

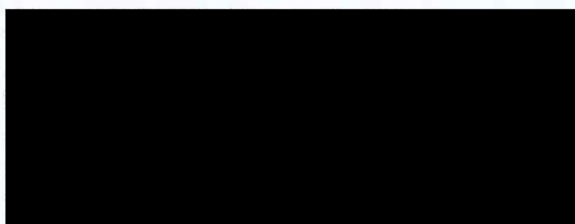


Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 36-2015

8 October 2015




Re: Payment Terms for Government Contracts

Dear 

This refers to your letter seeking clarification on the payment terms on government contracts.

It is represented that Software Farm International Inc. (SFII) is a provider of the accounting software "Asyst", to which National Development Company (NDC) signified its interest in acquiring to track all the billing statements they issue to their customers, record their purchases, track their assets, provide reports and other accounting system functions. For non-government clients, SFII usually agree with the following payment terms: 50% down payment upon contract signing, 25% upon installation and the remaining 25% upon turnover. Since NDC is a government entity, SFII initially agreed to the following payment terms: 40% upon installation, 30% on the 9th day of training and the remaining 30% on the 18th or last day of training. However, NDC, citing Republic Act (RA) 9184 and its revised Implementing Rules and Regulations (IRR), asked SFII for the following payment terms: 15% upon installation – delivery and installation of software on client's computer, and 85% upon completion of training/implementation visits - four (4) to six (6) months after installation.

It is in this view that SFII is asking for ways by which it can collect other than the 15%/85% payment terms within the purview of the procurement law.

As a general rule, no payment, partial or final, shall be made on any contract for services or for supplies and materials 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 pursuant to Section 88(1) of Presidential Decree No. 1445.¹ It also provides that 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, except with the prior approval of the President. 

¹ Ordaining and Instituting a Government Auditing Code of the Philippines, 11 June 1978.

In accordance with the above provision, Section 4.1 of the Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials provides that advance payment may be made only after prior approval of the President, and shall not exceed fifteen percent (15%) of the contract amount, unless otherwise directed by the President; provided however, that for cases mentioned under Section 4.3, 4.4, and 4.5 of Guidelines, no prior approval by the President shall be necessary.

Likewise, pursuant to General Conditions of the Contract² (GCC) Clause 10.1, payments shall be made only upon a certification by the Head of the Procuring Entity (HOPE) **to the effect that the Goods have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted**, unless otherwise specified in the Special Conditions of the Contract (SCC). It also reiterated the rule that no payment can be made when services have not yet been rendered or when supplies and materials have not yet been delivered under the contract, subject to the exception of having prior approval of the President as provided under GCC Clause 11.1.³

From the foregoing, the procurement law and its associated rules and procedures admit of procurement transactions allowing partial deliveries and progress payment for each delivery of the goods and services covered by the contract. The terms and conditions for which, *i.e.* 40%/30%/30 must be properly indicated in the SCC, particularly, Clauses 6 and 10 thereof. It bears stressing that the fifteen percent (15%) threshold, used by NDC in its proposed payment terms – 15%/85% - applies only to advance payment, where services have not yet been rendered or when supplies and materials have not yet been delivered under the contract, as opposed to progress payments for partial deliveries allowed by the contract, *i.e.* payment upon installation of software.

All told, SFII would have occasions by which to collect on its government contracts, other than the proposed 15%/85%, as long as such payment is in the nature of progress payments for partial deliveries prescribed in the Bidding Documents through SCC Clauses 6 and 10, and not in the nature of an advance payment.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

DENNIS S. SANTIAGO

Executive Director V

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² Philippine Bidding Documents for the Procurement of Goods, 4th Edition.

³ Advance payment shall be made only after prior approval of the President, and shall not exceed fifteen percent (15%) of the Contract amount, unless otherwise directed by the President or in cases allowed under Annex "D" of RA 9184.