

KNOWLEDGE CENTRE

Advance Payment and Security

AA:1

Relevant Facts or Questions Asked	Issues Arising
<p>A Procuring Entity (PE) sought guidance as to whether an advance payment for the procurement of goods, services and works can only be done when a contract is enforced between the procuring entity and a contractor.</p>	<p>Whether a contract has to be in place between the PE and the supplier before an advance payment can be made.</p>

Advice

1. An advance payment security is a guarantee used to underpin a contractor's performance once the contractor has received an advance payment prior to the commencement of performance. The procuring entity giving the advance payment may call on the security in the event that the contractor defaults in their obligations under the agreement.

2. In this regard, the PEs attention is directed to Regulation 33(1) of the Public Procurement Regulations, 2018, which states:

33. – (1) Subject to paragraph (2), a procuring entity may offer, in respect of the award of a procurement contract for goods or services, an advance payment.

The law therefore is clear in that there needs to exist a contract before an advance payment is made.