

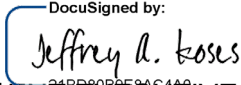


GSA Office of Governmentwide Policy

3/15/2024

Acquisition Letter MV-2024-01

MEMORANDUM FOR: ALL GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES 
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OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: Guidance on Payment for Software Licenses Delivered via SaaS

1. Purpose.

This Acquisition Letter (AL) provides guidance to Contracting Officers who may have questions about purchasing cloud-based Software as a Service (SaaS). It clarifies that under specific conditions, addressed below, an upfront payment is not considered an advance payment. As there are potential price savings and small business benefits to upfront payment for SaaS, this AL supports GSA's strategic objective that its portfolio of offerings meets market demand for products, services, and solutions and the desired acquisition approaches.

2. Background.

SaaS is a cloud-based method of software delivery and licensing in which software is accessed online, commonly on a subscription basis. The purchaser receives access to the license contemporaneously with payment by downloading or accessing the software (and updates) via internet (web) based platforms. The purchased software license typically comes with a software license term that reflects the time period in which the license will grant users access to the software via SaaS delivery.

In the context of software licenses delivered or accessed via SaaS, payment is often made "upfront", meaning that payment is made contemporaneously with receipt of the software license and the beginning of the license service term. GSA Contracting Officers have been asked whether such upfront payment is considered an advance payment. As explained below, it is not.

Advance payment is a specific type of contract financing method where payments are made prior to delivery or completion of the product or a service. There are statutory limitations (e.g., 31 U.S.C. § 3324 and 41 U.S.C. § 4505) on the Federal Government's use of advance payments. Advance payments to Government contractors for goods and services are generally

prohibited unless specifically authorized. Advance payment is not authorized for the purchase of software licenses delivered or accessed via SaaS.

Purchases meeting the criteria established in this AL, upfront payment for software licenses delivered or accessed via SaaS are not considered advance payment. The central distinction is the contemporaneous access.

3. Criteria.

As long as the purchase meets the following criteria, such upfront payment is not considered advance payment:

- Access to the software is granted contemporaneously with payment (*i.e.*, delivery of the license is made contemporaneously with payment);
- The license is acquired on a fixed-price or fixed-price with economic price adjustment basis even if other portions of the task order or contract are not fixed price;
- The license is priced at a single seat, multi-seat, unit, or subscription price covering a fixed term, defined as “a limited period of time”;
- The license’s pricing/billing model allows for no utilization or consumption metric other than quantity to affect the costs incurred over the negotiated term;
- The license does not require any upfront payment other than the fixed seat, unit, or subscription cost as a prerequisite for access or a pricing discount; and
- Within end user or other license agreements, the license service is continuous and uninterrupted for the negotiated term of access to the license.

4. Effective Period

This AL is effective immediately and remains in effect until rescinded or incorporated into the GSAM.

5. Point of Contact.

Any questions regarding this AL may be directed to GSARPolicy@gsa.gov.