

A stylized graphic of a city skyline with various rectangular buildings of different heights, rendered in a light tan color. The graphic is positioned behind the text of the Massachusetts School Building Authority.

# Massachusetts School Building Authority

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## **Manual for Module 7 - Construction**

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## Table of Contents

### Module 7 – Construction

A. Welcome to Module 7	3
B. Construction Deliverable Procedures	5
1. DCAMM Evaluation Notifications	5
C. The Project Funding Agreement Bid Amendment	7
1. Bid Savings	8
2. Site Costs	9
3. Categorically Ineligible Scope	9
4. Overall Scope Exclusion	9
5. Soft Cost Exclusions	10
6. Other Budgeted Costs in Construction Budget	10
7. Budget Revision Requests	11
8. Sequence of Exclusions	11
D. Change Order Submittals	11
1. Procedures governing Change Order Eligibility Review	12
2. Guidelines for Eligibility Determinations of Change Orders	13
a. Scope, Schedule and Budget of the Project	13
b. Categorically Eligible Costs	15
c. Funding Limits	15
3. Reconsideration of Change order Eligibility Determinations	16
E. Guaranteed Maximum Price (“GMP”) Contingency Submittals	17
1. Costs that may be reimbursed for payments made from either GMP or Construction Contingency	17
2. Costs that should be paid exclusively from GMP Contingency, not from Construction Contingency	18
3. Costs ineligible for MSBA reimbursement	18
4. Procedures governing GMP Contingency Expenditure Eligibility Review	19
5. Reconsideration of GMP Contingency Eligibility Determinations	20
F. Budget Revision Requests	20
1. BRRs that reconcile buy savings, holds and allowances – CMR contracts	22
2. BRRs for budgetary matters other than buy savings, holds and allowances	23
3. Process for submitting BRRs	23
4. Eligibility Determinations in regard to BRRs	24

## **Module 7 - Construction**

If the District has completed all steps defined in Module 6 (Design Development), the District is ready to proceed with Construction as set forth in Module 7 (Construction). Module 7 is one of eight MSBA modules intended to provide a guide to the procedures and approvals needed to work collaboratively with the MSBA.

### **A. Welcome to Module 7 – Construction**

Module 7 (Construction) begins with the first Notice to Proceed. During Module 7 (Construction), the MSBA Construction Administration team monitors the project for compliance with the Project Funding Agreement (“PFA”) and any amendments to the PFA, including the “Bid Amendment,” with particular regard to scope, budget and schedule as set forth in the PFA and any amendments. The MSBA requires monthly submissions of a report by the Owner’s Project Manager (“OPM”) to facilitate this monitoring, and also conducts regular site visits to the project.

During Module 7, the District and its team collaborate with the MSBA to:

- Amend the Project Funding Agreement to account for bid results or a Guaranteed Maximum Price.
- Determine eligibility of change orders for MSBA reimbursement.
- Determine eligibility of Guaranteed Maximum Price (“GMP”) contingency expenses for MSBA reimbursement.
- Process Budget Revision Requests to align MSBA Progress Payment (“Pro-Pay”) budgets to Schedules of Value and project Soft Costs.
- Address issues concerning project scope, budget, cash flow and schedule.

During Module 7, the District is always encouraged to reach out to the MSBA Project Coordinator to raise any issues or questions that the District may have. In addition, to facilitate communication, the following meetings are scheduled between the District and the MSBA:

- Site visits. The MSBA will conduct the first scheduled site visit approximately two months following the start of construction and the notice to proceed. The MSBA Project Manager will contact the District and the OPM to arrange a mutually agreeable meeting time. Site visits are conducted at the project site and usually last two to three hours.
- Pro-Pay Training. As the District begins to submit costs against a budget that includes the General Contractor or Construction Manager's Schedule of Values, Pro-Pay submission becomes more complex. The District is encouraged to attend a Pro-Pay training as a refresher course.

Module 7 participants will include, at a minimum, the following:

- Representatives of the School Building Committee as submitted by the District and approved by the MSBA in the School Building Approval form, as well as elected officials and other District representatives, as deemed necessary by the District to show the educational and financial support of the District for the project.
- The OPM as submitted by the District and approved by the MSBA in accordance with MSBA regulations and policies.
- The Designer as selected locally by the District and approved by the MSBA for projects estimated to cost less than \$5 million or as selected through the MSBA's Designer Selection Panel for projects estimated to cost \$5 million or more.
- The General Contractor or Construction Manager as contracted by the District.
- The MSBA, through the assigned MSBA Project Manager and Project Coordinator.

Module 7 has been provided as a general guide for Districts and their teams to plan their work in a collaborative effort in accordance with the MSBA's procedures and requirements. Just a reminder that, as with all MSBA modules, this module is not intended to replace or supersede the services required by any OPM or Design contracts into which the District enters. The Designer and OPM shall each be solely responsible for performing the services required by their contracts

with the District, and nothing in this module shall be construed as relieving the Designer or OPM from their duties and responsibilities.

## **B. Construction Deliverable Procedures**

All documents and materials submitted to the MSBA during the course of the construction must be transmitted by the OPM or the District. When the OPM transmits documents, the OPM is required to compile and coordinate all deliverables prior to delivery to the MSBA including all items from the District or Designer.

The following project deliverables are required during Module 7:

- Budget Revision Requests if necessary
- Change Orders
- Change Order Logs
- DCAMM Evaluation Notifications at 50% and 100%
- Designer Contract Amendments
- GMP Expenditure Log with supporting documentation
- OPM Contract Amendments
- OPM Reports and attachments
- PFA Bid Amendment (executed copy)
- Reconsideration Letters if necessary
- Reimbursement Requests and supporting documents
- Schedule of Values

### **1. DCAMM Evaluation Notifications**

Among the construction deliverables required by the MSBA in Module 7 are DCAMM Evaluation Notifications.

The Massachusetts Division of Capital Asset Management and Maintenance (“DCAMM”) has a standard contractor evaluation form (“DCAMM Evaluation”) that must be completed for every public building construction project “at the 50% completion stage” (“the 50% DCAMM

Evaluation”) and upon completion of a building project (“the 100% DCAMM Evaluation”). At both stages the DCAMM Evaluation must be sent to the relevant contractor and subcontractors (filed sub-bidders only). At project completion, the completed 100% DCAMM Evaluation must be submitted to DCAMM. These steps are required by Massachusetts law. See M.G.L. c. 149, § 44D (7) and 810 CMR 8.02.

The 50% and 100% DCAMM Evaluation forms and associated instructions can be found on the DCAMM website. Massachusetts law further requires 100% DCAMM Evaluations to be completed by the School District or other public agency in Massachusetts and submitted to DCAMM within 70 calendar days from completion of the project for General Contractors, or within 90 calendar days from completion of the project for Sub-Bidders.

The MSBA has developed a 50% DCAMM Evaluation Notification (“50% Notification”) that requires the District to list the grades that are awarded to each contractor and subcontractor (filed sub-bidders only) evaluated at 50% project completion, and to affirm that the 50% DCAMM Evaluation has been sent to the contractor. The 50% Notification is to be completed and submitted to the MSBA no later than four (4) months subsequent to the 50% completion stage. Failure to submit the 50% Notification within the requisite time will affect the processing of subsequent reimbursement requests.

The MSBA has also developed a 100% DCAMM Evaluation Notification (“100% Notification”) to be completed and submitted to the MSBA when the 100% DCAMM Evaluation is submitted to DCAMM. The 100% Notification requires the District to list the grades that are awarded to each contractor and subcontractor (filed sub-bidders only), and to affirm that the 100% DCAMM Evaluation has been sent to the contractor and to DCAMM. Submission to the MSBA of the 100% Notification is a prerequisite to closing a project with the MBSA and receiving final audit approval. In the absence of the 100% Notification, a project cannot be closed, and the District will not receive final payment from the MSBA.

### **C. The Project Funding Agreement Bid Amendment**

When the MSBA and the District execute a Project Funding Agreement (“PFA”), they enter into a funding agreement to abide by the scope, budget and schedule of their project. The Total Project Budget established by the PFA includes a Maximum Total Facilities Grant, which is the most that the MSBA will contribute toward a project. The Maximum Total Facilities Grant cannot increase during the life of a Project without approval by the MSBA Board of Directors.

After the PFA is executed, the District may bid its project or negotiate a Guaranteed Maximum Price (“GMP”) with its Construction Management firm. If the lowest, responsible bid or the GMP accepted by the District for the construction of the Project is lower than the corresponding amount set forth in the Total Project Budget, the MSBA will reduce the Maximum Total Facilities Grant accordingly. In the event that the lowest, responsible bid or GMP accepted by the District for the construction of the Project exceeds the corresponding amount set forth in the Total Project Budget, the MSBA will not make any adjustments to its Maximum Total Facilities Grant on account of the bid, and the increased costs will be the sole responsibility of the District. In the event that the lowest, responsible bid or GMP accepted by the District for construction of the project exceeds the corresponding amount set forth in the Total Project Budget, the District may use a reasonable amount of the owner’s and/or construction contingency to fund the cost of any such budget overrun. Such expenditures of owner’s and/or construction contingency funds for the purpose of funding such budget overruns will not be eligible for reimbursement by the MSBA and will be the sole responsibility of the District.

The “PFA Bid Amendment” is a legal amendment to the PFA based on a new budget that reflects the bid or GMP cost. It is developed after the District awards the Project to the General Contractor that is the winning bidder, or negotiates the GMP, and is based upon the new Schedule of Values (“SOV”) reflecting the awarded or negotiated project cost. The purpose of the PFA Bid Amendment is to amend the Project Budget and reconcile it with the Maximum Total Facilities Grant as set forth in the PFA, and create a better-defined budget and corresponding grant as a result of bidding or the negotiated GMP.

The PFA Bid Budget is returned to the District with a legal agreement that formally amends the PFA to include the updated budget and is used to update the Pro-Pay system to accommodate the accurate submission of reimbursement requests.

The following considerations are relevant to the MSBA's establishment of the PFA Bid budget:

- Bid savings
- Site costs
- Categorically ineligible scope
- Overall scope exclusion
- Soft cost exclusions
- Other budgeted costs in the construction budget
- Budget Revision Requests ("BRRs")
- Sequence of exclusions

## **1. Bid Savings**

Bid savings are the difference between the PFA Budget and the Budget as determined by the bids or GMP ("Bid Budget"), in the case that the Bid Budget is less than the PFA Budget.

When a District has bid savings, these may be applied to project costs but will be ineligible, and therefore will not increase the MSBA's participation in the grant. The District Share is defined as the difference between the Total Project Budget and the Maximum Total Facilities Grant in the PFA without amendments. To the extent the District Share of the Total Project Cost has decreased as a result of bid savings, then an amount of bid savings equal to the decrease in the District Share can be applied to the project, and this amount will be excluded from MSBA participation. Thus, bid savings will be applied only so as not to increase the District Share. If considering applying these bid savings to a project, the District should work with District Counsel to ensure that such an application of bid savings is in accordance with and permitted by appropriate local approval or appropriation of funding. Certification of compliance with local approvals and appropriation, signed by District Counsel, must be submitted to the MSBA.



## **2. Site Costs**

At PFA, the site cost funding limit is calculated as 8% of building costs. The cost of site work in excess of the 8% funding limit is excluded from participation, and the MSBA will enter a “site work exclusion” into the Project Budget for the amount of excluded costs for site work. The amount of the site work exclusion is not recalculated at PFA Bid, regardless of changes to the building costs.

## **3. Categorically Ineligible Scope**

The MSBA will not participate in categorically ineligible costs, which are set forth in the Appendix of Categorically Ineligible Costs. Such scope includes Underground Storage Tank removal or Vinyl Asbestos Tile abatement, which will be excluded in the line item where it is budgeted. Categorically ineligible scope that involves many line items, such as, for example, district administrative space, may be specifically excluded within the line items where it occurs, or it may be excluded on a percentage-wise basis throughout the construction costs. Mark-ups associated with categorically ineligible scope are also excluded.

## **4. Overall Scope Exclusion**

The MSBA participates in the cost of construction up to the applicable construction cost per square foot amount. Beyond that amount, the District is responsible for 100% of the costs. In other words, costs in excess of this amount are 100% excluded, and represented in the Project Budget as exclusion, known as the “overall scope exclusion.” The portion of construction costs in which the MSBA will participate is determined, first, by multiplying the eligible square footage of the building times the eligible cost per square foot, and second, by adding to that sum the cost of marked-up eligible demolition and abatement. This calculation is performed at the time of the PFA, and then performed again at the time of the PFA Bid; however, the proportion of construction costs in which the MSBA will participate will not increase at PFA Bid.

## **5. Soft Cost Exclusions**

At the PFA and at the PFA Bid, the MSBA also enters soft cost exclusions. At the PFA Bid, the MSBA examines soft cost exclusions from the PFA, which are verified against the same funding parameters used in the PFA:

- Consultant Fees. OPM Basic Services that exceed 3.5% of the construction budget are excluded. Designer Basic Services Fees that exceed 10% of the construction budget are excluded.
- Total soft costs that exceed 20% of the construction budget are excluded.
- Furniture, fixtures and equipment (“FF&E”) costs are excluded where they exceed the FF&E funding limit of \$1200 per student.
- Technology costs are excluded when they exceed the Technology funding limit of \$1200 per student.

## **6. Other Budgeted Costs in the Construction Budget**

Other budgeted costs in the Construction Budget, which are generally calculated in addition to the Construction Trades Subtotal, are recalculated at PFA Bid.

The following budget lines represent budgeted costs in the PFA budget which are generally calculated in addition to the Construction Trades Subtotal:

- Design and Pricing Contingency
- Design Bid Build Sub-Contractor Bonds
- Design Bid Build Insurance
- General Conditions
- Design Bid Build Overhead and Profit
- GMP Insurance
- GMP Fee
- GMP Contingency
- Escalation to Mid-Point of Construction

In the PFA Bid Amendment, these amounts are recalculated and reflected in the following budget line items:

- GMP Fee
- GMP Insurance
- GMP Contingency
- Division 1- General Requirements

Specific exclusions within the Construction Trades in the PFA Budget are applied to categorically ineligible items such as site costs over the funding limit or Vinyl Asbestos Tile abatement costs. Mark-ups on such categorically ineligible items are excluded.

## **7. Budget Revision Requests (“BRRs”)**

The PFA Bid Amendment Budget will be updated to include revision by all Budget Revision Requests (BRRs) approved by the MSBA since the establishment of the PFA Budget. Please reference the BRR section of this manual for guidance on the eligibility of BRRs. All BRRs should be up to date before preparation of the PFA Bid Amendment.

## **8. Sequence of Exclusions**

The MSBA generally seeks to place exclusions from grant eligibility in the same sequence in all projects. Site work exclusions are hosted in the site work line items (Divisions 31-33). Exclusions for project-specific categorically ineligible costs and scope are discussed above in reference to Categorically Ineligible Scope. All other exclusions are distributed among the lines of the Construction Budget except the site work line items, beginning with the line item with the greatest budget. In CMR Projects, these other exclusions are distributed first to the GMP Contingency, and then to the line items of the Construction Budget in the same sequence as Design Bid Build projects.

## **D. 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 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.

## **1. Procedures Governing Change Order Eligibility Review**

The following procedures govern the MSBA’s review of Change Orders for all projects:

- The MSBA reviews Change Orders for each project four times a year (quarterly).
- For each Change Order submitted, the District must submit a Change Order Log.
- 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)
- All District entries on the Change Order Log are subject to MSBA review.
- 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.

- 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.
- All Change Orders not submitted to the MSBA within four months after they are executed by the District will be deemed ineligible for reimbursement.
- 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.
- The MSBA will reimburse the District for its eligible change order costs either: (a) upon completion of the MSBA Change Order Review and any associated Budget Revision Requests, for all projects entering a Project Scope and Budget Agreement before January 2014; or (b) upon final reimbursement from the MSBA, for all projects entering a Project Scope and Budget Agreement during or after January 2014.

**2. Guidelines for Eligibility Determinations of Change Orders**

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.

**a. *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. The scope, budget and schedule of a project are determined at

PFA. “Scope” means the scope of the Proposed Project that has been mutually agreed to by the MSBA and the District as set forth in Exhibit B to the PFA including all work that is included in the final design and any work that is determined by the MSBA to be an eligible expenditure of construction contingency. A construction contingency is included within the Project Budget to address potential change orders; change order costs will not be reimbursed if they exceed the eligible construction contingency, or if they are for ineligible costs such as the costs of owner or third-party changes.<sup>1</sup> The following guidelines help to determine which costs are ineligible:

- Project costs in excess of the Maximum Total Facilities Grant will not be reimbursed. 2.16 (5) (a).<sup>2</sup> The Maximum 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.

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.

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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 eligible 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.

***b. 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>i</sup>.

***c. 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>
- 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.) This amount is calculated at PFA and is **not** recalculated at PFA Bid.
- 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

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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.

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

construction contingency may be carried.) This amount is calculated at PFA and is **not** recalculated at PFA Bid.

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.

### **3. Reconsideration of Change Order 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.



## **E. GMP Contingency Submittals**

The MSBA conducts a review of Guaranteed Maximum Price (“GMP”) Contingency for eligibility similar in process to the MSBA Review of Change Orders.

GMP Contingency is unique to Construction Manager at Risk (“CMR”) projects and, while this Manual addresses GMP Contingency generally, it must be emphasized that each District entering a CMR Contract will be governed by the specific terms of that contract, which may conflict with the general statements made here. In a CMR Contract the GMP Contingency is sometimes referred to as a “Construction Contingency.” However, a GMP “Construction Contingency” should not be confused with the separate Construction Contingency on MSBA projects, from which Districts working with the MSBA pay Change Orders.

### **1. Costs that may be reimbursed for payments made from either GMP Contingency or Construction Contingency**

A GMP Contingency is typically included in a CMR/Cost Plus Contract to pay for additional costs that arise out of “unforeseen conditions” or “events” not reasonably anticipated at the time of the execution of the GMP, to the extent that such conditions or events do not result in or constitute a change in the Work. Additional costs that arise out of “unforeseen conditions” and or “events” that do result in or constitute a change in the Work are not typically paid out of the GMP Contingency. Rather, the GMP is increased to account for the additional costs and any additional costs are paid for out of the Construction Contingency. The MSBA does not direct how a District can use its GMP Contingency and a District may choose to pay for costs that arise out of conditions or events that result in or constitute a change in the Work from its GMP Contingency. However, the MSBA will only consider funding amounts drawn from the Construction Contingency that are used to pay for additional costs that arise out of “unforeseen conditions” and or “events” that result in or constitute a change in the Work.

The eligibility for funding costs that are paid either from GMP Contingency or Construction Contingency is determined in accordance with the provisions of the Change Order section of this Manual, which provisions are not repeated here. However, all GMP Contingency expenditures must be submitted for MSBA review on the GMP Contingency Log, including those costs that

are of the sort that may be paid from either GMP Contingency or Construction Contingency. Upon exhaustion by the District of its GMP Contingency, the MSBA will suspend its review of, and participation in, GMP Contingency expenditures. The District must continue to submit its GMP Contingency expenditures to the MSBA in the GMP Contingency log until the end of the project, however, for the purposes of audit.

## **2. Costs that should be paid exclusively from GMP Contingency, not from Construction Contingency**

On MSBA projects, unforeseen costs that do not result in or constitute a change in the work must be paid from GMP Contingency. Generally, costs that do not result in or constitute a change in the work may include, but are not limited to, the following:

- Minor concealed or unknown conditions not materially different from those indicated in the contract documents.
- Unanticipated cost overruns stemming from the CMR's procurement of subcontracts, other purchases of materials, or labor costs provided that the same are not caused by the fault, negligence, or breach of contract of the Construction Management or any Subcontractor or Supplier.
- Expediting or acceleration costs required to meet the baseline schedule, not caused by the negligence of the CMR or its subcontractors.
- Correction of defective or non-conforming work not caused by the negligence of the CMR or its subcontractors.

## **3. Costs ineligible for MSBA reimbursement**

Not all GMP Contingency expenditures are eligible for MSBA reimbursement. Please note as stated in the Change Order section of this Manual, that the MSBA does not reimburse for costs arising out of defective work or non-conforming work, otherwise known as "re-work." **As a general principle, the MSBA does not participate in acceleration, overtime, delay or other costs associated with changed schedule.** The MSBA will not participate in GMP Contingency

Expenditures for categorically ineligible costs. Please see the Appendix of Categorically Ineligible Costs.

#### **4. Procedures Governing GMP Contingency Expenditure Eligibility Review**

The following procedures govern the MSBA's review of GMP Contingency Logs for all projects:

- The MSBA reviews GMP Contingency Logs for each project four times a year (quarterly).
- For its GMP Contingency expenditures to be reviewed for reimbursement, the District must submit a GMP Contingency Log.
- On the GMP Contingency Log, the District must complete the following sections for each expenditure:
  - a) Item Number
  - b) Description
  - c) Requested by
  - d) Net Added/Deducted
  - e) Amount Ineligible/Eligible for Grant Participation
  - f) Approximate Cost by Trade
  - g) Reason for the Expenditure
  - h) Comment (rationale/necessity for the expenditure)
- All District entries on the GMP Contingency Log are subject to MSBA review.
- Upon the receipt of the MSBA's quarterly review determinations, the District has forty-five (45) days to request reconsideration of any MSBA GMP Contingency Determinations it disputes. Reconsideration of MSBA GMP Contingency Determinations is final.
- GMP contingency expenditures not submitted to the MSBA within four months after they are paid by the District will be deemed ineligible for reimbursement.
- After substantial completion, the District must continue to submit GMP Contingency Logs to the MSBA.
- All GMP Contingency expenditures must be submitted and reviewed by the MSBA before a draft MSBA Final Project Cost Audit report for a project can be generated.

At any appropriate time during a project, holds and buy savings may move among line items within the construction budget, but can only be re-dedicated with MSBA participation to scope that is eligible. It is unnecessary to move holds and buy savings first to the GMP Contingency and then to a new line, but that is considered best practice so that the MSBA can timely review the eligibility of the costs to which they are re-dedicated. Once they are moved to the GMP Contingency, funds associated with holds and buy savings are subject to the same eligibility review as all funds expended from GMP Contingency.

## **5. Reconsideration of GMP Contingency Eligibility Determinations**

Upon receipt of the MSBA quarterly review of GMP Contingency expenditures, the District will have 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 GMP Contingency quarterly review, and the outcome of the reconsideration will be final. Any requests for reconsideration of issues relating to the substance of the GMP Contingency Review that are not raised during this 45-day period are waived.

After substantial completion, the District should continue to submit GMP Contingency expenditures on the GMP Contingency Log to the MSBA as the GMP Contingency is expended. All GMP Contingency expenditures 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 GMP Contingency finalization that delays the submittal of a final pay requisition may result in the forfeiture of reimbursement for associated GMP Contingency expenditures.

## **F. Budget Revision Requests (BRRs)**

BRRs revise a District's Budget so that budgeted funds are available to meet project costs. Every MSBA project has a Total Project Budget ("Budget") within which the District must

complete its project. As authorized by the MSBA Board of Directors, this Budget, associated with the Project Funding Agreement (“PFA”), includes both the District’s and the MSBA’s estimated share of the project costs. The MSBA only participates in costs that are “eligible” for participation, as established by the MSBA regulations and policies; costs in which the MSBA does not participate are known as “ineligible.”<sup>6</sup>

Before the Project Budget can be revised by the PFA Bid Amendment, the budget for all soft costs must be up-to-date and reconciled by BRRs; only then will the Construction Budget be revised in order to create a PFA Bid Amendment that reflects the Schedule of Values (“SOV”) representing the successful Bid on Design Bid Build Projects, or representing the Guaranteed Maximum Price on Construction Manager at Risk Projects.

BRRs may be used to revise budgeted line-item values to allow expended funds to meet budgeted funds in the appropriate category or line item. The District’s Budget is set on a line item basis, and all costs must be submitted to the particular line item in which they are expended. The District will not be reimbursed for sums that exceed the amount of a given line. District reimbursement within a given line may further be limited by exclusions from eligibility (“exclusions”) for categorically ineligible costs (such as swimming pools), or by exclusions of costs that exceed the allowance for MSBA’s participation in certain items of scope, such as the allowance for MSBA’s participation in site work. BRRs are the means by which the budget of line items can be changed, within the amount of the Budget, without increasing the Maximum Total Facilities Grant (“Maximum Grant”).<sup>7</sup> Thus, surplus budget from one line item may be transferred to another line item in which there is a budget shortfall. The MSBA may determine some transfers to be ineligible, thus decreasing the Maximum Grant.

The MSBA may require BRRs to move Construction Contingency into the Change Order line.

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<sup>6</sup> Both eligible and ineligible budgets can be transferred by means of a BRR.

<sup>7</sup> Within the Budget, the MSBA establishes a Maximum Total Facilities Grant (“Maximum Grant”), which is the outside limit of what the MSBA can reimburse. The MSBA may not participate in the total amount of the Maximum Grant because the Budget contains potentially eligible contingency budgets that the District may use for ineligible costs, the District may realize cost savings, and the District may not complete the entire project scope. All costs are subject to audit by the MSBA.

## 1. BRRs that reconcile buy savings, holds and allowances – CMR contracts

For CMR contracts, buy savings, holds and allowances may move freely within the lines of a construction budget without eligibility determinations.<sup>8</sup> The Construction Budget is defined to include:

- GMP Fee
- GMP Insurance
- GMP Contingency
- Divisions 1-33

Please note that the Construction Contingency is defined to fall **outside** the Construction Budget.

The movement of buy savings, holds and allowances between lines must be reflected in analogous movements of budget between the lines, or the Budget will suffer from over-runs and under-runs, and be unable to accommodate costs within the appropriate lines.

Buy savings and holds may move from one line of the construction budget to any other. In contrast, amounts budgeted to an allowance cannot be re-dedicated to scope other than that to which they were first assigned, but any amounts that are budgeted as a single allowance that is spread over several line items (for example, signage or winter conditions) can be freely dispersed over those several line items without MSBA eligibility determinations.

In the case of the movement of buy savings, holds and allowances among the line items of the construction budget, a BRR to reflect such movements may be submitted whenever there is the risk of a line item being insufficient to cover a cost. Before final audit during project closeout, when no further movement of holds, allowances or buy savings among the lines are anticipated, any remaining unspent holds and buy savings may be moved to GMP Contingency, and unspent

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<sup>8</sup> “Buy savings” represent the difference between the estimated cost to complete a budgeted item of work in a CMR Contract and the actual cost to the CMR of contracting the completion of that work excluding allowances. A “Hold” is a guaranteed maximum price for the completion of a discrete line item of work in a CMR Contract. As a consequence, upon completion of all the work included under a CMR Contract, a CMR will be paid the lesser of its cost plus a fee or of the GMP. If that overall cost includes the cost to complete a line item that is subject to a Hold, the overall cost may only include the lesser of the Hold price or the cost to complete that line item of work. An “Allowance” is an adjustable cost estimate that is included in a budget by the CMR and owner as a place holder for the actual cost of completing work that is not defined as of the time of contract.

allowances may be moved to Construction Contingency. Holds or buy savings which move to the GMP Contingency do so as potentially eligible, and may be used for eligible expenditures to the same extent as GMP Contingency could be. Allowances that move to Construction Contingency will do so as ineligible, because an allowance cannot be dedicated to scope other than that to which it was originally assigned. Any movement of GMP Contingency, buy savings or holds to the Construction Contingency will be deemed ineligible, because the MSBA will participate in the value of the unspent budget, according to the same principle by which it participates in bid savings. The MSBA will perform an eligibility review of all costs paid from GMP or Construction Contingency.

## **2. BRRs for all budgetary matters other than buy savings, holds and allowances**

BRRs that are used for any budgetary matters other than buy savings, holds and allowances should be submitted when the need becomes apparent that the budget as configured cannot accommodate project costs. An example of such a BRR would be the transfer of Owner's Contingency to the "A&E Other Basic Services" line item to increase the amount that is available to fund costs that are incurred for work under that line item.

BRRs for change orders, that transfer budget from Construction Contingency to the Change Order budget line so that costs may be submitted against that line, are to be submitted in association with the MSBA review of Change Order eligibility.

## **3. Process for submitting BRRs**

BRRs are to be submitted to and reviewed by the MSBA according to a two-step process: the paper BRR and the electronic BRR. Please note that adequate budget to accommodate costs may not be available in the appropriate line items of the MSBA Budget, until BRRs are processed.

### **(1) Paper BRR**

- The District must submit a paper BRR requesting that the Budget be revised that is signed by the District's:
  - Chief Executive Officer,

- Superintendent of Schools, and
- Chair of the School Committee.
- The MSBA requires supporting documentation to be submitted with the paper-copy BRR.
- An adequate reason for the revision must be provided on the BRR form; should the MSBA determine the reason stated to be inadequate, the BRR will be returned to the District for further processing.
- The MSBA will note exclusions on the paper-copy BRR, execute the BRR and return it to the District.

(2) Electronic BRR

- After the paper copy, executed by the MSBA, has been returned to the District, the District must submit the BRR electronically in Pro-Pay.
- The MSBA will accept and approve the electronic BRR and enter the exclusions in Pro-Pay.

**4. Eligibility Determinations in regard to BRRs**

Eligibility determinations for costs submitted to budgets transferred by BRR are made according to the same principles that govern all MSBA eligibility determinations. Costs are ineligible if they add scope or accelerate the schedule from the scope and schedule established in the PFA, if they are categorically ineligible (see Appendix of Categorically Ineligible Costs), or are beyond the funding limits set for specific categories of cost. In addition, funds which have been determined to be ineligible (against which an exclusion has been placed) remain ineligible when transferred (and the exclusion is transferred with them).

Thus, legal fees, land acquisition, swing space, modular units, and moving costs are some examples of costs that are categorically ineligible when submitted against budgets revised by BRR. Funding limits apply to the specific categories of otherwise eligible cost including:

- OPM Basic Services
- Designer Basic Services
- Earthwork (Division 31)



- Exterior Improvements (Division 32)
- Utilities (Division 33)
- Furnishings
- Computer Equipment

The following costs, when within budget for scope designated by the PFA, are generally eligible subject to audit:<sup>9</sup>

- OPM Air Quality Testing
- Designer Other Reimbursable Services
- Designer Printing
- Designer Geo Tech Services
- Designer Air Quality Testing
- Construction Insurance

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<sup>i</sup>APPENDIX of

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).

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<sup>9</sup> Costs associated with the Feasibility Study (such as Feasibility Study contract alignment, Feasibility Study traffic study, or Feasibility Study site survey) are transferred as eligible funds only during the Feasibility Study phase, and associated BRRs must be recorded prior to the entry of the PFA.

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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).
- 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).