

Massachusetts School Building Authority
963 CMR 2.09 Section (6) Emergency Statement of Interest
Process

(6) Emergency Statement of Interest Process

(a) If a school facility, that has been in regular use as a school facility, has been damaged or destroyed by reason of fire, flood, explosion, earth movement, extreme weather conditions, or other unforeseen, extreme facility failure (“Emergency Condition”), such that all or a substantial part of the school facility that is used for educational purposes has been declared unsafe and unfit for student occupancy by the appropriate governmental agency, but excluding any such conditions attributable to neglect or lack of maintenance, the Authority may accept an Emergency Statement of Interest from an Eligible Applicant subject to the following conditions:

1. The Authority is a payor of last resort in the event of an Emergency Condition described herein. If, at any time, the Authority determines, in its sole discretion, that insurance proceeds, damages, awards, payments, grants or donations recovered by a city, town, regional school district, or independent agricultural and technical school (“District”), or which the District is eligible to recover, from insurers, responsible parties or any other funding sources for the repair, reconstruction or replacement of a school facility damaged or destroyed by an Emergency Condition meet or exceed the estimated costs of replacing, reconstructing, or repairing the school facility such that the educational and instructional program is restored to that which existed prior to the Emergency Condition, the Authority shall have no obligation to accept an Emergency Statement of Interest or to take any further action to advance an Emergency Statement of Interest that has been submitted, unless otherwise agreed by the Authority in writing. Any Proposed Project that is initiated by the submission of an Emergency Statement of Interest shall only be eligible for reimbursement of project costs, in accordance with the provisions of General Laws Chapter 70B, as amended, and 963 CMR 2.00 *et seq.*, that the Authority determines are necessary to replace, reconstruct, or repair a school facility so that the educational and instructional program is restored to the condition that existed prior to the Emergency Condition. Any additional improvements that the Authority determines exceed those necessary to restore the educational and instructional program to that which existed prior to the Emergency Condition shall be considered only as part of a Statement of Interest submitted under 963 CMR 2.09(1), unless otherwise agreed by the Authority in writing.

2. The confirmation of an Emergency Condition by the Authority as described herein, the submission of an Emergency Statement of Interest to the Authority, the acceptance of an Emergency Statement of Interest by the Authority, and/or the inspection or investigation of an Emergency Condition, shall in no way commit the Authority to accept any Application materials, approve an Application,

provide a grant or any other type of funding, or place any other obligation or requirement upon the Authority. A District shall have no entitlement to any funds from the Authority.

3. An Eligible Applicant who has reason to believe that a potential Emergency Condition exists in a school facility shall as soon as practicable, but in no event later than three (3) business days after such Emergency Condition becomes known to the Eligible Applicant, notify the Authority in writing of the potential Emergency Condition and shall as soon as practicable thereafter provide the Authority with any and all information that the Authority may request in its evaluation of the potential Emergency Condition.

4. By no later than ten (10) calendar days after the potential Emergency Condition becomes known to the Eligible Applicant, the Eligible Applicant may submit a written request to the Authority for confirmation of the potential Emergency Condition. The written request shall include: a detailed description of the events resulting in the potential Emergency Condition, evidence sufficient to show that an authorized public safety official has declared the school facility unsafe and unfit for student occupancy; a certification by a professional engineer, or other appropriate licensed professional, that the school facility is unsafe and unfit for student occupancy; a statement describing the educational impact and hardship caused to the District by the potential Emergency Condition; and a summary of the steps that the District has taken to accommodate the students displaced by the potential Emergency Condition. Upon receipt of the District's written request, the Authority may assign one or more representatives to inspect and investigate the potential Emergency Condition, to evaluate the damage, and to meet with local officials.

5. The Eligible Applicant shall give the Authority a reasonable opportunity to inspect and investigate the potential Emergency Condition. To the extent possible, the Eligible Applicant shall give the Authority prior written notice of any demolition activity and shall allow the Authority to inspect and investigate the potential Emergency Condition prior to any demolition.

6. The Eligible Applicant shall cooperate with the Authority in its inspection and investigation of the potential Emergency Condition. The Eligible Applicant shall allow the Authority to have access to the affected school facility, police and fire reports, all correspondence, reports and other documents received from or sent to the District's insurers, and all other documentation that the Authority may request. The Eligible Applicant shall promptly submit to the Authority any documentation or information requested by the Authority, including, but not limited to, any certifications, statements, forms, or applications that the Authority may require.

7. After the Authority has had a reasonable opportunity to inspect and investigate the potential Emergency Condition and after the Authority has

received all documentation, information, certifications, statements, applications, reports, and forms that it has requested, the Authority shall determine, in its sole discretion, whether an Emergency Condition exists.

8. If the Authority has confirmed in writing that an Emergency Condition exists, the Eligible Applicant may, at the direction of the Authority, submit an Emergency Statement of Interest to the Authority in such format as the Authority may develop no later than 30 calendar days after such confirmation by the Authority. The Authority shall not accept an Emergency Statement of Interest unless the Authority has confirmed the existence of an Emergency Condition.

9. The Authority may take whatever action it deems reasonable and necessary, in its sole discretion, to expedite the processing of an Emergency Statement of Interest but, except as otherwise provided in this subsection, an Emergency Statement of Interest shall be processed and considered in accordance with the provisions of General Laws Chapter 70B, as amended, and 963 CMR 2.00 *et seq.*

(b) Emergency Stabilization: As a further condition of the Authority's acceptance of an Emergency Statement of Interest, when a potential Emergency Condition arises, the Eligible Applicant shall forthwith undertake whatever actions are reasonable and necessary to alleviate the potential Emergency Condition; to mitigate the damage or harm to the school facility and to the educational and instructional program; to prevent further damage, harm or deterioration; to make the school facility safe and fit for student occupancy, in whole or in part; and to restore the educational and instructional program, to the extent possible. The Eligible Applicant shall be required to demonstrate to the Authority's satisfaction that it has undertaken, and will continue to undertake, the Emergency Stabilization measures required herein. Costs incurred for Emergency Stabilization shall be the sole responsibility of the Eligible Applicant and shall not be eligible for reimbursement from the Authority.

(c) Eligible Applicant's Duty to Exhaust Alternative Sources of Funding: In the event of an Emergency Condition, the Authority shall be a payor of last resort. To be eligible for a school facilities grant on account of an Emergency Condition, an Eligible Applicant shall have a continuing duty to demonstrate to the Authority's satisfaction that it is using its best efforts to file, perfect, advance, prosecute and, if necessary, litigate any claims that it may have against any responsible insurer, any responsible party, and/or any other available source of funding, and to recover the maximum amount of insurance proceeds, damages, or other payments that are available to be applied against the cost of replacement, reconstruction, or repair of the affected school facility. Any costs incurred by an Eligible Applicant in filing, perfecting, prosecuting, advancing or litigating any claims or in fulfilling any requirements imposed by this section shall be the sole responsibility of the Eligible Applicant and shall not be eligible for reimbursement from the Authority.

1. Insurance Claims: For purposes of these regulations only, if an Emergency Condition is or may be covered by an insurance policy either carried by the District and/or on which the District is an additional insured party, the Eligible Applicant shall use its best efforts to file, perfect, prosecute, advance and, if necessary, litigate its claims under any applicable insurance policies; to fulfill any obligations or conditions imposed by the insurer under any applicable insurance policies, and to recover the maximum amount of proceeds available under the applicable policies.

2. Responsible Parties: For purposes of these regulations only, the Eligible Applicant shall use its best efforts to identify any additional parties, including but not limited to independent contractors, subcontractors, manufacturers, vendors or individuals, who may be responsible for the Emergency Condition. The Eligible Applicant shall use its best efforts to give notice to any such potentially responsible parties and their insurers; to give any such responsible parties and their insurers a reasonable opportunity to inspect and investigate the Emergency Condition; and to file, perfect, prosecute, advance and, if necessary, litigate its claims against any such responsible parties. This provision shall also apply to claims under product and service warranties, contracts, indemnification agreements and any other potential sources of recovery.

(d) Application of Insurance Proceeds, Damages Awards, Grants, Donations, and other Payments: In the event that an Emergency Statement of Interest results in an Approved Project, if an Eligible Applicant recovers, has recovered, or was eligible to recover any insurance proceeds, damages, awards, payments, grants or donations from insurers, responsible parties or any other funding sources related to the Emergency Condition, other than funding from the Authority, that can be applied to the costs of replacing, reconstructing, refurbishing or repairing the affected school facility, all such proceeds, damages, awards, payments, grants, and/or donations shall be used solely for that purpose. If the total amount of said proceeds, damages, awards, payments, grants and/or donations meet or exceed the total eligible costs of an Approved Project, as determined by the Authority, the Authority shall be reimbursed for its share of the amount of total eligible costs and any excess amounts shall be retained by the Eligible Applicant. If the total amount of proceeds, damages, awards, payments, grants and/or donations are less than the total amount of eligible costs, as determined by the Authority, then such amounts shall be deducted from said total amount of eligible costs and the remaining amount of eligible costs shall be apportioned according to the applicable reimbursement rate, as determined by the Authority.

(e) Insurance for School Facilities: In order to be eligible for a school building grant initiated by an Emergency Statement of Interest, each city, town, regional school district and independent agricultural and technical school shall obtain and maintain, at its sole expense, an insurance policy providing coverages, standard extensions of coverage and optional extensions of coverage as needed to insure

against damage, destruction or loss of its school facilities, including both real property and personal property within school facilities, resulting from accident, equipment breakdown, fire, flood, earth movement, lightning, aircraft, explosion, riot, civil commotion, smoke, vehicles, wind or hail, malicious mischief, leakage or accidental discharge from fire protection systems, collapse, terrorism and any other perils commonly insured against in such types and in such amounts as are sufficient to cover the replacement cost for repair, replacement, or reconstruction of school facilities as well as the replacement cost of personal property contained in school facilities. The insurance policy shall also contain, at a minimum, such coverages, standard extensions of coverage and optional extensions of coverage as are sufficient to cover demolition costs, operation of building laws, increased construction cost, extra expense during a period of restoration, debris removal and relocation costs related to a covered loss. A city, town, regional school district or independent agricultural and technical school shall make the certificate of insurance evidencing the insurance coverage for school facilities that is required by this section available to the Authority upon request.

(f) Maintenance of Smoke and Fire Alarm Systems and Fire Suppression Systems: In order to be eligible for a school building grant initiated by an Emergency Statement of Interest, each city, town, regional school district and independent agricultural and technical school shall establish and fund by sufficient appropriation a maintenance program to maintain and keep in good repair existing smoke and fire alarm systems and existing fire suppression systems in school facilities.