

MEMORANDUM

TO: Board of Directors, Massachusetts School Building Authority
FROM: James A. MacDonald, First Deputy Treasurer, Chief Executive Officer
John K. McCarthy, Executive Director, Deputy Chief Executive Officer
SUBJECT: MSBA Third-Party Funding Policy Update
DATE: June 14, 2023

Introduction

Given the rising cost of school construction in the Commonwealth and the increasing availability of federal and state grants, rebates, and other sources of funding that districts could use for their school projects, the Massachusetts School Building Authority (the “MSBA”) has reviewed its Third-Party Funding Policy (“Policy”) and is recommending changes as they relate to certain types of third-party funding that cities, towns and districts (“Districts”) with MSBA grant eligible projects may receive. These changes would allow districts to use and fully benefit from many available third-party funding sources.

Background

The Policy is based, in part, on a recommendation from the State Auditor in a report dated August 23, 2004, regarding sources of project income. The State Auditor recommended that the MSBA define areas of income that are used to offset project costs and that the MSBA require municipalities to affirm that any third-party funds will be used to reduce the overall cost of the project.

When the MSBA first implemented its third-party funding policy, a broad approach was applied, and all forms of third-party funding resulted in a decrease to the project cost basis and a concomitantly lower MSBA grant. As the MSBA’s program has evolved over time, it has updated the Policy to exclude certain types of grants and rebates.

The current Policy, which was last updated on June 21, 2022, still requires that the MSBA share in savings provided to Districts through most forms of third-party funding. Pursuant to the Policy, otherwise potentially eligible costs paid for with third-party funding have lowered the project cost basis and the grant accordingly, and if the third-party funding is identified later in the process, these amounts are treated as ineligible costs. As a result, both the MSBA and Districts share in the savings that result from third-party funding. Therefore, the MSBA grant is lowered proportionally based on the District's reduced eligible costs. Under the Policy, third-party funding includes insurance settlements, rebates¹, grants from other public entities or other parties, private donations, and other sources of project income.

¹ An April 2018 update to the MSBA’s Third-Party Funding Policy changed the treatment of Clean Energy Incentive rebates for projects that submit their final ProPay reimbursement request on or after July 1, 2018. Accordingly, Clean Energy Incentive Rebates for these projects have not been treated as an ineligible cost under the MSBA’s Third-Party Funding Policy since.

In April 2018, the MSBA updated its Policy in order to address Clean Energy Incentive Rebates that a District may receive for a project. This update provided that costs funded by Clean Energy Incentive Rebates, which are funded in whole or in part by monies that were directly or indirectly paid by Massachusetts' customers to providers, would not be treated as ineligible costs, and would not reduce the grant for which a District is eligible.

In June 2022, the MSBA again updated its Policy, this time as it relates to certain federal funding that cities, towns and districts with MSBA grant eligible projects may receive and in connection with electric vehicle infrastructure funding that Districts with MSBA grant eligible projects may receive. The June 2022 update provided that certain federal funding received pursuant to legislation passed in response to the Coronavirus Pandemic and electric vehicle infrastructure funding would not be treated as ineligible under the Policy and therefore, would not lower a District's grant.

Discussion

The purpose of the MSBA's Third-Party Funding Policy is to prevent a participant in the MSBA's grant program from being reimbursed or paid more than once (so called "double dipping") for any cost incurred in connection with the school project for which a participant is receiving a grant from the MSBA.

The MSBA's Third-Party Funding Policy is not intended to limit an MSBA grant program participant from receiving rebates, grants, state or federal funding, donations, or other sources of project income, that when coupled with the MSBA's grant, do not provide a double payment to the participant for any cost incurred in connection with the school project.

Recommendation

In light of the preponderance of federal and state grants, rebates, and other sources of funding that districts could use to assist with funding their school projects, and the current market conditions, the MSBA has further reviewed its Policy to facilitate the use of these monies by districts for their school projects. MSBA staff is recommending that rebates, grants, state or federal funding, donations, or other sources of project income that MSBA program participants may receive will not lower the project cost basis or reduce the amount of grant funding for Districts; provided that a district is not receiving more than its share of project costs from a third-party source or the district is not being reimbursed or paid more than once through an MSBA grant for any cost incurred in connection with the school project for which a participant has received funding from a third-party.

Updated Third-Party Funding Policy and Related Grant Program Details

The MSBA's Third-Party Funding Policy applies to insurance settlements and may apply to other forms of financial compensation a program participant may receive from a third-party, in the sole discretion of the MSBA. For third-party funding that is subject to the MSBA's Policy, such as insurance proceeds, both the MSBA and the District will share in the savings that may

result from third-party funding. The third-party funding reduces the MSBA's and District's share of the Project proportionally.

Pursuant to the current MSBA's program requirements, program participants are required to disclose all sources of funding, including rebates, grants, state or federal funding, donations, or other sources of project income from a third-party funding source, in the MSBA Sources and Uses Form, which is required as part of the close-out audit. Based on this revised policy, in addition to submitting as part of the close-out audit, program participants are required to disclose sources of funding from any third-party funding source at the time they are eligible for a funding agreement with the MSBA. If such third-party funding becomes available after the execution of the funding agreement, the District will be required to promptly notify the MSBA. Timely notification to the MSBA by Districts using a third-party funding source will be critical but particularly important for those participating in the Accelerated Repair Program. If any type of third-party funding, such as a utility rebate, exceeds the amount of the District's share of the Project, the incremental portion would be considered third-party funding, and therefore, the relevant costs would be deemed ineligible.

The MSBA requires program participants to provide specific documentation in connection with third-party funding that is being used to pay for project costs. The MSBA may require additional information related to third-party funding at any time. Further, program participants must execute a third-party funding certification that requires disclosure of all third-party funding and an agreement that, should the participant be paid in excess of any actual project cost between the receipt of MSBA grant funds and any source of third-party funding, the participant will notify the MSBA and work with the MSBA to repay any excess grant amounts that have been provided by the MSBA. As set forth in M.G.L. 70B § 3E, should a municipality remain indebted to the MSBA, this amount may be offset by the Commonwealth's disbursement of funds payable to the indebted municipality.