

SECTION 7: ACQUISITION PROCEDURES

SUBJECT: PAYMENT IN ADVANCE PROCEDURE 7.3.10

POLICY:The University generally may not make payment in advance of performance. Payment in advance for goods or services is generally prohibited by [RCW 43.88.160](#). However, there are certain exceptions for which state law explicitly permits payment in advance and in certain instances, payment may be structured to accommodate a supplier’s need for advance payment without violating state law.

PROCEDURE:

Payment in Advance is prohibited by state law. University of Washington General Terms and Conditions, #2 “Advance Payments Prohibited” expresses this prohibition in UW contracts and should be included whenever possible.

The State Legislature has made several explicit exceptions to the prohibition against payment in advance in the Revised Code of Washington (RCW). All payments in advance must be commercially reasonable. These exceptions are:

RCW 42.24.035

Postage: Postage may be paid in advance;

Books: Books may be purchased in advance;

Subscriptions: Subscriptions may be paid up to three years in advance. Subscriptions may include physical as well as digital media

Software/Software Updates: Considered to be “subscriptions” and may be paid up to three years in advance.

RCW 43.88.160(5)

Equipment Maintenance: Equipment maintenance may be paid up to 60 months (5 years) in advance.

RCW 28B.10.029(c)(ii)

Travel: Travel expenses may be paid for in advance. [See Administrative Policy Statements, Section 70](#) for additional guidance.

Other exceptions are not explicitly provided for in the RCW, but due to the nature of the purchase or guidance in the State Administrative and Accounting Manual (SAAM) may be paid “in advance.”

Memberships: Memberships may be paid for in advance of the current membership year. The best reason for this exception is that it is not a true advance payment—the benefits of membership are immediate and merely extend for a full year.

Insurance: Insurance may be paid for in advance of the period for which UW will be insured. Like memberships, this is not a true advance payment—the benefits of insurance are immediate and merely extend for the period of insurance. Additionally, the SAAM makes reference to payment in advance for insurance in Section 85.58.10.

Procurement Card: Payments made with a credit card are not considered “paid” until the credit card bill has been paid. Thus, for Procurement Card purchases, it is not a payment in advance if performance is received prior to the time the bill is paid. SAAM 45.20.035.

Leases: A lease creates a property interest in the University when the lease agreement is made. This property interest is considered legally distinct from the legal interest created by a contract. See: AGO 53-55 No. 347.

Finally, in some situations, the prospective supplier may require immediate payment for goods or services for which the University is not authorized to make payment in advance. In these situations, a supervisor should be contacted to determine whether any of the following methods can and should be utilized to complete the transaction.

The University makes payment, immediately acquires title to the goods or raw materials and can insure or file a lien or security interest on the goods or raw materials to protect the University’s interest, even if the goods are not immediately delivered. This arrangement creates a situation where the UW owns property which is held by the supplier as a bailee until the goods are completed and delivered to the University.

The University and the supplier agree to a performance bond to ensure the supplier will perform and create a contract with a third party bank (Bank) wherein the Bank makes any required advance payment to the supplier. The contract between the University and the supplier serves as collateral. The UW makes progress payments to the bank in an amount equal to the contract price. The supplier is then responsible for paying any required interest or charges associated with the bank contract.