to awarding Cultural Development Fund grants to cultural programs. Proposals that received grants were complete and submitted within the required deadline, and grants were made only to programs operating in New York City. We found no grants for fund-raising activities or receptions.

However, we found that DCA asked that organizations alter their CDF Public Service Award Proposals to increase the amount requested to justify receiving Safety-Net and Member-Item funds in addition to the CDF funds. Altering proposals after receiving signed grant agreements, is not only improper, but greatly diminishes transparency and accountability for public money that funds hundreds of cultural programs through DCA. Indeed, the practice has the appearance of possible misconduct. DCA also altered unsigned grant agreements to distribute excess funds that it had set aside for the appeals process, which invites the conclusion that certain cultural institutions are more entitled than others to receive additional funding.

We also noted some instances of noncompliance with DCA policy and procedures. These weaknesses include: payment by DCA of the entire award amounts to 381 organizations at the beginning of the fiscal year in violation of its procedures, the staffing of three panels not in accordance with DCA regulations, and the failure to submit for registration by the Comptroller's Office four agreements with cultural organizations that included Member-Item funding in excess of \$25,000.

These issues are discussed in detail in the following sections of this report.

DCA Requested Organizations to Alter Proposals to Match Larger Grant Awards

In 9 out of 86 awards reviewed, DCA asked that organizations alter their CDF proposals to increase the amount requested to justify receiving Safety-Net funds and Member-Item funds in addition to the CDF funds, if any.⁷ DCA requested that these organizations revise the Synopsis Page of their Public Service Award Proposal so the grant amount requested by the organization would be equal to or greater than the amount awarded by DCA and the total cost of the project would be at least double the amount of the grant.⁸ The Synopsis Page serves as the basis for the terms of the grant agreement for cultural organizations. Accordingly, these organizations increased the grant amount requested and, in some cases, increased the total cost of the projects on their CDF proposals without significantly changing the scope of services to be provided. DCA's request to the organizations to alter their CDF proposals in order to justify additional or other funding is not only improper but greatly diminishes competition, transparency and accountability of the process. Indeed, the practice has the appearance of possible misconduct.

⁷ Of the 99 proposals reviewed, only 86 were awarded grants.

⁸ According to the instructions for the Public Service Award Proposal, DCA's support will be limited to no more than 50 percent of the project budget.

For example, Jazz at Lincoln Center, Inc., submitted a Public Service Award Proposal requesting \$300,000 for quality jazz programming for the public, including education and concerts. However, the music panel did not recommend that DCA award grants to Jazz at Lincoln Center for these programs. In fact, according to the Cultural Development Fund Ranking Form, panelists made unflattering comments about its proposal and presentation. While DCA did not award this organization a CDF grant, it awarded Jazz at Lincoln Center more than double the amount it requested—\$637,800—\$627,800 in Safety-Net funding and \$10,000 in Member-Item funding, in accordance with DCA guidelines. However, before processing payment, DCA’s Director of Cultural Programs requested that Jazz at Lincoln Center, Inc., alter page four of the Public Service Award Proposal, the Synopsis Page, to match the amount to be awarded, even though no CDF funds were involved. In her letter dated September 10, 2007, the director stated that “we need to request that you revise the Synopsis Page because your Fiscal 2008 award exceeds the total amount requested from DCA in your application. . . . The amount requested must be equal to or greater than the amount of your fiscal 2008 award.” Accordingly, Jazz at Lincoln Center’s revised its Synopsis Page by increasing the total amount requested and altered the total project cost, even though there was no change in the scope of services.

In a second example, the National Black Theatre Workshops, Inc., requested \$140,000 for two projects—\$70,000 in ticket subsidies for two Main Stage productions (56 shows) and \$70,000 for Communication Arts Training. However, according to the Cultural Development Fund Ranking Form, the theater panel recommended that DCA grant \$35,000 for project one (ticket subsidies) only. Nevertheless, the National Black Theatre Workshops was awarded \$124,000—\$35,000 in CDF and \$89,000 in Member-Item funding. In this case, DCA’s Assistant Commissioner requested that the National Black Theatre Workshops alter the Synopsis Page of the Public Service Award Proposal to match the amount awarded in Fiscal Year 2008. The revised Synopsis Page requested \$124,000 for ticket subsidies for “two to four Main Stage productions [56 shows].” While the dollar amount requested from DCA for ticket subsidies increased from \$70,000 to \$124,000, the total project cost of \$275,658 and the number of shows, 56, remained the same.

In a third case, the Queens Council for the Arts, Inc., requested \$100,000 to award grants to individual artists who live in Queens and organizational project support for public arts projects based in Queens. DCA awarded the Queens Council for the Arts \$132,000 in Local Art Council funding—\$32,000 more than was requested. In this case, the total cost of the project, \$261,860, and the amount requested from DCA, \$100,000, were crossed out on the proposal and \$315,000 and \$132,000, respectively, were written in.

CDF was expanded to replace long-standing fixed entitlements to arts organizations with a merit-based competitive review process that gives more cultural groups access to public funds to allow them to provide quality public services throughout the five boroughs. Requesting grant applicants to alter their proposals after receiving signed grant agreements is not only inappropriate, it subverts the purpose of a competitively-based funding process. The competitively-based funding was established to ensure that only organizations deemed to be worthy by a panel of their peers would be awarded CDF grants. DCA’s requests that applicants alter their Public Service Award Proposals to match additional Safety-Net and Member-Item funding, which can be substantially greater, leads us to question the veracity of the CDF

proposals, the amount of the CDF funds awarded, the total cost of the CDF projects, the scope of funded services, and the merit-based competitive process itself. Although DCA guidelines allow DCA to distribute Safety-Net and Member-Item funds, it is imperative that DCA maintain accurate documentation through grant agreements, which are in fact City contracts, to support the integrity of those grants.

DCA Altered Agreements to Distribute Excess Funds

In 7 of 86 awards reviewed, DCA altered grant agreements to distribute excess funds that it had set aside for the appeals process.⁹ Since DCA did not expend all these funds for the intended purpose, it distributed the excess amount to these organizations. On the grant agreement DCA “wrote in” a new award amount, labeling the additional amount “supplemental funds,” and notified the organizations of the award in the subsequent fiscal year. Altering agreements to distribute excess funds is improper.

For example, for Fiscal Year 2008, the Spanish Theatre Repertory Company, Ltd. was awarded a \$150,000 grant for community performances, activities for students and schools, and ticket subsidies for seniors. On July 1, 2008, the first day of Fiscal Year 2009, DCA’s Assistant Commissioner of Program Services notified the Spanish Theatre Repertory Company that DCA was able to offer it an additional \$25,000 for Fiscal Year 2008 expenses because the funds DCA had set aside for appeals were greater than needed. DCA then altered the agreement by writing in a new grant award of \$175,000, labeling the extra \$25,000 “supplementary funds” on a copy of an *unsigned* agreement. It should be noted that the initial \$150,000 award was registered with the Comptroller’s Office. However, the additional \$25,000 in supplemental funds was not registered.

In a second example, Jazzmobile, Inc., was awarded an \$80,000 grant for free concerts, festivals, and workshops for Fiscal Year 2008. On July 1, 2008, the first day of Fiscal Year 2009, DCA’s Assistant Commissioner of Program Services notified Jazzmobile that DCA was able to offer it an additional \$20,000 for Fiscal Year 2008 expenses because the funds DCA had set aside for appeals were greater than needed. DCA then altered the agreement by writing in new grant award of \$100,000, labeling the extra \$20,000 as “supplementary funds” on a copy of the *unsigned* agreement. It should be noted that since the award totals \$100,000, it should have been registered with the Comptroller’s Office.

By altering agreements to distribute excess funds to certain organizations, DCA distorts the transparency and accountability of the awards process and also invites the conclusion that certain cultural institutions are more entitled than others to receive additional funding.

⁹ If an organization believes it has been rejected unfairly, the organization is entitled to submit a written appeal within 21 days of the date of the notification letter. The appeal will be reviewed by the Commissioner and the Unit’s Assistant Commissioner. The Commissioner will then render a final decision.

Issues of Noncompliance

DCA Paid Entire Grants to Organizations at the Beginning of the Fiscal Year in Violation of its Procedures

DCA awarded grants to 848 organizations, totaling \$35.5 million during Fiscal Year 2008. For 381 (45 percent) awards, DCA paid \$5,304,475, the entire award amount, at the beginning of the fiscal year, instead of \$4,243,580 (80 percent), in violation of its procedures.

According to DCA's CDF Public Service Award Proposal Guidelines, organizations that have exhibited a strong prior history of satisfactory performance will be provided up to 80 percent of awarded funds as soon as is feasibly possible after the start of the fiscal year. Organizations without such strong prior records will receive payments on a reimbursement basis.

In our detailed review of 86 awardees, 12 did not have a prior history with DCA but were nevertheless paid \$100,000, 80 percent of their award, at the beginning of the fiscal year, instead of being paid on a reimbursement basis.

The procedures established by DCA regarding payment for services to organizations were designed to minimize the City's exposure in cases in which a cultural organization is unwilling or unable to provide the services (scope of work) promised in its proposals. By paying the entire amount, or even 80 percent, of the grant funding at the beginning of the fiscal year to certain organizations, DCA has no easy recourse in recouping the funding should any fraud, waste, mismanagement, or abuse occur on the part of the organizations.

Panels Are Not Staffed In Accordance with DCA Procedures

Three of the 27 panels convened were not staffed in accordance with DCA's regulations. Two panels—one discipline-specific panel and one borough-specific—did not include the required number of representatives from the field. The third panel—borough-specific—did not include a City Council designee.

DCA regulations require that each panel include seven members. Discipline-specific panels require six representatives from the field and a designee from the City Council. The borough-specific panels should also include a representative from the respective Borough President's Office.

These regulations are designed to ensure a fair and competitive evaluation of each CDF proposal and give all proposals an equal opportunity to be awarded grant money. Any imbalance on these panels may hinder some organizations' efforts to receive a grant award.

Missing Grant Agreement

DCA was not able to provide us one grant agreement, totaling \$12,428. As a result, we were not able to determine whether DCA paid this award in accordance with its grant agreement.

The Rockaway Artists Alliance Inc., submitted a Public Service Award Proposal for exhibits, special presentations, events, publicity, and public relations, requesting \$27,000. The DCA panel did not recommend the Rockaway Artists Alliance for support. However, the Rockaway Artists Alliance received a one-year Member Item, totaling \$12,428. It should be noted that DCA Assistant Commissioner sent the Rockaway Artist Alliance an Urgent Final Notice on October 15, 2007, advising it that if the agreement was not signed by October 29, 2007, DCA would be unable to fund the organization. Although DCA paid the grant, it was unable to demonstrate that it had received a signed grant agreement from the Rockaway Artists Alliance. Signed grant agreements specify the grant amounts, scope of services, terms, method of payments, credits, and terminations, and ensure that all parties involved understand their responsibilities and are in agreement.

Contracts Not Submitted for Registration to the Comptroller's Office

DCA has four agreements with cultural organizations that include City Council discretionary funding (Member-Item) of more than \$25,000 that were not submitted for registration to the Comptroller's Office of Contract Administration. Member-Items are funds supported through the City Council and as such are discretionary funds. Contracts using discretionary funds are required to follow the City Charter, Chapter 13, §328, which requires contracts to be submitted for registration to the Comptroller's Office. Moreover, according to the FMS Office of Contract Administration Policies and Procedures Chapter, "Contract Creation," 4-1, expense purchases that individually or aggregately exceed the limit of \$25,000 for goods and services are required to be registered with the Comptroller's Office. It should be noted that a memorandum dated May 13, 2008, from the Deputy Mayor of Operations stated that written contracts are required for the use of discretionary funds, regardless of the dollar amount, and that registration packages are now required to be submitted to the Comptroller for all contract amounts of \$5,000 or more.

RECOMMENDATIONS

DCA should:

1. Discontinue its practice of instructing organizations to alter the Synopsis Page of its Public Service Award Proposal to justify any addition of Safety-Net funds and Member-Item funds to the CDF Public Service Awards, if any. Safety-Net and Member-Item funds should instead be awarded through separate contracts.

DCA Response: “As described below, DCA will continue its practice of requesting adjustments to the Synopsis Page *after* the panel review process is completed to ensure that all grant agreements reflect the accurate amount of the total award made to the organization and an appropriate scope of services, and that the award is in compliance with DCA’s Guidelines. DCA will also continue to process its grants by a single grant agreement, but in the interest of further clarifying funding sources, for its next funding cycle (FY11) the grant agreements will specify the amount from each funding source that comprises the grant.

“The Draft Report is correct that in certain circumstances and only *after* review by the panel, DCA staff members asked organizations to adjust the Synopsis Page which is incorporated in the organizations’ grant agreements as the scope of services. Contrary to what the Draft Report suggests, these adjustments did not undermine the CDF process. Rather, these adjustment made certain that each organization’s grant agreement would reflect the final amount of the grant awarded to the organization (post Safety-Net and Member-Item funds) and the activities to be funded, and assured that the grant would compromise no more than 50% of the total project costs (in effect, to ensure that the organization had also raised funds from other sources).

“In addition, DCA’s grant agreement ensures that the activities slated for funding meet the Agency’s basic funding criteria (i.e., cultural activities of recognize quality accessible to the public) and that the funded organizations are accountable for reporting to DCA on those activities. Since the funded organizations are made aware of the sources of the grant in the award letters from the Agency, the use of a single grant agreement to administer all funds does not undermine the transparency of CDF. Rather, it reduced administrative burden on the Agency and the funded organizations by consolidating reporting obligations in a single document. Creating a parallel process for each funding stream would require double or triple reporting on identical activities, pose an administrative burden on the Agency, and inevitably slow the process of getting the awarded funds to the organizations.

“DCA concurs with the Draft Report’s conclusion that it is important for the documentation of DCA’s grant agreements to be accurate; indeed, that is the reason why adjustments to funding requests and scopes of services are required to be made.”

Auditor Comment: Clearly, DCA does not understand the implications of instructing organizations to alter their CDF Public Service Award Proposal Synopsis Page to

increase the amount requested to justify additional funding or other funding *after receiving signed* grant agreements. Altering official signed documents destroys the integrity of the documentation maintained by DCA, gives the appearance of possible misconduct, and compromises the important work that DCA does. Official documents that are signed and considered complete and final should not be altered or tampered with in any way.

Furthermore, altering CDF Public Service Award Proposal Synopsis Pages does, in fact, undermine the competitive process. When DCA awards additional funding—in some cases substantially more than organizations requested—or other funding to programs that DCA’s panel of experts did not deem worthy of funding, and then justifies the additional funding by altering the dollar amounts on the Synopsis Page, it certainly appears that DCA is ignoring the recommendations their panels made during the competitive process.

Moreover, reducing the administrative burden for DCA and funded organizations does not discharge DCA from its responsibility to maintain accurate documentation through grant agreements—i.e., City contracts—to support the integrity of those grants.

Therefore, we reiterate our recommendation that DCA discontinue its practice of instructing organizations to alter the Synopsis Page of its Public Service Award Proposal to justify any addition of Safety-Net funds or Member-Item funds to the CDF Public Service Awards Safety-Net and Member-Item funds should instead be awarded through separate contracts.

2. Discontinue its practice of altering grant agreements to distribute excess DCA funds.

DCA Response: “Consistent with Agency practice, all excess funds will be administered by DCA by formal amendment of its grant agreements.

“Supplemental funds that were not allocated for successful appeals of panel decisions were thereafter distributed to cultural organizations based primarily on panel recommendations made during the CDF panel process. Panels were specifically invited to make recommendations for such post-appeal awards, in the event that such funding became available. Because of the changes and expansion of CDF in FY08, however, DCA distributed the supplemental funds late in the fiscal year and as a result, organizations received written notification of supplemental awards on the first day of FY09. Even so, supplemental funds were only provided for costs that the organizations had incurred in FY08 toward cultural public services that occurred in FY08, as provided by DCA’s Guidelines. DCA recognizes that crossing out funding amounts by hand is not an ideal method for documenting changes to the awards. For these late-processed awards, DCA elected to change the grant agreements by hand to ease the administrative burden on Agency staff and the organizations.”

Auditor Comment: “Writing in” new award amounts on unsigned grant agreements and labeling the additional amount as “supplemental funds” may be consistent with DCA practice but is unacceptable and hardly constitutes a formal amendment to grant agreements, which are city contracts.

Moreover, contrary to DCA’s response, DCA Cultural Development Fund Ranking Forms—minutes of the panel meetings—neither revealed panel recommendations nor an invitation to make recommendations pertaining to the distribution of excess funds to select organizations.

Also, contrary to DCA’s response, the City has procedures in place in its Procurement Policy Board rules and Financial Management System to amend City contracts, and register them with the Comptroller’s Office.

Again, easing the administrative burden of DCA staff and organizations, does not discharge DCA from its responsibility to maintain accurate documentation through grant agreements to support the integrity of those grants.

Therefore, we reiterate our recommendation that DCA discontinue its practice of altering grant agreements to distribute excess DCA funds.

3. Ensure that it follows its own procedures and guidelines when making payments to awardees.

DCA Response: “DCA has amended its CDF Guidelines to ensure that its payment practices are consistent therewith.

“In its policy-making discretion and in the best interests of the City, DCA elected to pay 80% of the grant amount to the majority of organizations and 100% of the grant amount to previously-funded organizations with smaller awards (\$25,000 or less in FY08) as early as possible in the fiscal year. By expediting payment of these grants, the Agency encouraged organizations to leverage DCA funding to attract private funds to finance the remaining cost of the cultural activities since the Agency’s support totaled no more than 50% of the cost.

“In the few instances where organizations do not perform the activities and/or fail to comply with DCA’s reporting requirements with respect to those activities, where appropriate, DCA may decrease funding to the organization, request the return of the Agency’s funds and consider the organization ineligible for future DCA funding. In FY08, out of the 848 organizations funded by DCA, just three organizations experienced decreases in funding and only one organization was asked and did in fact return its funding.”

4. Ensure that all panels are staffed in accordance with DCA guidelines.

DCA Response: “DCA will continue to staff its panels by its current method. Given the minimal rate of absence for CDF panelists and the level of preparation required to serve, DCA finds it impractical to designate alternative panelists.

“Two panelists were absent from panels held during FY08 due to circumstances beyond the control of DCA and the panelists: one panelist was absent due to hospitalization and another due to a traffic accident on the morning on which the panel was scheduled. DCA does not consider these absences to have materially impacted the grant-making process. Finally, DCA provided records to the auditors following the Exit Conference on October 28, 2009, which demonstrate that a City Council designee did in fact attend the borough-specific panel highlighted in the Draft Report.”

Auditor Comment: Contrary to DCA’s response, the name of the Council Member’s intern on the copy of the e-mail submitted to us by DCA was not listed on the borough-specific panel’s attendance records.

5. Ensure that all grant agreements are signed by all parties and maintained by DCA.

DCA Response: “It is already the Agency’s practice to ensure that grant agreements are signed by all parties and that copies are retained within DCA’s files. In an effort to further improve its record-keeping practices, however, in FY09 DCA implemented a Customer Relationship Management System that has decreased the Agency’s dependence on paper files and simplified record-keeping and tracking of payment milestones.

“Although DCA’s paper files did not include a signed Grant Agreement for one of the organizations highlighted in the Draft Report (Rockaway Artists Alliance (“**RAA**”)), the Agency’s files did contain the organization’s CDF proposal, an unsigned grant agreement, payment requests, payment records, and a log entry from the Assistant Commissioner for Program Services that indicated the day on which the organization’s grant agreement was signed on behalf of the Agency. Since the conclusion of the audit, DCA has updated its files with the FY08 signed grant agreement from RAA.”

6. Ensure that all contracts funded with \$5,000 or more in Member-Items (discretionary funds) be submitted for registration to the Comptroller’s Office of Contract Administration.

DCA Response: “Consistent with the Law Department’s Opinion 9-93, DCA awards for cultural activities are grants. Accordingly, DCA will continue to file grant of \$100,000 or more with the Comptroller’s Office including those funded by Member-Items, in keeping with the directives of Comptroller’s Memo 95-09.

“Grant agreements for \$100,000 or more are filed with the Comptroller, without regards to whether the grant includes discretionary funds or constitutes the full amount of the grant. The inclusion of discretionary funds does not convert a cultural grant into Chapter 13 procurement. The Draft Report points to the Memorandum from the Deputy Mayor for Operations dated May 13, 2008 (“**Deputy Mayor’s Memo**”) which required the submission of discretionary awards of \$5,000 or more as having applied to DCA’s program grants. However, the Deputy Mayor’s Memo was released after most of DCA’s grants were processed for FY08 and was intended to apply only to procurement awards, as those had been previously subject to the \$25,000 registration threshold noted in the Deputy Mayor’s Memo. DCA’s grants were not subject to the \$25,000 threshold, and therefore, were not subject to the lower \$5,000 threshold. As set forth in Opinion 9-93, such awards are grants and not procurements, and will continue to be so processed.” (Emphasis in original.)

Auditor Comment: Contrary to DCA’s response, Member-Items are discretionary funds, and contracts using discretionary funds are required to follow City Charter, Chapter 13, §328, which requires contracts to be submitted for registration to the Comptroller’s Office.

Therefore, we reiterate our recommendation that DCA should ensure that all contracts funded with \$5,000 or more in Member-Items (discretionary funds) be submitted for registration to the Comptroller’s Office of Contract Administration.



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Commissioner

December 4, 2009

John Graham
Deputy Comptroller
Audit, Accountancy & Contracts
Office of the Comptroller
1 Centre Street
New York, NY 10007-2341

Re: Agency Response to Draft Audit Report on the Process of the Department of Cultural Affairs for Awarding Programs Grants to Cultural Organizations
Dated November 19, 2009, Audit No. FL09-106A

Dear Mr. Graham,

The Department of Cultural Affairs (“DCA” or “Agency”) appreciates this opportunity to respond to the Draft Audit Report dated November 19, 2009 (“Draft Report”) concerning the Agency’s process for awarding Programs grants to cultural organizations. Although the Agency was pleased with the auditors’ determination that DCA generally complied with its requirements relating to awarding Cultural Development Fund (“CDF”) grants, we remain concerned about several mischaracterizations of the CDF program, as well as several instances where the Draft Report mischaracterizes DCA’s program grants as City procurements, which they are not. In the paragraphs below, DCA will provide context for the expansion of CDF in Fiscal Year 2008 and address the auditors’ findings and recommendations in the Draft Report.

Background on CDF Expansion

In January 2007, Mayor Michael Bloomberg and Speaker Christine Quinn announced a dramatic expansion of CDF, the merit-based grant program administered by DCA, to include all eligible cultural organizations that are not members of the Cultural Institutions Group and increase the available pool of competitive funds. Prior to FY08, CDF had been limited to cultural organizations that did not have Member-Items of \$10,000 and above or fixed allocations in the City’s adopted budget known as “Line-Items,” which date back to the 1982 Board of Estimate. With the expansion of CDF, all organizations, regardless of their history of Member or Line-Item funding, were evaluated through the CDF peer panel process to compete for a larger pool of funds, more than six times the amount available the year prior. To avoid an abrupt decline in City support to the organizations, for FY08 only, organizations that had received designated Member or Line-Item funding in FY07 were eligible for “Safety-Net” funding, a guarantee of at least the amount of support the organization had received through DCA in FY07. In addition to panel awards and Safety-Net funding, organizations were able to seek Member-Items from the

City Council and were notified of the levels of Member-Item support once the City's budget was reconciled for FY08.

The results of the CDF expansion were overwhelmingly positive. More cultural organizations applied for funding and more received funding through the competitive process than in years past, many for the first time. In fact, the New York City Independent Budget Office noted that "the new funding process provides transparency in how program unit funds are distributed . . . and [that] arts and cultural organizations stand on more level ground when seeking city funds." New York City Independent Budget Office, Fiscal Brief, August 2009, p. 1.

Draft Report Recommendations and Agency Responses

Recommendation 1: DCA should discontinue its practice of instructing organizations to alter the Synopsis Page of its Public Service Award Proposal to justify any addition of Safety-Net funds and Member-Item funds to the CDF Public Service Awards, if any. Safety-Net and Member-Item funds should instead be awarded through separate contracts.

DCA Response: As described below, DCA will continue its practice of requesting adjustments to the Synopsis Page *after* the panel review process is completed to ensure that all grant agreements reflect the accurate amount of the total award made to the organization and an appropriate scope of services, and that the award is in compliance with DCA's Guidelines. DCA will also continue to process its grants by a single grant agreement, but in the interest of further clarifying funding sources, for its next funding cycle (FY11) the grant agreements will specify the amount from each funding source that comprises the grant.

The Draft Report is correct that in certain circumstances and only *after* review by the panel, DCA staff members asked organizations to adjust the Synopsis Page which is incorporated in the organizations' grant agreements as the scope of services. Contrary to what the Draft Report suggests, these adjustments did not undermine the CDF process. Rather, these adjustments made certain that each organization's grant agreement would reflect the final amount of the grant awarded to the organization (post Safety-Net and Member-Item funds) and the activities to be funded, and assured that the grant would comprise no more than 50% of the total project cost (in effect, to ensure that the organization had also raised funds from other sources).

In addition, DCA's grant agreement ensures that the activities slated for funding meet the Agency's basic funding criteria (i.e., cultural activities of recognized quality accessible to the public) and that the funded organizations are accountable for reporting to DCA on those activities. Since the funded organizations are made aware of the sources of the grant in the award letters from the Agency, the use of a single grant agreement to administer all funds does not undermine the transparency of CDF. Rather, it reduces administrative burden on the Agency and the funded organizations by consolidating reporting obligations in a single document. Creating a parallel process for each funding stream would require double or triple reporting on identical activities, pose an administrative burden on the Agency, and inevitably slow the process of getting the awarded funds to the organizations.

The addition of Safety-Net or Member-Item funding to a panel award does not always result in the need to adjust the organization's scope of services as the Draft Report implies. Where the addition of Safety-Net or Member-Item funding does not increase the Agency's funding to more than 50% of the total project cost, the Agency's proportionate share of the project increases, but it remains within the range prescribed by DCA's Guidelines and no adjustment to the scope is necessary. For instance, for National Black Theatre Workshops, Inc. ("NBTW"), the example cited in the Draft Report, after the panel reviewed and awarded \$35,000 to the organization, DCA asked NBTW to adjust its requested amount up from \$70,000 to \$124,000, to account for an additional \$89,000 in Member-Item funds awarded to the organization. Even with the addition of the sizable Member-Item, however, the Agency's total funding commitment toward NBTW's project (\$124,000) still amounted to less than 50% of NBTW's total project cost (\$275,658). As a result, there was no reason for NBTW to increase its scope of services; the larger award simply meant that the Agency's share of the funding increased, but was still within the DCA Guideline requirement of less than 50% of total costs. In the usual case, the Agency's total funding does not reach the 50% mark.

In circumstances where the addition of Safety-Net or Member-Item funding would increase the Agency's award to more than 50% of the project cost, DCA does ask organizations to increase the proposed scope of services to ensure that they demonstrate sufficient activity to warrant the larger award. For instance, as noted in the Draft Report, among the programs for which Queens Council on the Arts ("QCA") received funding from DCA in FY08 was a re-grant program called the Greater New York Arts Development Fund ("GNYADF") which re-grants funding in smaller amounts to individual artists for the creation of new work and to smaller arts organizations providing cultural services throughout the borough of Queens. For QCA, an increase in the funding made available for GNYADF from \$261,860 to \$315,000 meant that QCA would be able to make more re-grants available to artists and organizations, thus QCA increased its proposed scope of services accordingly.

It must also be noted that project cost information and supporting budgets which accompany a CDF proposal are the organization's best estimate of the cost of the project at the time of the proposal. For example, in the case of Jazz at Lincoln Center, the organization's actual project cost ended up more than \$300,000 higher than the estimate provided in its initial CDF proposal (i.e., \$1,354,130 in the CDF proposal vs. \$1,663,368 in the final report to DCA). Actual cost information and exact budgets are not typically available until the project is in production (e.g., supplies are purchased, teaching artists are hired, and facilities are rented) or concluded. Prior to issuing final payment, DCA reconciles the organization's estimated project cost with the budget that accompanies the organization's final report to the Agency.

DCA concurs with the Draft Report's conclusion that it is important for the documentation of DCA's grant agreements to be accurate; indeed, that is the reason why adjustments to funding requests and scopes of services are required to be made. However, DCA strongly disagrees with the Draft Report's statement at the conclusion of this section (p. 9) that DCA grant agreements "are in fact City contracts" to the extent that such a statement is intended to indicate that DCA's grant agreements are procurements subject to Chapter 13 of the City Charter. The Agency's position is supported by New York City Law

Department Opinion 9-93 (“**Opinion 9-93**”) which established that DCA’s grants to organizations for cultural activities within the five boroughs are grants and not City procurements.

Recommendation 2: DCA should discontinue its practice of altering grant agreements to distribute excess DCA funds.

DCA Response: Consistent with Agency practice, all excess funds will be administered by DCA by formal amendment of its grant agreements.

Supplemental funds that were not allocated for successful appeals of panel decisions were thereafter distributed to cultural organizations based primarily on panel recommendations made during the CDF panel process. Panels were specifically invited to make recommendations for such post-appeal awards, in the event that such funding became available. Because of the changes and expansion of CDF in FY08, however, DCA distributed the supplemental funds late in the fiscal year and as a result, organizations received written notification of supplemental awards on the first day of FY09. Even so, supplemental funds were only provided for costs that the organizations had incurred in FY08 toward cultural public services that occurred in FY08, as provided by DCA’s Guidelines. DCA recognizes that crossing out funding amounts by hand is not an ideal method for documenting changes to the awards. For these late-processed awards, DCA elected to change the grant agreements by hand to ease the administrative burden on Agency staff and the organizations.

With respect to the organizations highlighted in the Draft Report, Spanish Theatre Repertory’s \$150,000 CDF panel award was filed with the Comptroller in accordance with the procedures of Comptroller’s Memorandum 95-09 dated November 21, 1995 (“**Comptroller’s Memo 95-09**”), which provides that grants in excess of \$100,000 be filed with the Comptroller. DCA conferred with staff from the Comptroller’s Office about the supplemental award at the time and determined that there was no method by which to add the \$25,000 supplemental award to the previously submitted grant agreement. Therefore, the \$25,000 supplemental award which by itself did not meet the \$100,000 filing threshold, was not filed with the Comptroller. Similarly, DCA processed Jazzmobile’s \$80,000 CDF panel award by purchase order pursuant to Comptroller’s Memo 95-09. After conferring with Comptroller staff, DCA determined that there was no method by which to reverse the \$80,000 purchase order for the purpose of adding \$20,000 in supplemental funds. Because the \$20,000 supplemental award did not meet the \$100,000 filing threshold, it was not filed with the Comptroller.

Recommendation 3: DCA should ensure that it follows its own procedures and guidelines when making payments to awardees.

DCA Response: DCA has amended its CDF Guidelines to ensure that its payment practices are consistent therewith.

In its policy-making discretion and in the best interests of the City, DCA elected to pay 80% of the grant amount to the majority of organizations and 100% of the grant amount to previously-funded

organizations with smaller awards (\$25,000 or less in FY08) as early as possible in the fiscal year. By expediting payment of these grants, the Agency encouraged organizations to leverage DCA funding to attract private funds to finance the remaining cost of the cultural activities since the Agency's support totaled no more than 50% of the cost.

In the few instances where organizations do not perform the activities and/or fail to comply with DCA's reporting requirements with respect to those activities, where appropriate, DCA may decrease funding to the organization, request the return of the Agency's funds and consider the organization ineligible for future DCA funding. In FY08, out of the 848 organizations funded by DCA, just three organizations experienced decreases in funding and only one organization was asked and did in fact return its funding.

Recommendation 4: DCA should ensure that all panels are staffed in accordance with DCA Guidelines.

DCA Response: DCA will continue to staff its panels by its current method. Given the minimal rate of absence for CDF panelists and the level of preparation required to serve, DCA finds it impractical to designate alternate panelists.

Two panelists were absent from panels held during FY08 due to circumstances beyond the control of DCA and the panelists: one panelist was absent due to hospitalization and another due to a traffic accident on the morning on which the panel was scheduled. DCA does not consider these absences to have materially impacted the grant-making process. Finally, DCA provided records to the auditors following the Exit Conference on October 28, 2009, which demonstrate that a City Council designee did in fact attend the borough-specific panel highlighted in the Draft Report.

Recommendation 5: DCA should ensure that all grant agreements are signed by all parties and maintained by DCA.

DCA Response: It is already the Agency's practice to ensure that grant agreements are signed by all parties and that copies are retained within DCA's files. In an effort to further improve its record-keeping practices, however, in FY09 DCA implemented a Customer Relationship Management System that has decreased the Agency's dependence on paper files and simplified record-keeping and tracking of payment milestones.

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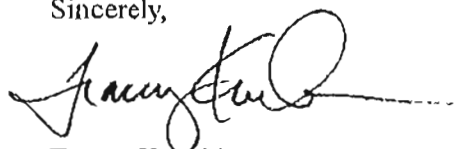
Recommendation 6: DCA should ensure that all contracts funded with \$5,000 or more in Member-Items (discretionary funds) be submitted for registration to the Comptroller's Office of Contract Administration.

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Grant agreements for \$100,000 or more are filed with the Comptroller, without regard to whether the grant includes discretionary funds or constitutes the full amount of the grant. The inclusion of discretionary funds does not convert a cultural grant into a Chapter 13 procurement. The Draft Report points to the Memorandum from the Deputy Mayor for Operations dated May 13, 2008 ("**Deputy Mayor's Memo**") which required the submission of discretionary awards of \$5,000 or more as having applied to DCA's program grants. However, the Deputy Mayor's Memo was released after most of DCA's grants were processed for FY08 and was intended to apply only to procurement awards, as those had been previously subject to the \$25,000 registration threshold noted in the Deputy Mayor's Memo. DCA's grants were not subject to the \$25,000 threshold, and therefore, were not subject to the lower \$5,000 threshold. As set forth in Opinion 9-93, such awards are grants and not procurements, and will continue to be so processed.

Finally, DCA thanks the Comptroller's audit staff for their efforts in performing this review.

Sincerely,



Tracey Knuckles
General Counsel

cc: (via e-mail)
Man Hon Cheung/Comptroller
Steven Stein Cushman/LAW
George Davis/MOO
Howard Friedman/LAW
Kathleen Hughes/DCA
Kate D. Levin/DCA
Vicki Metzger/City Hall
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