

## MEMORANDUM

**TO:** Board of Directors, Massachusetts School Building Authority  
**FROM:** James A. MacDonald, First Deputy Treasurer and Chief Executive Officer  
Mary L. Pichetti, Executive Director and Deputy Chief Executive Officer  
**DATE:** October 18, 2023  
**RE:** Revisions to the Authority's Regulations

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### **Recommendation**

The Massachusetts School Building Authority (the "MSBA") has been working to update its regulations to reflect the operating procedures for the MSBA's grant program as it is structured today. MSBA staff is recommending that the Board of Directors approve the Revised Draft of the Authority's regulations to be issued for public comment; and then authorize the Executive Director to proceed with the public comment period and prepare the revised draft of the regulations to be promulgated with the Secretary of the Commonwealth, returning to the Board for final approval after the public comment period and prior to promulgating changes to the regulations.

### **Overview**

The MSBA's regulations were first promulgated in 2006 and the grant program has changed since it was first envisioned. The MSBA has made some small updates to the regulations over the years but, this is the first large scale revision effort to bring the MSBA's regulations to a place that best reflects the MSBA's current practices and procedures.

The MSBA's overall objectives in revising the regulations that are being presented today are to accurately reflect how the MSBA's grant process has evolved, to provide clarity and make the regulations more user friendly, and to make the regulations easier to follow by arranging the sections in chronological order and matching the MSBA modules.

The regulations will now track the modules that the MSBA has developed over time. Once the regulations revisions are promulgated, the MSBA will be in a place where the MSBA can use the regulations as a starting point to make updates that may be needed as the MSBA moves into the future.

### **Revised Regulations – Summary of Revisions**

The regulations will now proceed from Module 1 through Module 9 as core program projects do, making it easier for districts and external stakeholders to understand the process. Given how the MSBA grant program has evolved over the years, the revisions that the MSBA has made to the regulations are intended to allow for flexibility in the future.

In addition to arranging the regulations into chronological order based on the MSBA's modules, the MSBA added stand-alone sections such as: Accelerated Repair Program (ARP); Construction (Module 7); Post Occupancy Evaluation (Module 9); and Model School Program.

In terms of providing flexibility for the future, the MSBA made changes to the regulations to allow for the regulations to stay current year after year. For example, the regulations currently cite specific ASHRAE (American Society of Heating, Refrigerating, and Air-Conditioning Engineers) standards, which are updated from time to time like the building code. The MSBA has updated instances such as those to instead require districts meet MSBA requirements and exceed requirements when possible.

The MSBA also clarified terminology used in the regulations and made technical changes to better capture our process and provide increased clarity for stakeholders.

The MSBA also made technical changes to facilitate clarity. For example, the term educational facilities master plan appears in the regulations currently. However, the Capital Planning team determined that master plan has a specific meaning in the industry, which was inconsistent with how the MSBA used that term. The MSBA rephrased the term so that now the regulations refer to an educational facilities capital plan.

Further, currently the regulations indicate Statements of Interest should be filed at any time, but no later than July 31 for approval in that same calendar year. As the MSBA has matured, the Statement of Interest period has become formalized, and the submission window has become more defined to provide predictability for districts and to allow staff to work more efficiently. The MSBA's edits make the regulations less prescriptive, allowing the MSBA to adapt to fit its needs without conflict with the language of the regulations.

Additionally, the MSBA updated the incentive points portion of the regulations. The MSBA removed Construction Manager at Risk and Model School from this section because the MSBA no longer provides these incentive points. The MSBA updated the Green School Program incentive to allow for three incentive points and also included an additional point for Indoor Air Quality.

Further, the MSBA added greater details about the grant program, where appropriate, such as the addition of the educational profile questionnaire that is required during Eligibility Period.

### **Process for Revising the Regulations**

If the Board of Directors approves the revised draft regulations to be issued for public comment at the October 25, 2023 Board of Directors meeting, the MSBA plans to hold public hearings throughout the Commonwealth, as well as virtually, to collect feedback from external stakeholders, such as districts and construction industry professionals. Following the public comment period, the MSBA will make additional changes to the regulations as necessary and present a final draft of the regulations to the Board of Directors for approval to promulgate the regulations. Finally, the MSBA will work with the Secretary of State's office to promulgate the revised regulations.

## **Additional Details**

This effort will help the MSBA move forward as the MSBA continues to improve its grant program.

MSBA staff has prepared the following documents which provide more information about the revisions that are being proposed.

1. Attachment A: MSBA Draft of Revised Regulations
2. Attachment B: One page summary
3. Attachment C: Section by section chart detailing revisions