

Pre-NTP Termination Pre-Construction Development Costs Frequently Asked Questions (FAQs)

1. Introduction

These FAQs have been developed for the purpose of assisting Suppliers in understanding the process for submitting Pre-Construction Development Costs, pursuant to Section 2.4 of the FIT Contract.

All capitalized terms used but not defined in this document have the meanings given to them in the applicable FIT Contract Standard Definitions.

2. Disclaimer

These FAQs are provided for general information and guidance purposes only and do not constitute legal or other professional advice or an opinion of any kind nor do they amend the FIT Contract in any way.

As the FIT Contract counterparty, the IESO cannot provide you, the Supplier, with legal or other professional advice. The IESO recommends that you seek independent legal or other professional advice, as you consider prudent and appropriate.

The FAQs are not binding on the IESO and in no way vary or impact the interpretation of any FIT Contract or any other IESO contract. In the event of any conflict or inconsistency between anything in the FAQs and any provision of FIT Contract, the terms of the applicable FIT Contract will govern. These FAQs do not confirm the IESO's treatment of a particular cost in a particular situation involving a specific Supplier but are intended to provide general information that may assist you in making determinations concerning your submission of Pre-Construction Development Costs. The treatment of any particular cost incurred by a specific Supplier will only be confirmed by the IESO following submission and review of a Supplier's Pre-Development Costs statement submitted in the manner set out in the IESO's "Pre-NTP Termination Guidelines" (the "**Guidelines**") found online at <http://www.ieso.ca/-/media/Files/IESO/Document-Library/FIT/FIT-Contract-Pre-NTP-Termination-Guidelines.pdf?la=en>.

The IESO may, but is not required to, change, modify, amend or update these FAQs at any time and from time to time, without notice. While the IESO will endeavour to keep these FAQs current, the IESO makes no guarantee, representation or warranty, express or implied, with respect to their accuracy or completeness and disclaims any and all liability in connection therewith.

3. Personal Information

The IESO respects privacy and is committed to the protection of individuals’ personal information. To that end, the IESO requests that Supplier’s refrain from providing the IESO with any “personal information” (as such term is defined in the *Freedom of Information and Protection of Privacy Act*) in the submission of Pre-Construction Development Costs. Please ensure that any personal information of identifiable individuals is redacted from any part of your submission. The IESO will not collect any records containing personal information. Examples of personal information that must be redacted include an identifiable individual’s social insurance numbers, age, sex, family status, personal address, personal telephone number, personal email, driver’s licence, etc. Please note that an individual’s name, while not itself personal information, could be personal information where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual. More information on the IESO’s privacy policy can be found at: <http://www.ieso.ca/en/Privacy>.

4. Document Change History

Version	Reason for Change	Date
1	Pre-NTP Termination Pre-Construction Development Costs Frequently Asked Questions (FAQs)	September 28, 2018
2	Update to Question #8	November 14, 2018
3	Update to Definitions	November 15, 2018
4	Added Section 3, Updated “Proof of Payment” definition, updated Question #7	December 6, 2018

5. Definitions

In these FAQs:

“**Eligible Cost**” means costs incurred by the Supplier that are defined in Section 4.2 of the Guidelines and are satisfactorily evidenced by the supporting documentation.

“External Resource” means external duly qualified professionals and technical consultants and contractors carrying out the services or activities relevant to the development of the Project.

“Invoices” means copies of invoices, bills or receipts issued by an External Resource, relating to Eligible Cost, that must at a minimum include:

- i) an itemized invoice addressed to the Supplier on the External Resource’s letterhead outlining the expenses incurred by the Supplier with respect to the expense;
- ii) a detailed description of the work carried out;
- iii) names of entities retained to carry out work, if applicable;
- iv) a time frame (start date to completion date) in which the work was conducted
- v) hours, hourly wages and total expenditures for each Person or entity for the work or costs associated in completing the work; and
- vi) the total cost and hours of the work reflected in the body of the invoice.

“Personal Information” has the meaning given to it in the *Freedom of Information and Protection of Privacy Act* (Ontario).

“Processed Cheque” means a cheque paid by the Supplier’s bank and cleared by the depositor’s account as evidenced by a digital image of the front and back of the cheque provided by the financial institution that holds the account from which the cheque was drawn.

“Proof of Payment” means evidence of payment confirming the Eligible Costs incurred and paid by the Supplier in respect of the Project in at least one of the following forms:

- i) a Processed Cheque;
- ii) a cheque and accompanying bank statement reflective of the withdrawal amount and date from the Supplier’s bank account;
- iii) a signed letter from the External Resource on the External Resource’s letterhead indicating that payment has been made in full by the Supplier in respect of the Project, as applicable (referencing the Supplier’s name/Contract ID, as applicable) on the Invoice from the External Resource referencing (a) the number of such Invoice, (b) the total amount paid, and (c) the date payment was received;
- iv) payroll logs (redacted of any personal information); or
- v) other acceptable methods of proof of payment approved by the IESO, in its sole and absolute discretion; as applicable.

“Reasonable Costs” means a cost or price that is consistent, in its nature and amount, with what a reasonable person would pay in the same or similar circumstances for the same or similar service or for the same or similar item.

6. Pre-Construction Development Costs

1. What is the deadline to submit the Pre-Construction Development Costs Prescribed Forms?

Pre-Construction Development Costs Prescribed Forms are to be submitted by the Supplier at their earliest convenience.

2. Is there a maximum amount I can receive for the Pre-Construction Development Costs of my Facility?

Yes. A Supplier's Pre-Construction Development Costs cannot exceed the amount of its applicable Pre-Construction Liability Limit, which is specified in Section 1.2(d) of Exhibit A to the FIT Contract for each technology type, as reproduced below:

Biogas	Biogas (On-Farm)	Landfill Gas	Renewable Biomass	Solar (PV) Rooftop/ Rooftop Solar (not URSP)	Rooftop Solar (URSP) (n/a to version 2.1.1)	Solar (PV) Ground Mount/ Non-Rooftop Solar	Water-power	Wind (On-Shore)/On-Shore Wind
\$400,000 plus \$2.00/kW	\$400,000 plus \$2.00/kW	\$400,000 plus \$2.00/kW	\$400,000 plus \$2.00/kW	\$250,000 plus \$10.00/kW	\$250,000 plus \$10.00/kW	\$250,000 plus \$10.00/kW	\$500,000 plus \$20.00/kW	\$400,000 plus \$2.00/kW

3. If I have one Invoice for work done for multiple projects, how should I submit this to the IESO?

The Supplier must ensure duplicate costs have been billed across different Projects with proper division and substantiation across Projects. When completing the Prescribed Form or submitting an invoice, the documents should clearly identify if the work completed was done for multiple projects, and include the Contact IDs for those projects. If the invoice does not substantiate the total amount for each individual project, the Supplier should provide additional supporting documentation showing proper justification and division across Projects.

4. Does Pre-Construction Development Costs include costs incurred to obtain Access Rights?

Reasonable Costs incurred for the development of the Facility, including obtaining Access Rights, may be considered an eligible Pre-construction Development Cost as per the definition in the FIT Contract.

Please note that Pre-Construction Development Costs do not include costs that were incurred prior to the Contract Date or after the Termination Date.

5. What will the IESO accept as “proof of payment”?

The supporting documentation submitted for each Pre-Construction Development Cost should include detailed Invoices, Proof of Payment and any other relevant documentation that may substantiate the Pre-Construction Development Cost.

6. What additional documentation is acceptable to prove that a non-Arm’s Length Person’s charges are Reasonable Costs?

Pre-Construction Development Costs under the FIT Contract excludes that portion of any costs charged by a Person (a “**NAL Person**”) who does not deal at Arm’s Length with the Supplier that is in excess of the costs that would have been charged had such NAL Person been at Arm’s Length with the Supplier.

Persons that do not deal at Arm’s Length may not be subject to ordinary market forces and are thus able to manipulate prices to improperly inflate Pre-Construction Development Costs in the absence of the foregoing exclusion.

Whether a Supplier has been charged by a NAL Person a price in excess of Arm’s Length price is a factual determination to be reviewed on a case-by-case basis. Without knowing the facts and circumstances of the particular transaction, the IESO is unable to provide specific examples of acceptable evidence to demonstrate an Arm’s Length price. Ultimately, the Supplier bears the responsibility to appropriately document their transactions with NAL Persons for the purposes of confirming Pre-Construction Development Costs, including how the parties determined the price therefor.

Generally, where a Supplier has claimed the costs of a transaction with a NAL Person as a Pre-Construction Development Cost, the IESO would look for such Supplier to provide evidence that it set the price for such transaction within a reasonable range of the prices associated with the Arm’s Length purchase and sale of:

- (i) a similar product or service,
- (ii) in similar quantities or scope,
- (iii) under similar terms, and
- (iv) in a similar market.

In short, the IESO will look to comparable transactions between Arm’s Length parties to confirm a Supplier’s claim for a Pre-Development Construction Cost charged by a NAL Person.

Given the number of FIT Contracts, the IESO expects that there will be sufficient examples of Arm's Length comparable transactions for a limited volume of products and services in relation to Pre-Construction Development Costs.

7. What kind of supporting documentation is needed for internal staff?

If a Supplier has contributed a portion of its employee's time to activities in furtherance of an undertaking that were an Eligible Cost and the activity was justified, meaning an Arm's Length Person would be willing to pay for the activity only to the extent that the activity confers a benefit of economic or commercial value, then the Supplier may be entitled to claim the pro-rata share of wages or salaries attributable to the Project and paid by the Supplier to the applicable employee. In support of this claim, the IESO would look for the Supplier to provide:

1. Evidence of the particular employee's wages or salary paid by the Supplier, such as a payroll log (redacted of any personal information);
2. A description of the activity devoted to the Project that would allow the IESO to ascertain whether the activity was justified and in furtherance of an undertaking that was an Eligible Cost; and
3. A reasonable estimation of the amount of time allocated to each activity.

Please note that for any Pre-Construction Development Cost submission, whether a Supplier's employee's wages or salary are an Eligible Cost will be reviewed on a case-by-case basis and may require additional information depending on the facts and circumstances of the particular situation.

8. Will the IESO reimburse costs that have not yet been paid?

The IESO views reasonable costs incurred for the purpose of the FIT Contract to mean expenses that have been paid by a Supplier, or expenses that a Supplier is legally obligated to pay. On that basis, the IESO will confirm reasonable costs incurred, but not yet paid, provided that the Supplier submits evidence to the satisfaction of the IESO that the Supplier is legally obligated to pay that particular expense, such as Invoices.

9. For Unconstructed Rooftop Solar Project (URSP), are building costs included in Pre-Construction Development Costs?

No. Building costs for an Unconstructed Rooftop Solar Project (URSP) are not considered part of the Pre-Construction Development Costs. Per the FIT Contract, the Unconstructed Building should be designed to be used for the purpose of providing enclosure, shelter, or protection to people or property, provided that one of its main purposes is not to support a solar power

installation or to provide shelter from the sun. The Pre-Construction Development Costs are specifically for the costs incurred for the development of the Renewable Generating Facility.