



2011

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

NPM No. 126-2012

8 October 2012

MR. REINO STEPHEN A. AYO

Department Manager III

BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA)

2/F Bonifacio Technology Center,

31st St., Crescent Park West,

Bonifacio Global City, Taguig City

Re: Advance Payment for Consulting Services

Dear Mr. Ayo:

We respond to your letter¹ requesting clarification regarding advance payment as discussed in Annex "F" of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

As represented, BCDA provides advance payment to its consultants, which is consistent with Annex "F" on Contract Implementation Guidelines for the Procurement of Consulting Services. BCDA poses four (4) related scenarios relative to advance payment, and we have narrowed down the queries as follows:

1. Whether advance payment can be made at any time during the implementation of the contract (*i.e.*, together with the first progress billing or any time thereafter); and,
2. Whether advance payment is possible without the issuance of the corresponding irrevocable standby letter of credit (LC).

Advance Payment and Progress Payment

For your guidance, the Manual of Procedures for the Procurement of Consulting Services² (Manual) provides guidance on advance payment for consultants in addition to Annex "F" of the IRR. Both rules allow the issuance of advance payment equivalent to not more than fifteen percent (15%) of the contract price if the Government deems it fair and reasonable, subject to certain specified conditions; and, likewise provide for a repayment scheme whereby the advance payment made will be deducted from the consultant's progress payments. 8

¹ 8 August 2011.

² Volume 4, June 2006.

Advance payment, as a general rule, is not allowed. Section 88(1) of Presidential Decree No. 1445³ provides that:

“Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.”

As an exception, however, advance payment may be extended to a consultant for purposes of mobilization. This exception is recognized in order to provide him with the needed funds to initiate his work. Since the purpose in extending advance payment is to facilitate mobilization on the part of the consultant, it can be released without any prior work being performed as distinguished from progress payment which requires prior accomplishment of works as a condition for payment. As such, similar to civil works procurement, advance payment may be considered as a form of financial assistance that the government may extend to the contractor, upon his request before he starts working on a project, while progress payment represents payment for each part of work accomplished.⁴

In view of the foregoing considerations, it is our view that advance payment cannot be claimed either together with the first progress billing or at any stage of the contract implementation indicating that work on the project has been commenced as this is incongruous with the very purpose for which provisions for advance payment is recognized.

Irrevocable Standby LC

Please note that the issuance of an irrevocable standby LC is a mandatory requirement under RA 9184 and its IRR. This rule is reflected in a previous opinion⁵ issued by this office that the irrevocable standby letter of credit, bank guarantee or surety bond (collectively referred to as guarantee), which a contractor is required to submit, is a condition precedent to receiving advance payment. Such guarantee must be equal to the amount advanced by the Procuring Entity since such instrument stands as security for the re-payment of the money received by the contractor in case the latter does not proceed with the consultancy work. However, the Manual provides that the consultant may reduce his irrevocable standby LC by the amounts recouped by government which is charged against progress billings.

Hence, the rules clearly mandate the posting of the corresponding irrevocable standby LC by the consultant, such that under no condition should advance payment be extended without complying with this requisite.

Based on the foregoing, we are of the opinion that claim for advance payment is not allowed when a consultant initially forgoes its right to claim advance payment and thereafter requests it together with the first progress billing or at any time during contract implementation where work has been partially accomplished as this defeats the very purpose

³ Ordaining and Instituting a Government Auditing Code of the Philippines.

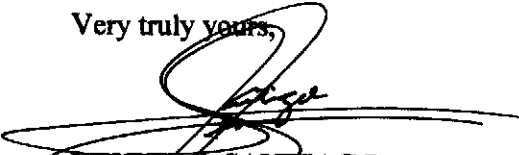
⁴ PM No. 001-2004 dated 18 February 2004.

⁵ NPM No. 054-2004 dated 20 April 2004.

for which an advance payment is allowed. In addition, the posting of an irrevocable standby LC is necessary whenever advance payment is made, but may be reduced *vis-a-vis* the amounts refunded or charged against progress billings.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular circumstances as presented, and may not be applicable to a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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