



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

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MR. JAYMEE A. ALCOS
Sr. Technical Staff
CENTER FOR GOVERNANCE – OPERATIONS MANAGEMENT OFFICE
DEVELOPMENT ACADEMY OF THE PHILIPPINES (DAP)


Re: Payment Tranches for Consultants

Dear Mr. Alcos:

We respond to your letter seeking clarification on the propriety of the payment terms stipulated in one of the consulting contracts executed by DAP. As represented, the proposed payment tranches are as follows:

- 15% of the total project price upon signing of the contract;
- 65% of the total project price after the conduct of the initial presentation of the agency; and
- 20% of the total project price upon submission of the project terminal report.

Annex “F”¹ of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 allows advance payment to consultants in an amount not to exceed fifteen percent (15%) of the contract price to cover mobilization cost. Although it would appear that the proposed first tranche of 15% is equal to the percentage allowable for advance payment, it bears stressing that the latter scheme imposes some conditions prior to the release of said funds.

Annex “F” of the IRR provides specific conditions for the allowance of advance payment. First, this arrangement must be requested in writing by the consultant and subject to the approval of the Government if it deems such payment to be fair and reasonable. Second, advance payment should not exceed fifteen percent (15%) of the contract amount and is granted to cover mobilization cost. Third, the release of the funds is subject to the posting of an irrevocable standby letter of credit issued by an entity acceptable to the agency in an amount equal to the advance payment. Fourth, the advance payment shall be repaid by deducting from the consultant’s progress payments a sum previously agreed by the consultant and the procuring entity during contract negotiation. 

¹ Contract Implementation Guidelines for the Procurement of Consulting Services.

We note that under the proposed scheme, specifically for the first tranche, the payment of 15% of the total contract price is automatic after the contract signing. No prior requisites must be satisfied by the consultant in order to receive the first payment for rendering consulting services nor does it specify that it is for the purpose of mobilization.

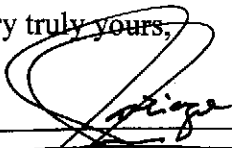
Based on the foregoing, we are of the view that the proposed initial 15% payment is not in accord with the provisions of Annex "F" of the IRR of RA 9184, as it constitutes an automatic or outright payment without satisfying the specific conditions prior to its issuance.

As to the balance of 85% (65% and 20%) of the total project price, we are of the opinion that the mode of payment is subject to the different disbursement schemes allowed in the Manual of Procedures for the Procurement of Consulting Services² (Manual). Based on the Manual, the different types of consultancy contracts based on payment terms normally used are: lump sum contract, time-based contract, retainer and/or contingency (success) fee contract, percentage contract, and indefinite delivery contract. Based on your representation, DAP's proposed payment tranche may be considered as percentage contract since there is a direct relation to the fees paid to the consultant and the estimated or actual project completion.

In sum, we are of the opinion that the proposed first payment equivalent to 15% of the project price upon signing of the contract is contrary to the allowable payment terms under "Annex F" of the IRR of RA 9184. However, for the succeeding payment tranches, these may be allowed as provided for under the Manual.

We hope our advice provided sufficient guidance on the matter. This opinion is based on the information presented, and may not be applicable to a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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² Volume IV issued on June 2006.