*\*\*\*DRAFT\*\*\* Exhibit B* imab-adad-nov21item01a06

*California Assessment System #CN220002* Attachment 6

 Page 1 of 4

# EXHIBIT B

## BUDGET DETAIL AND PAYMENT PROVISIONS

### Invoicing and Payment

* 1. For services satisfactorily rendered, and upon receipt and approval of the invoices, the CDE agrees to compensate the contractor for actual expenditures incurred in performance of this agreement not to exceed the amount budgeted in each fiscal year. Should legislation subsequent to execution of the Agreement make a task or activity set forth in the Agreement unnecessary, the CDE will notify the contractor of the change as soon as practicable. The contractor will not be reimbursed for costs incurred after the relevant legislation becomes operative for the affected task or activity, or if such legislation is effective retroactively, the date that CDE issues a stop work order.
	2. Payment of the invoice will not be made until the CDE accepts and approves the invoice. To be approved the invoice must include the level of detail described in the Budget for each task and for the fiscal year in which the expense was incurred. Further, the invoice must be easily comparable by CDE staff to the Budget contained herein. The total costs invoiced for any fiscal year may not exceed the total amount for that fiscal year in the Budget.
	3. With each monthly invoice submitted for reimbursement, the contractor must attach a written progress report containing the information set forth in Task 1.7. The progress report must be a detailed narrative, easily comparable to the invoice, and must be easily comparable by CDE staff to the Budget contained herein and delivered as an original hard copy or electronic record, as directed by the CDE. In addition, the CDE will not approve an invoice for payment on this Agreement until it has received and approves the monthly progress report as set forth in Exhibit B.
	4. The contractor must retain and update records and accounts, including original source records, necessary to support all costs and must be able to prepare and submit statistical, narrative, and/or financial and program reports and summaries related to this Agreement as requested by CDE or by the SBE.
	5. Invoices shall be itemized per Exhibit B (Budget) and shall include the Contract Number—CN220002, dates of services, and shall be submitted in arrears. Each invoice shall contain a progress report outlining the costs being invoiced per task and subtask, by fiscal year and by administrative test cycle. The tasks identified in the invoice must match the tasks set forth in the Budget. Invoices shall be sent, along with a progress report (see task 1.7, Monthly Progress Reports), not more frequently than monthly and in duplicate to:

California Department of Education

Assessment Development and Administration Division

1430 N Street, Suite 4409

Sacramento, CA 95814

Attention: Linda Hooper

Email: lhooper@cde.ca.gov

### Budget Contingency Clause

* 1. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
	2. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for fiscal years covered by this agreement for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
	3. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, the CDE has the option to void the Agreement under the 30-day termination clause set forth in Exhibit D, Section VII, or to amend the Agreement to reflect any reduction of funds. If the CDE terminates the Agreement, it agrees to pay the contractor for work completed based on the contractor’s actual final invoice of actual expenses incurred, up to and including the day of termination.
	4. Pursuant to Government Code (GC), Section 927.13, no late payment penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.
	5. The contractor shall comply with reporting requirements set forth in OMB Uniform Grants Guidance, subpart F at 2 CFR 200.500 et.seq. For purposes of this Agreement, ETS is considered a subcontractor and not a sub-recipient.

### Travel

All travel costs shall be reimbursed at rates not to exceed those established for the State of California’s non-represented employees, computed in accordance with and allowable pursuant to applicable California Department of Human Resources (Cal HR) regulations as specified on the CalHR website.

### Prior Approval of Out-of-State Travel

All out-of-state travel by the contractor or subcontractor(s) for purposes of this Agreement is subject to prior written approval by the CDE Contract Monitor specified in this Agreement.

### Excise Tax

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees’ wages. California may pay any applicable sales and use tax imposed by another state.

### Budget Adjustments

Per *EC* Section 60643, the CDE, in consultation with the SBE, may make material amendments to the Agreement that do not increase the Agreement cost. Agreement amendments that increase Agreement costs may only be made with the approval of the CDE, the SBE, and the Department of Finance.

### Liquidated Damages

The Contractor shall pay liquidated damages in the amount of up to 10 percent of the total cost of the Agreement for any component task per test administration that the contractor through its own fault or that of its subcontractors fails to substantially perform by the date specified in the Agreement.

### Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in Government Code (GC), Chapter 4.5, commencing with Section 927.

### Payment Withhold for Separate and Distinct Tasks

In accordance with *EC* 60643 and 60810, the CAASPP and ELPAC Agreement shall include a payment withhold for separate and distinct component tasks for work performed or costs incurred to be made to the contractor(s) in the performance of the Agreement.

The CDE shall withhold 10 percent of each payment for each separate and distinct component task. Funds withheld for each separate and distinct Task will be withheld pending final completion of all component tasks by the Contractor for each test administration and will be paid upon satisfactory performance of each component task as determined by the SBE as described in Article X. Process for Release of Payment and Withhold. Those annual activities that are completed and repeated in their entirety each year shall be considered separate and distinct tasks that are to be paid following satisfactory completion in each year of the Agreement.

Final Payment is not a progress payment and is not subject to the 10 percent withholding.

### Process for Release of Payment and Withhold:

Pursuant to EC 60643, the following establishes the process and criteria by which the successful completion of each component task shall be recommended by the CDE and approved by the SBE.

1. Process

1. SBE Determination: During the term of the Agreement, based on the criteria set forth below, the SBE will consider at its November Board Meeting, or the next meeting thereafter if a November meeting is not held, whether the contractor has successfully completed each component task for the prior fiscal year. If the SBE determines the contractor has not successfully completed each component task for the prior fiscal year, it shall, within ten business days of its determination, notify the contractor and the CDE in writing which component tasks the SBE has determined that the contractor has failed to successfully complete. The contractor shall have ten days from receipt of the notice to respond in writing, and the response shall be promptly delivered to the CDE Contract Monitor.

If the contractor contests the decision of the SBE, the CDE and the contractor will have an opportunity to discuss the issues before the SBE at the following SBE meeting. The SBE will, at that subsequent meeting, make its final determination based on the criteria set forth below, as to whether the contractor has successfully completed each task or component of a task for the prior fiscal year and releases the withholding for those component tasks.

1. Release: Once the SBE has determined that the contractor has successfully completed a component task, the 10 percent withheld from invoices for the component task for the prior fiscal year may be released by the CDE. The contractor must submit an invoice to CDE for the withheld amounts for each component task which SBE authorized release. The contractor must identify the prior invoice from which the money was withheld and the applicable component task in its invoice for the released withholding.

### 2. Criteria: The criteria by which CDE will recommend and the SBE will determine successful completion of each component task for payment of the final 10 percent will be set forth in Exhibit E.