

**63G-6a-1208 Installment payments -- Contract prepayments.**

- (1) A contract entered into by a procurement unit may provide for installment payments, including interest charges, over a period of time, if the procurement officer makes a written finding that:
  - (a) the use of installment payments are in the interest of the procurement unit;
  - (b) installment payments are not used as a method of avoiding budgetary constraints;
  - (c) the procurement unit has obtained all budgetary approvals and other approvals required for making the installment payments;
  - (d) all aspects of the installment payments required in the contract are in accordance with the requirements of law; and
  - (e) for a contract awarded through an invitation for bids or a request for proposals, the invitation for bids or request for proposals indicates that installment payments are required or permitted.
- (2) A procurement unit may not pay for a procurement item before the procurement item is received by the procurement unit, unless the procurement officer makes a written finding that it is necessary or beneficial for the procurement unit to pay for the procurement item before the procurement item is received by the procurement unit.
- (3) Circumstances where prepayment may be necessary for, or beneficial to, the procurement unit include:
  - (a) when it is customary in the industry to prepay for the procurement item;
  - (b) if the procurement unit will receive an identifiable benefit by prepaying, including reduced costs, additional procurement items, early delivery, better service, or better contract terms; or
  - (c) other circumstances permitted by rule made by the applicable rulemaking authority.
- (4) The applicable rulemaking authority may make rules governing prepayments.
- (5) A prepaid expenditure shall be supported by documentation indicating:
  - (a) the amount of the prepayment;
  - (b) the prepayment schedule;
  - (c) the procurement items to which each prepayment relates;
  - (d) the remedies for a contractor's noncompliance with requirements relating to the provision of the procurement items; and
  - (e) all other terms and conditions relating to the payments and the procurement items.
- (6) The procurement officer or the procurement officer's designee may require a performance bond, of up to 100% of the prepayment amount, from the person to whom the prepayments are made.

Enacted by Chapter 445, 2013 General Session