



# Massachusetts School Building Authority

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## **Manual for the Eligibility Review of Change Orders**

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## **MSBA Review of Change Order Submittals:**

The PFA establishes that during the course of a project, the District must submit “a list of all proposed changes” to the MSBA in the form of a “Change Order log.” PFA 3.21. The MSBA then determines “whether the costs associated with such Change Orders, extra work orders, or modifications are eligible for reimbursement” pursuant to the PFA. Costs which “exceed the provisions of the Project Scope and Budget Agreement” are ineligible for reimbursement, meaning that the District bears the full amount of such costs. 936 CMR 2.15.

The MSBA reviews District-approved Change Orders to determine reimbursement in keeping with its mission and in accordance with the scope, budget and schedule agreed upon in the PFA as amended.

It is important to note that the advisability and/or necessity for entering into a Change Order is entirely within the discretion and responsibility of the District. The MSBA will not make that determination, but instead, based on the District’s determination of advisability or necessity, the MSBA will determine whether the Change Order costs are eligible for reimbursement. The following procedures govern the MSBA’s review of Change Orders for all projects:

- 1) The MSBA reviews Change Orders for each project four times a year (quarterly).
- 2) For each Change Order submitted, the District must submit a Change Order Log.
- 3) On the Change Order Log the District must complete the following sections for each Potential Change Order (“PCO”):
  - a) Description
  - b) Requested by
  - c) Net Added/Deducted
  - d) Rework (stating yes or no)
  - e) Amount Ineligible/Eligible for Grant Participation
  - f) Approximate Cost by Trade
  - g) Reason for the Change
  - h) Comment (rationale/necessity for the change)
- 4) All District entries on the Change Order Log are subject to MSBA review.
- 5) The Change Order itself, all attachments to the Change Order, and all other documents necessary to establish the basis of the Change Order, must be submitted together with the Change Order Log.
- 6) Upon the receipt of the MSBA’s quarterly review determinations, the District has forty-five (45) days to request reconsideration of any MSBA Change Order Determinations it disputes. Reconsideration of MSBA Change Order Determinations is final.
- 7) All Change Orders not submitted to the MSBA within four months after they are executed by the District will be deemed ineligible for reimbursement.

- 8) After substantial completion, the District must continue to submit Change Orders to the MSBA as they are executed, but the MSBA will determine the eligibility of all such Change Orders only upon the submission of the final Change Order for the project.
- 9) All Change Orders must be submitted and reviewed by the MSBA before a draft MSBA Final Project Cost Audit report can be generated for a project.

## Guidelines for Eligibility Determinations

The District must make a determination on the Change Order Log whether each PCO is eligible for reimbursement by the MSBA. These eligibility determinations will be reviewed by the MSBA. A PCO is ineligible for reimbursement if it is:

- (1) not within the scope, budget or schedule of the project (such as owner-directed or third-party directed changes);
- (2) for costs that are categorically ineligible for reimbursement; or,
- (3) outside the funding limits set for specific categories of cost.

### *1. The Scope, Schedule and Budget of the Project*

The MSBA will not reimburse costs associated with construction that is not within the scope, budget or schedule of the project. Changes in “scope” as understood by the MSBA mean not only significant, structural additions to or subtractions from the design, but also all additions and enhancements to design such as higher quality, higher cost materials or work that exceeds the agreed design intent of the project. “Scope” means the work as designed and set forth in Exhibit B to the PFA, and changes from scope include all divergence from the PFA in terms of design, construction, schedule, educational plan and cost.<sup>1</sup> Change Order costs that fall outside the scope, budget or schedule of the project will not be eligible for reimbursement. The following guidelines help to determine which costs are ineligible:

- Project costs in excess of the Total Facilities Grant will not be reimbursed. 2.16 (5)(a).<sup>2</sup> The Total Facilities Grant includes a potentially eligible construction contingency cost budget line from which Change Orders that are eligible may be reimbursed.
- Costs that are inadequately supported will not be reimbursed. 2.16(5)(h).
- Duplicate costs or costs unrelated to the project will not be reimbursed. 2.16(5)(j).
- Schedule-related change work for delay, time extension or acceleration, including premium time, will not be reimbursed.

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<sup>1</sup> Scope changes can include deletions of scope as well as added scope. The MSBA will share in the savings from deleted scope in accordance with the Reimbursement Rate.

<sup>2</sup> Generally, expenditures made prior to the execution of the PFA will not be reimbursed. 2.16(5)(f). Limited exceptions exist for prior expenditures approved in writing and related to the Feasibility Study, or expenditures approved by the Board.

In addition, the MSBA will not reimburse costs associated with the following categories of PCOs:

- PCOs that are owner-directed will not be reimbursed as these add scope to the project.
- PCOs that are directed by third-parties [such as utilities or local inspectors] will not be reimbursed as these add scope to the project.
- PCOs that result from faulty workmanship, damage by the contractor or its sub-contractors, or corrective action (“re-work”) will not be reimbursed.

By contrast, PCO costs associated with design issues or unforeseen/differing conditions that arise within the project scope generally will be reimbursed up to the applicable funding limits.

## ***2. Categorically Ineligible Costs***

Certain “categorically ineligible” costs will not be reimbursed even though they are within the scope of the project. Although such costs are generally excluded from potential reimbursement during the PFA process, these costs remain ineligible when they arise in conjunction with a Change Order. Please see Appendix A (Categorically Ineligible Costs)<sup>1</sup>.

## ***3. Funding limits***

The MSBA establishes a funding limit for specific categories of work. Funding limits apply in cases where work would otherwise be eligible for reimbursement because it does not exceed scope and is not categorically ineligible. Thus, the funding limit is an additional cap on MSBA reimbursement beyond considerations of scope and categorical ineligibility.<sup>3</sup> The MSBA applies the following funding limits to all costs including Change Orders:

- Site work costs cannot exceed eight percent (8%) of the estimated total building costs.<sup>4</sup>

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<sup>3</sup> The following funding limits also apply to MSBA projects but generally do not arise as an issue after the PFA process:

- OPM costs cannot exceed three and a half percent (3.5%) of the estimated total construction budget. This may vary for Accelerated Repair Projects.
- Designer costs cannot exceed ten percent (10%) of the estimated total construction budget. This may vary for Accelerated Repair Projects.
- Soft costs cannot exceed twenty percent (20%) of the estimated total construction budget. This may vary for Accelerated Repair Projects.
- A furniture, fixtures and equipment (FF&E) funding limit is also set based upon the number of students.

<sup>4</sup> The estimated total building costs and estimated total construction budget are established by the PFA.

- For all projects entering a Project Scope and Budget Agreement during or after January 2014, the eligible construction contingency for new core projects cannot exceed one percent (1%) of the total construction budget. (Additional ineligible construction contingency may be carried.)
- For all projects entering a Project Scope and Budget Agreement during or after January 2014, the eligible construction contingency for addition and/or renovation projects<sup>5</sup> cannot exceed two percent (2%) of the total construction budget. (Additional ineligible construction contingency may be carried.)

The funding limit that the construction budget cannot exceed the applicable MSBA cost per square foot, though applicable to the project budget as determined by the PFA as amended, does not govern Change Orders.

## **Process for Reconsideration of MSBA Eligibility Determinations**

Upon receipt of the MSBA quarterly review, the District will have up to forty-five (45) calendar days to request reconsideration of any MSBA determination with which it disagrees through a written request to the MSBA. The District should make as full and detailed an explanation as necessary to support its request for reconsideration, setting forth all reasons pertinent to that contention and submitting any relevant supporting documentation.

The MSBA will take all relevant materials timely submitted into account during its reconsideration. It is important to note that the MSBA will conduct only one reconsideration review for each Change Order quarterly review, and the outcome of the reconsideration will be final. Any requests for reconsideration of issues relating to the substance of the Change Order Review that are not raised during this 45-day period are waived.

After substantial completion, the District must continue to submit Change Orders to the MSBA as they are executed, but the MSBA will determine the eligibility of all such Change Orders only upon the submission of the final Change Order for the project. All Change Orders must be submitted and reviewed by the MSBA before a draft MSBA Final Project Cost Audit report can be generated for a project. Unreasonably prolonged Change Order finalization that delays the submittal of a final pay requisition will result in the forfeiture of the construction costs associated with such a Change Order.

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<sup>5</sup> Does not include Accelerated Repair Projects.

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## APPENDIX A

### CATEGORICALLY INELIGIBLE COSTS

Categorically ineligible costs include costs that are not core to the educational program, such as:

- Swimming pools, skating rinks, field houses, district administrative office space, and indoor tennis courts. 2.16(5)(m).
- Synthetic turf. Site Cost Allowance Guidelines (“SCAG”).
- Athletic stadiums, or excavation, earthwork, and pedestrian walkways within stadiums. (SCAG).
- Spectator amenities such as concession stands, press boxes, and toilet facilities for outdoor athletic facilities. (SCAG).
- Transportation of students 2.16(5)(s).
- Water and wastewater treatment and disposal (MSBA will reimburse up to eight percent [8%] of the estimated total building costs) .

Categorically ineligible costs further include costs for items that are not part of the permanent building and grounds (with the exception of the per student funding limit for furniture, fixtures and equipment and additional funding limit per student for technology), such as:

- Normal operating and maintenance costs such as textbooks, classroom supplies, custodial supplies, administrative support, or telephone service. 2.16 (5)(1).
- School supplies. 2.16 (5)(u).
- Cell phones. 2.16 (5)(x).
- Utility charges, fees and service bills. 2.16 (5)(w).
- Athletic equipment such as balls, bats, bases, racquets, uniforms, helmets or gloves. 2.16 (5)(p).
- Modular units except with specific written permission writing. 2.16(5)(q).
- Vehicles: cars, trucks, tractors or golf carts. 2.16(5)(t).

Categorically ineligible costs also designate costs beyond the project scope, such as:

- All costs associated with site acquisition. 2.16 (5)(g).
- Demolition costs will not be reimbursed unless specifically permitted in writing.
- Special waste and hazardous or contaminated materials remediation, removal and disposal where associated with site work. (SCAG).
- Financing costs, interest, costs of issuance, short or long term bonds, notes, or other certificates of indebtedness. 2.16(5)(b).
- Credit rating services, legal services related to issuance or indebtedness, and financial consulting services. 2.16(5)(c).
- Penalties, processing fees, catalogue fees, sales tax, membership, and subscriptions. 2.16(5)(n).
- Costs of local building permits, inspection fees and similar fees. 2.16(5)(o).
- Legal services. 2.16(5)(d).
- Direct or indirect municipal services except public safety services as required by law. 2.16(5)(e).
- Storage space, storage facilities, storage trailers or storage containers. 2.16(5)(k).

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- Maintenance or service contracts and warranties, including, as part of maintaining the building, the abatement and replacement of asbestos-containing floor or ceiling tiles. 2.16(5)(i).
  - Swing space used for housing students temporarily. 2.16(5)(r).
  - Dedications, ceremonial or celebratory costs. 2.16 (5)(y).