



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

NPM No. 17-2010

1 June 2010

MR. ANTONIO R. REYES, MGM
Chairman, Bids and Awards Committee
NATIONAL KIDNEY AND TRANSPLANT INSTITUTE
East Avenue, Quezon City 1101

Re: Mixed Procurement

Dear Mr. Reyes:

We refer to your letter dated 21 May 2010 requesting for guidance on the proper classification of the procurement for the supply, delivery, installation, testing and commissioning of various equipment for the National Kidney and Transplant Institute's (NKTi) Diagnostic Center Project.

We understand that your resident auditor believes that this procurement activity should be classified under infrastructure, rather than goods, since it includes works for the installation of the equipment. On the other hand, NKTi has classified it under goods because it involves the supply and delivery of equipment and other support services in accord with Section 5 (r) of the revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184. Section 5 (r) defines goods, as follows:

Refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, **whether in the nature of equipment**, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services... (Emphasis supplied)

According to your resident auditor, however, this distinction is important because the warranty period for goods is shorter than that for infrastructure projects.

From the foregoing, it appears that the procurement for the supply, delivery, installation, testing and commissioning of various equipment is mixed or one which has components that may fall under more than one classification, in this case both goods and infrastructure. In case of mixed procurements, Section 5 (aa) of the IRR clearly states that the procuring entity may determine its nature, *i.e.*, whether it is goods, infrastructure projects, or consulting services, based on the primary purpose of the contract. The relevant portion of Section 5 (aa) reads:

In case of projects involving mixed procurements, the nature of the procurement, *i.e.*, goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract.

Furthermore, this office has recognized the role of the procuring entity to determine the nature of the procurement activity considering that it is in the best position to identify the primary purpose of the contract.¹

Finally, please be advised that the warranty period of three months or one year, depending on the kind of goods, is prescribed by the IRR as the minimum.² NKTII may extend the warranty period provided that it is clearly stated in the bidding documents.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III

¹ Please see Non-Policy Opinion Nos. 06-2008 (27 May 2008) and 29-2008 (23 September 2008).

² Section 62.1, IRR.