

KNOWLEDGE CENTRE

Advance Payment and Security

AA:1

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

Whether an advance payment for the procurement of goods, services and works can only be made when a contract is in force between the procuring entity and a contractor.

Issues Arising

Whether a contract has to be in place between the PE and the supplier before an advance payment can be made.

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, which provides the advance payment, may call upon the security if the contractor defaults on their obligations under the agreement.
2. In this regard, the PEs' attention is directed to Regulation 33(1) of the Public Procurement Regulations, 2018 (as amended) ("Regulation"), which states:

33. – (1) A contractor may request an advance payment from a procuring entity, in respect of the procurement contract awarded.

The law, therefore, is clear in that a contract must exist before an advance payment is made.

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