

DEPARTMENT OF CULTURAL AFFAIRS

Notice of Adoption of Rules Pursuant to the Emergency Procedures of Section 1043(i)(1) of the New York City Charter

Pursuant to the emergency procedures set forth in section 1043(i) of the New York City Charter (the “Charter”) and pursuant to the rulemaking authority granted to the New York City Department of Cultural Affairs by Charter sections 1043 and 2503, the Department adopts the following emergency rule relating to the Cultural Development Fund. This rule will take effect immediately.

Statement of Basis and Purpose of Emergency Rule

The Cultural Development Fund (“CDF”) is the Department of Cultural Affairs’ (the “Department”) competitive, peer-evaluated grant process designed to support a broad, multidisciplinary group of diverse NYC-based nonprofit organizations that provide arts and cultural services across the five boroughs. The CDF is managed by the Department’s Program Services Unit under the supervision of the Commissioner of the Department and executive staff, and currently administers grant awards to more than 1,000 New York City-based arts and culture nonprofit organizations.

For fiscal year (“FY”) 2024, the CDF application opened on April 6, 2023. The Department invited eligible cultural nonprofits to apply for City funds in support of public-oriented cultural programming. The deadline to submit completed applications was May 9, 2023 for applicants applying for new awards. The deadline to submit renewal applications by organizations who received a multi-year CDF award starting in FY23 was June 27, 2023.

The annual CDF grant process provides broad City support for the cultural community, encompassing all creative disciplines, audiences, and geographies of New York City.

Each year, applications are reviewed, evaluated, and scored by members of the cultural community, whom the Department recruits to serve as paid panelists. In FY24, the panelists brought their expertise and perspectives to review approximately 650 applications, which were submitted by the May 9 deadline. An additional 646 organizations, who received a multi-year CDF award in FY23, submitted renewal applications by the June 27 deadline.

The panelists scored this year’s applications based both on the weighted criteria articulated in this rule and a set of guidelines providing more detailed direction that were published in conjunction with the launch of the application process in January of 2023. The Department used the panelists’ scores to determine which applicants would receive grants. Each recipient’s baseline award was determined in accordance with the minimum and maximum award associated with the FY24 budget category of that recipient. The published criteria, guidelines, and other Administration priorities further explained in this emergency rule and accompanying guidelines were used to arrive at the final grant awards.

This emergency rule codifies the CDF guidelines for FY24 through the City Administrative Procedure Act (“CAPA”) so that the Department can promptly distribute awards to the more than

1,000 worthy recipients of CDF grants, all of whom are awaiting their CDF award letters. If the Department does not promptly distribute awards, some recipients will have difficulty meeting their financial obligations. In light of the pressing importance to these nonprofits of timely distribution of the awards and the need to promulgate rules under CAPA governing the process, it is crucial to move forward with this emergency rule.

This rule is authorized by New York City Charter sections 1043 and 2503. Pursuant to Charter section 1043(d)(4)(i), this rule does not require certification or analysis by the Mayor’s Office of Operations.

New material is underlined.

[Deleted material is in brackets].

Asterisks (***) indicate unamended text.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1: Title 58 of the rules of the city of New York is amended by adding a new chapter 2 to read as follows:

Chapter 2: Cultural Development Fund

§ 2-01 Applicability and Definitions

For purposes of this chapter and any application for a Cultural Development Fund grant award submitted to the Department, the following terms have the following meanings:

Accessibility. The term “accessibility” means the degree to which an environment, service, product, or program allows access and eliminates barriers to participation by diverse or underrepresented communities, especially people with disabilities.

Applicant. The term “applicant” means an organization applying for CDF funds.

Audience. The term “audience” means any people who benefit from an applicant’s programs and activities.

City. The term “city” means the city of New York.

Cultural Development Fund. The term “Cultural Development Fund” or “CDF” is the citywide arts and cultural services grant award program administered in accordance with this chapter.

Cultural Institutions Group. The term “Cultural Institutions Group” has the same meaning set forth in the section 2507 of the New York city charter.

Department. The term “department” means the New York city department of cultural affairs.

Disability. The term “disability” has the same meaning set forth in section 8-102 of the administrative code of the city of New York.

Guidelines. The term “guidelines” means the materials published by the department for each CDF application cycle used to administer the CDF program.

§ 2-02 Applicant Eligibility

(a) To be eligible for an award pursuant to section 2-07 of this chapter, the applicant must:

(1) Be a nonprofit arts or cultural organization or a nonprofit organization that includes an arts or culture component as part of its mission;

(2) Demonstrate successful delivery of arts and cultural services in New York City for the two consecutive years immediately preceding the fiscal year for which the applicant is applying for CDF funds;

(3) Be based in New York city, as determined by the organization’s address identified on internal revenue service (“IRS”) Form 990, IRS § 501(c)(3) letter, and other publicly available information.

(4) Demonstrate administrative and programmatic operations within one or more of the five boroughs;

(5) Possess a unique Federal Employer Identification Number (EIN);

(6) Be certified as tax exempt under IRS Code § 501(c)(3), or be an incorporated nonprofit that uses a Department-approved, New York state incorporated, tax-exempt fiscal sponsor, provided that only nonprofit organizations may be eligible, regardless of whether they use a fiscal sponsor;

(7) Be incorporated in New York state as a nonprofit organization at least three years prior to the fiscal year for which the applicant is applying for CDF funds; and

(8) Be in compliance with the most recent annual state and federal filing requirements for nonprofit organizations, including New York State Charities Bureau filings.

(b) The following entities are not eligible applicants:

(1) Unincorporated individual artists or artist collectives;

(2) Limited liability companies, benefit corporations, limited partnerships;

(3) Parent-teacher associations and related organizations;

(4) Nonprofit organizations without IRS § 501(c)(3) tax-exempt status that do not utilize an eligible fiscal sponsor;

(5) Nonprofit organizations with chapters, offices, branches, or general activity in New York City but that are administratively based outside of New York city;

(6) Members of the Department's Cultural Institutions Group;

(7) Programs administered by city, state, or federal agencies;

(8) Libraries;

(9) Degree-granting institutions, including schools, colleges, and universities, provided, however, that organizations affiliated with such institutions that are independently incorporated nonprofits and meet all other application criteria in subdivision (a) of this section may be eligible and should contact the Department for further guidance;

(10) Applicants without a history of providing services in arts and culture as well as related income and expenses in the last two years; and

(11) Applicants that have previously received CDF funds but have failed to comply with the Department's grant reporting requirements at any time in the past five fiscal years.

§ 2-03 Application Requirements

(a) Applications for CDF funds must include one proposed project that conforms to the requirements set forth in section 2-04 of this chapter, and include the required materials described in section 2-08. If such application is awarded CDF funds by the Department, such proposed project will form the scope of service in the grant agreement between the Department and the organization.

(b) Applicants must submit the department's application form, which includes a description of the project, and provide other relevant information about the proposed project and the applicant, including the applicant's ability to compensate artists for their work.

§ 2-04 Project Qualifications

(a) A proposed project for CDF funds must:

(1) Include an artistic or cultural activity of acceptable quality as determined by the panels described in section 2-06 of this chapter;

(2) Take place in New York city during the fiscal year for which the applicant is seeking CDF funds;

(3) Be within the applicant organization's artistic, cultural, administrative, and fiscal capacity as determined by the panelists; and

(4) Incorporate a diverse funding stream that includes at least one of the following: individual donations, earned income, foundation and corporate support, or other government support.

(b) The proposed project must include an arts or cultural activity that comprises or addresses one of the priority areas described in this subdivision:

(1) Artistic dialogue, such as: creating a forum for new or previously created works for public presentation during the grant period; supporting of informed cultural public discourse; or engaging multiple genres or disciplines;

(2) Preservation projects, such as projects working to preserve: New York city's rich cultural heritage; the cultures of New York's diverse populations; public access to historic artifacts or sites relevant to New York city; or reference materials and documentation of a discipline with a public service component;

(3) Services to an artistic or cultural field or creative community, such as: professional training within an artistic or cultural discipline; workforce development for cultural workers; or supportive services to organizations serving a discipline;

(4) Arts education, such as: ongoing or sequential arts programs for children, youth, or other targeted audiences; cultural activities in schools, including programs related to curricula; in-school artist residencies; or arts programs for children and adult learners at cultural organizations; or

(5) Projects that promote sciences and the humanities, such as projects that promote: communication of cultural knowledge or practices to individuals or communities; expression of or learning about practices rooted in humanities; exploration of environmental and natural sciences; or the heritage of an ethnic group in New York city.

(c) Projects that are not eligible for CDF funds include:

(1) Non-arts activity, including but not limited to physical fitness, social sciences, or general education services such as college preparation or homework help;

(2) Any activity funded by a City Council initiative administered by the Department;

(3) Activities that do not provide access to the public;

(4) Strategic planning, including capacity building;

(5) Fundraising events and receptions;

(6) Construction or renovation of facilities, including the purchase of equipment;

(7) Lobbying or government advocacy efforts.

§ 2-05 Create NYC Initiatives

Notwithstanding subdivisions (a) and (b) of section 2-04 of this chapter, and subject to availability, as indicated in the guidelines for the fiscal year for which the applicant is applying for CDF funds, funding may be provided for initiatives developed from recommendations of the Department's 2017 cultural plan ("Create NYC Initiatives"), or any subsequent cultural plan, including, but not limited to the Language Access Fund (the "LAF") and the Disability Forward Fund (the "DFP"). To be considered for funding pursuant to a Create NYC Initiative, the applicant must describe its initiative-related activities in the project proposal in accordance with the guidelines.

§ 2-06 Competitive Panel Review

(a) The Department will organize and oversee a competitive panel review process to evaluate CDF applications in accordance with section 2-07 of this chapter.

(b) Such panels will be comprised of no fewer than two panelists.

(c) Employees of the Department may not serve as panelists but may consult and administer the evaluation of projects by the panelists.

(d) Panelists must be practicing artists in New York city or administrators in the fields of arts and culture, or New York city community leaders, civic leaders, educators, or government officials or their staff.

(e) The weight assigned to the evaluative criteria are published in the guidelines and are subject to change to achieve the purposes of the CDF.

(f) Only panelists may assign scores to the applications. Scores determined by panelists, including final average scores, are not subject to change by the Department.

§ 2-07 Scoring and Fund Allocation

(a) Eligibility for single year awards. Applicants that did not apply for a CDF grant award in the fiscal year immediately preceding the fiscal year for which the applicant is applying for CDF funds are only eligible for a single-year award.

(b) Eligibility for multi-year awards. Applicants that did apply for a CDF grant award in the fiscal year immediately preceding the fiscal year for which the applicant is applying for CDF funds are eligible for a three-year award, provided, however, that such applicant must submit a renewal application each year of such award, such application must comply with section 2-03 of this chapter, and such application must demonstrate continued eligibility. The renewal application will not be subject to panel review.

(c) Scoring and award determination. CDF funds will be awarded in accordance with the following steps:

(1) Step one. Each application will be assigned to a panel. Panelists determine and assign a final score to each assigned application according to a methodology developed by the

Department and designed to provide consistent scoring across the panels. The methodology to score applications will use the following evaluative criteria: the benefit of the proposed project to the public; the applicant's fiscal and administrative capacity to execute the proposed project; and overall project quality and excellence.

(2) Step two. The Department will determine the minimum final award score needed to receive an award based on the available CDF budget for the relevant fiscal year. The Department may designate in its guidelines different applicant budget categories describing ranges of applicants' budgets and provide a different award amount to each such category. Applicants assigned a final panel score at or above the minimum award score will receive, at a minimum, the minimum award provided for in their budget category.

(3) Step three. The Department's guidelines may provide for a process to adjust awards above the minimum award for each budget category in consideration of any of the following factors:

(A) The total amount of funding appropriated for the CDF program;

(B) The percentile in which the applicant's panel score ranks compared to that of all other funded applicants;

(C) The applicant's operating budget for the fiscal year for which the applicant is applying for CDF funds or relevant prior years as determined by the Department;

(D) For applicants that were awarded funds prior to fiscal year 2023, how the award amount determined in paragraph (2) of this subdivision compares to the award amount for any year prior to fiscal year 2023;

(E) Whether the application furthers agency priorities by meeting criteria defined by the Department in the guidelines, which may include but are not limited to, prioritizing funding in underserved boroughs or other geographic areas, the impact of a proposed decrease in the CDF funding awarded to an applicant as compared to funding awarded to such applicant in a prior fiscal year, and any temporary increase in programmatic expenses associated with the completion of a city-funded capital investment for such applicant organization; and

(F) Whether Create NYC Initiatives awards as described in section 2-05, are available.

(d) Allowable expenses. CDF awards may only be used for project expenses, including programmatic operating expenses, such as staff salaries, space rentals, insurance costs, or any other costs incurred to realize the organization's proposed project.

§ 2-08 Application Materials

(a) Materials required for all applications. An applicant's CDF application must include the following documents:

(1) Background materials, in a single file of no more than 10 pages, that describes the applicant's arts and cultural public engagement over at least the past two years, as well as any other programs, press, marketing materials, letters of recommendation, curricula, testimonials, and artist biographies the applicant elects to include;

(2) A copy of the applicant's IRS § 501(c)(3) determination letter, except as provided in paragraph (3) of subdivision (b) of this section; and

(3) A copy of each of the applicable financial documents required by the Department, as described in the guidelines.

(b) Applicants with a fiscal sponsor or conduit. In addition to the materials set forth in subdivision (a) of this section, applicants applying with a fiscal sponsor or conduit must also submit the following documents:

(1) Proof of incorporation as a nonprofit organization in New York state. Acceptable forms of documentation include a New York state incorporation certificate and board of regents charter under section 216 of the education law;

(2) A letter from the fiscal sponsor indicating that it has agreed to act as a fiscal sponsor; and

(3) In lieu of the applicant's IRS § 501(c)(3) letter, a copy of the fiscal sponsor's IRS § 501(c)(3) determination letter.

(c) Organizations with a primary mission beyond arts and culture. In addition to the materials set forth in subdivisions (a) and (b) of this section, as applicable, applicants with a primary mission not related to arts and culture must also submit a full organizational budget on a template provided by the Department, as may be updated from time to time by the Department.

(d) Additional documentation. The Department may request additional information from an applicant after an application has been submitted.

§ 2-09 Grant Administration and Legal Guidelines

(a) Grant agreement. If an applicant is awarded funds, the Department will prepare a grant agreement based on the project proposed in the application. An officer, director, or member of the applicant who has been granted signatory authority by the applicant's bylaws or other valid corporate document must sign such grant agreement to receive such funds. The grant agreement must specify that an applicant receiving CDF funds shall:

(1) Comply with all pertinent city, state, and federal laws, including the Americans with Disabilities Act, New York state human rights law, and New York city human rights law;

(2) Maintain appropriate insurance, as required by the Department and described in the guidelines; and

(3) Credit the Department's support in all programs, brochures, flyers, posters, announcements, or similar printed or electronic matter relating to projects funded by the Department.

(b) Conflicts of interest. A CDF grant award may be rescinded at the sole discretion of the Department because of an actual conflict of interest or to avoid the perception of a conflict of interest. An applicant may appeal the rescission of an award in accordance with subdivision (d) of this section.

(c) Payment.

(1) An applicant's grant agreement must include a payment schedule that is based on the services provided and associated costs.

(2) Funds will not be available until after the adoption of the city's budget for the fiscal year for which the applicant has applied. Notification of final award amounts will be sent after the start of the grant period.

(3) Final payment is contingent on submission and Department approval of a final report demonstrating that the project was completed. Such final report must be submitted on a form provided by the Department. If modifications to the city budget require the reductions of awards, such reductions may be taken against any outstanding payments. Final payment is also contingent upon completion of any other reporting required by the grant agreement. Applicants that do not comply with such reporting by the deadlines required by the Department may have their award rescinded and be ineligible for future funding, as described in subdivision (b) of section 2-02. An applicant may appeal the rescission of an award in accordance with subdivision (d) of this section.

(4) While applicants must apply for project-related public services (rather than general operating support), funds received can be allocated to any project-related operating costs of the grantee organization (such as staff salaries, space rentals, etc.) other than capital expenditures, fundraisers, or government advocacy efforts, provided the projected services have been delivered as described.

(d) Appeal of rescission. An applicant may appeal a decision to rescind a CDF grant award to the commissioner of cultural affairs in writing. The commissioner will determine any such appeal within 60 days. The determination of the commissioner will be a final agency determination.

(e) Grantee evaluation

(1) Information regarding the upcoming activities of each applicant awarded a grant must be provided to the Department on a regular basis, and staff from the Department must be invited to view funded activities for the purpose of monitoring to assure funds are spent in accordance with the terms of the grant agreement.

(2) An organization's performance record may be a determining factor when considering future funding.

Required Finding Pursuant to New York City Charter Section 1043(i)(1)

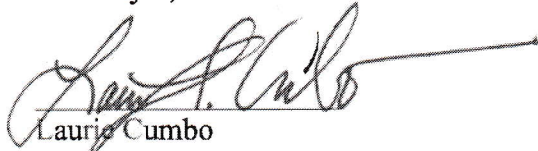
IT IS HEREBY CERTIFIED that this emergency rule, which allows the New York City Department of Cultural Affairs (“DCLA”) to administer the Cultural Development Fund (“CDF”) program, will become effective immediately.

This emergency rule is necessary to immediately continue the administration of the CDF program so that DCLA can finalize awards, send determination letters to applicants regarding whether they will receive an award, and if so, the amount of their CDF funding, and to process grant agreements with CDF recipients.

Delaying implementation of this rule pending non-emergency rulemaking would significantly delay CDF funding, which would foreseeably and immediately impair the ability of the CDF awardees to provide important arts and culture programs to the public, and risk the long-term health and viability of those organizations.

Pursuant to section 1043(i)(2) of the New York City Charter, the emergency rule will remain in effect for not more than 120 days, provided DCLA adopts a final rule in accordance with section 1043 within that time.

February 5, 2024



Laurie Cumbo
Commissioner
New York City Department of Cultural Affairs

APPROVED:



Eric Adams
Mayor