

EXHIBIT B
Budget Detail and Payment Provisions

CO - DELETE CO instructions in red italics as you modify the Exhibit.

1. **CONDITIONS FOR PAYMENT**

- A. No payment shall be made in advance of services rendered. *(CO confirm the accuracy of this term. If subcontractor is a Fed. Lab or State agency, advance payment to them maybe authorized)*
- B. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate the Contractor for actual allowable expenditures incurred in accordance with Exhibit B. The rates in Exhibit B are rate caps, or the maximum amount allowed to be billed. The Contractor can only bill for actual expenses incurred for hours worked **at the Contractor's and subcontractor's actual labor and non-labor rates**, not to exceed the rates specified in Exhibit B.
- C. The Contractor is not allowed to profit from its subcontractors' costs. Subcontractors are not allowed to profit from their subcontractors' costs.
- D. Each invoice is subject to the Energy Commission Contract Manager's (CCM) approval.
- E. Payments shall be made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered, and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, Contractor will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice.
- F. Payment will be made in accordance with the Prompt Payment Act, Government Code Chapter 4.5, commencing with Section 927, which requires payment of properly submitted, undisputed invoices within 45 days of receipt or automatically pay late payment penalties when applicable.
- G. Final invoice must be received by the Energy Commission no later than 30 calendar days after the Agreement termination date.
- H. No payment will be made for costs identified in Contractor invoices that have or will be reimbursed by another source, including but not limited to a government entity contract or subcontract or other procurement methods.

2. **PAYMENT TERMS**

Check all that apply:

[CO: Delete options that don't apply to the Agreement]

- In Arrears
- Itemized
 - Monthly
 - Quarterly
 - One-Time Payment
- Flat Rate

- Advance Payment to other California state agencies or federal government Not to Exceed \$_____ or _____ % of the Agreement Amount
- Reimbursement/Revenue
- Other (Explain)

3. **INVOICING PROCEDURES**

- A. Invoices shall be submitted in duplicate not more frequently than monthly. The following certification shall be included on each invoice and signed by an authorized official of the Contractor:

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract or other procurement method.

- B. The Contractor shall use the sample invoice format located on the Energy Commission's Web Site:

<http://www.energy.ca.gov/contracts/pier.html#piergeneralinfo>

- C. The Energy Commission will accept computer generated or electronically transmitted invoices, provided the Contractor sends a paper copy the same day to the Energy Commission. The date of "invoice receipt" shall be the date the Energy Commission receives the paper copy.

Send invoices to:

California Energy Commission
Accounting Office, MS-2
1516 Ninth Street
Sacramento, California 95814

- D. An invoice shall consist of, but not be limited to, the following:

- 1) Agreement number, date prepared, and billing period.
- 2) The Contractor's actual unloaded hourly labor rates by individual and number of hours worked during the reporting period. Identify actual, agreement, and billed amounts.
- 3) Non-Labor rates (fringe benefits, indirect overheads, general and administrative, profit, etc.). Identify actual, agreement, and billed amounts.
- 4) Other direct operating expenses, including equipment, travel, materials, and miscellaneous, etc.
- 5) Subcontractor expenditures.
- 6) An indication of whether a subcontractor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
- 7) By task and category (as specified in Budget Detail): current billing, previously billed, budgeted amounts, and balance of funds.
- 8) If applicable, the match fund expenditures.
- 9) All invoices must be accompanied by the following documentation to support the expenditure:

- a) Subcontractor invoices which shall include items 1-8 above for corresponding information, if any, identified in the budget detail (e.g., if the budget detail lists hourly labor rates, then the subcontractor's invoice would include hourly labor rates).
- b) Receipts for travel expenses.
- c) Receipts for materials, miscellaneous, and/or equipment.
- d) A report that documents the progress of the work during the billing period; and
- e) Any other deliverables due during the billing period.

[CO use the following for agreements with Work Authorizations, delete section C above][Delete section C, 1-11 below if not a WA agreement]

C. An invoice shall consist of, but not be limited to, the following:

- 1) Agreement number, date prepared, and billing period.
- 2) The Work Authorization number.
- 3) The Contractor's actual unloaded hourly labor rates by individual and number of hours worked during the reporting period. Identify actual, agreement, and billed amounts.
- 4) Non-Labor rates (fringe benefits, indirect overheads, general and administrative, profit, etc.). Identify actual, agreement, and billed amounts
- 5) Other direct operating expenses, including equipment, travel, materials and miscellaneous, etc.
- 6) Subcontractor expenditures.
- 7) An indication of whether a subcontractor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
- 8) Identify the specific task(s) and the categories of expenditures under the applicable Work Authorization.
- 9) Consistent with the applicable Work Authorization budget provide current billing, previously billed, budgeted amounts and balance of funds.
- 10) If applicable, the match fund expenditures.
- 11) All invoices must be accompanied by the following documentation to support the expenditure:
 - a) Subcontractor invoices which shall include items 1-10 above for corresponding information, if any, identified in the budget detail (e.g., if the budget detail lists hourly labor rates, then the subcontractor's invoice would include hourly labor rates).
 - b) Receipts for travel expenses.
 - c) Receipts for materials, miscellaneous, and/or equipment.
 - d) A report that documents the progress of the work during the billing period; and
 - e) Any other deliverables due during the billing period.

4. **RETENTION**

The Energy Commission shall retain from each invoice ten per cent (10%) of that invoice, excluding equipment invoices, pursuant to Public Contract Code section 10346. The retained amount shall be held and released only upon approval that work has been satisfactorily completed and the Final Report (if required) has been received and approved. The Contractor must submit a separate invoice for the retained amount. Retained funds may be withheld by the Energy Commission to compensate or credit for amounts that were paid in error, or amounts that were paid but exceed the actual allowable incurred costs.

CO: Delete following paragraph if not applicable to Agreement

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Exhibit B, Budget Attachment, identifies the tasks for which retention may be released prior to the end of the Agreement. Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks.

5. **TRAVEL AND PER DIEM RATES**

The Contractor shall be reimbursed for travel and per diem expenses using the Energy Commission Contractor Travel Rates. The Contractor must pay for travel in excess of these rates. The Contractor may obtain current rates from the Energy Commission's Web Site at: http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF

[CO: Delete "and Contracts Officer" if contract has work authorizations]

- A. Travel identified in Exhibit B, Pre-Approved Travel List is approved and does not require further authorization. *CO- delete this clause if this is a WA agreement.*
- B. Travel that is not included in Exhibit B, Pre-Approved Travel List shall require written authorization from the CCM and **Commission Contracts Officer** prior to travel departure. The Energy Commission will reimburse travel expenses from the Contractor's office location.
- C. Travel receipts and documentation of travel expenses, including travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission. The documentation must be listed by trip and include dates and times of departure and return.

6. **BUDGET CONTINGENCY CLAUSE**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Contractor to reflect the reduced amount.

7. **RATES & CLASSIFICATIONS: CHANGES IN CONTRACTOR PERSONNEL OR SUBCONTRACTOR PERSONNEL**

This section contains provisions allowing rate and classification changes without a formal amendment. Exhibit D contains the rules for adding or replacing personnel and subcontractors listed in the Agreement. When a Contractor makes personnel and subcontractor changes in accordance with Exhibit D that do not require a formal amendment, the following rules explain the rates and classifications for which the Contractor can invoice. Changes outside of these rules require a formal amendment to the Agreement.

A. New Personnel

If Contractor or a subcontractor adds new personnel after the Agreement has been executed, the Contractor shall submit the new personnel's resume and proposed job classification/rate, consistent with classifications/rates within the respective budget, to CCM for review and approval. If the Agreement budget includes a job classification with the person identified as "To Be Determined", and a person is later identified, this person is considered to be new personnel. The new personnel shall not provide services until the CCM approves the new personnel request in writing and notifies the Commission Contracts Officer (CCO). Any work performed by these new personnel prior to CCM approval is at Contractor's expense; the Energy Commission will not reimburse Contractor for work performed by these new personnel that occurs prior to CCM approval.

B. Labor Rates & Classifications

The Agreement budget identifies individuals and/or job classifications and the maximum rates that the Contractor can invoice for them. The Contractor shall only invoice for the actual rates up to the maximum amount listed. Contractor can only increase rates or add new job classifications to the Agreement through a formal amendment to this Agreement.

1. Contractor Changes: Addition or Replacement of Personnel

a) Labor Rates

If the Contractor adds a new person to a job classification listed in the Contractor's budget or replaces a person listed in the Contractor's budget, the Contractor can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the Contractor's budget. The Contractor cannot use for its personnel a rate of a subcontractor.

b) Classifications

Additions or replacement of personnel can only be made within existing job classifications identified in the Contractor's budget. The Contractor cannot use for its personnel a job classification of a subcontractor. The new person must be invoiced within job classifications that already exist in the budget for the Contractor. If the Contractor wishes to add a new

job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

c) Promotions

Contractor personnel listed in the Contractor's budget can be moved to a higher-paying job classification listed in the Contractor's budget with prior written approval of the CCM and the appropriate Division Deputy Director. The written approval must be submitted to the CCO.

2. Subcontractor Changes: Addition or Replacement of Personnel

a) Labor Rates

If a subcontractor adds a new person to a job classification listed in the subcontractor's budget or replaces a person listed in the subcontractor's budget for that subcontractor, the subcontractor can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the subcontractor's budget. The subcontractor cannot use for its personnel a rate of another subcontractor or of the Contractor.

b) Classifications

Additions or replacement of personnel can only be made within existing job classifications identified in the subcontractor's budget. The subcontractor cannot use for its personnel a job classification of another subcontractor or of the Contractor. The new person must be invoiced within job classifications that already exist in the budget for the subcontractor. If the subcontractor wishes to add a new job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

c) Promotions

Subcontractor personnel listed in the subcontractor's budget can be moved to a higher-paying job classification listed in the subcontractor's budget with prior written approval of the CCM and the appropriate Division Deputy Director. The written approval must be submitted to the CCO.

C. Changes in Assigned Personnel Hours

Contractor may move hours allocated for a specific person (employee or subcontractor) to another person listed in the Agreement, upon written notification to the CCM. However such changes cannot change the amount of the budget for the task or labor category. If a change in personnel will result in a change in the dollar amount of the task or in the labor category, then refer to the Budget Reallocation provision in this Exhibit B.

8. **BUDGET REALLOCATIONS**

A. The Energy Commission, through its CCM and CCO, and the Contractor can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

- 1) For agreements without work authorizations, the total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$75,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Energy Commission funds being paid to Contractor under this Agreement. It does not include any match funds provided by Contractor.

For example, if under an agreement the Energy Commission agrees to pay a contractor \$100,000 and the contractor is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Energy Commission funds can be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a contractor \$800,000, ten percent would be \$80,000, but the cap is \$75,000, so the most that could be reallocated without a formal amendment is \$75,000.

For agreements with work authorizations, budget reallocations up to ten percent (10%) with a cap of \$75,000 of the entire agreement can be made. Budget reallocations up to ten percent (10%) of each work authorization can be made so long as the total amount of all work authorization budget reallocations does not exceed 10 percent of the agreement amount and is within the cap of \$75,000. For example, assume an Agreement Amount is \$175,000 and the agreement has two work authorizations, WA1 and WA2. WA1 has a budget of \$100,000, and WA2 has a budget of \$50,000. \$10,000 (10% of \$100,000) can be moved within WA1. \$5,000 (10% of \$50,000) can be moved within WA2. In addition to this, \$2,500 (10% of \$25,000, the Agreement Amount of \$175,000 minus the combined work authorization budgets of \$150,000) can be made to the portion of the Agreement Amount not associated with work authorizations. The total of these budget reallocations does not exceed ten percent of the total agreement amount or the \$75,000 cap.

- 2) The budget reallocation cannot substantially change the Scope of Work. Examples of budget reallocations that do not substantially change the Scope of Work include, but are not limited to, the following:
 - Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
 - Increasing or decreasing the equipment budget.
 - Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.

- 3) The budget reallocation only involves moving funds between tasks or categories. The total Agreement Amount and the total budget of any work authorizations must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.
 - 4) The budget reallocation does not increase the percentage rate of Indirect Overhead, Direct Overhead, Fringe Benefits, General and Administrative Costs, Profit, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment. Another example is that if a contractor listed that its profit rate is 8% of the total agreement, to increase this rate would require a formal amendment.
- B. To effectuate a budget reallocation under this section, the Contractor must make a request in writing to both the CCM and the CCO. Both the CCM and CCO will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the CCM and the CCO. Oral communications cannot be used or relied upon. If the request is approved, the CCM shall revise the Budget Attachments to reflect the changes and send them to the CCO and Contractor.
 - C. Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment. For purposes of this provision, a “formal amendment” means that all of the following must occur: approval by the Energy Commission at a Commission Business Meeting, a written amendment signed by both parties, and approval by the California Department of General Services.
 - D. Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

9. **RECORDKEEPING, COST ACCOUNTING AND AUDITING**

A. Cost Accounting

The Contractor agrees to keep separate, complete, and correct accounting of the costs involved in developing, installing, constructing, and testing of Project-Related Products and Rights funded under the Energy Commission-funded portion of this Agreement.

The Contractor also agrees to keep separate, complete, and correct account of the Economic Benefits from Project-Related Products and Rights.

B. Accounting Procedures

The Contractor’s costs shall be determined on the basis of the Contractor’s accounting system procedures and practices employed as of the effective date of this Agreement. The Contractor’s cost accounting practices used in accumulating and reporting costs during the performance of this Agreement shall be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and provided, further, that such costs may be accumulated and reported in greater detail during performance of this Agreement.

The Contractor's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

C. Allowability of Costs

Except as provided for in this Agreement, the Contractor shall use the applicable Federal Office of Management and Budget (OMB) Circulars A-87, A-21, A-122, or Federal Acquisition Regulations (FAR) Part 31 in determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the OMB Circulars and/or FAR. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item; (ii) allowability of the item to the work; (iii) the appropriate use of applicable Federal OMB Circulars or FAR; and (iv) the terms and conditions of this Agreement. Applicable OMB circulars and FAR may be found at www.whitehouse.gov/omb and <https://www.acquisition.gov/far/>.

1) Allowable Costs

Allowable costs may include all costs, direct and indirect, incurred in the performance of work identified in the Contractor's proposal, if applicable and if capped as specified in Exhibit B, Budget Attachment. Costs must be incurred within the term of the Agreement. The Energy Commission will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Energy Commission pursuant to this Agreement.

2) Unallowable Costs

Examples of unallowable costs include: contingency costs, imputed costs, fines and penalties, losses on agreements, excess profit taxes, and increased rates and fees for this Agreement.

The Contractor is not allowed to profit from its subcontractors' costs. Subcontractors are not allowed to profit from their subcontractors' costs.

The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.

D. Audit Rights

The Contractor shall maintain books, records, source documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this Agreement. The Energy Commission, an agency of the State or, at the Energy Commission's option, a public accounting firm designated by the Energy Commission, may audit such accounting records at all reasonable times with prior notice by the Energy Commission. The Energy Commission shall bear the expense of such audits. It is the intent of the parties that such audits shall ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years following payment by the Energy Commission of the Contractor's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit.

E. Audit Cost

The cost of the audit shall be borne by the Energy Commission except when the results of the audit reveal an error detrimental to the Energy Commission that exceeds ten percent (10%) of the amount audited, or \$5,000 (whichever is greater); or if a royalty audit, ten percent (10%) of the total royalties due in the period audited. In this event, the Contractor agrees to reimburse the Energy Commission for reasonable costs and expenses incurred by the Energy Commission in conducting such audit.

F. Refund to the Energy Commission

If the Energy Commission determines that any invoiced and paid amounts exceed the actual allowable and incurred costs, the Contractor shall repay such amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed to in writing by the Energy Commission and the Contractor. If the Energy Commission does not receive such repayments, the Energy Commission shall be entitled to withhold further payments to the Contractor.

10. **BUDGET DETAIL**

Budget Detail is contained in the Attachment to this Exhibit.