

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 07-2005

January 24, 2005

STATE AUDITOR ELEAZAR B. MANTOS
Commission on Audit
Local Government Sector-Mindanao
Office of the Auditor
Province of Zamboanga Sibugay
Municipality of Ipil

**Re : Warranty for the Procurement of Reconditioned
Equipment**

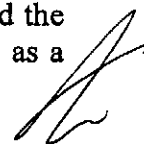
Dear Auditor Mantos:

This refers to your letter dated December 7, 2004 which we received on even date requesting for clarification on this single issue, to wit:

Whether or not the requirement for a warranty under Section 62 (a) of Republic Act 9184 (R.A. 9184) and 62.1 of its Implementing Rules and Regulations Part-A (IRR-A) may be set aside in the procurement of reconditioned heavy equipment

Requirement for Warranty, Mandatory

To protect the proprietary interest of the Government, the framers of R.A. 9184 and its IRR-A deem it necessary to insert an innovative provision that will provide for guarantee and immediate indemnity in case the goods or the construction works procured are found to be defective or of substandard quality. Thus, R.A. 9184 and its IRR-A contain special provisions on warranty in the procurement of goods and infrastructure projects which provide for an upfront or forward assurance that the supplier, manufacturer, or distributor warrants the goods from hidden defects and the procuring entity against eviction therefrom, whereby the happening of any, acts as a



signal for the procuring entity to call on the retention money or bank guarantee. For the procurement of goods, Section 62.1 of IRR-A explicitly provides:

For the procurement of goods, in order to assure that manufacturing defects shall be corrected by the supplier, manufacturer or distributor, as the case may be, a warranty shall be required from the contract awardee for a minimum period of three (3) months, in the case of supplies, and one (1) year, in the case of equipment, after performance of the contract. The obligation for the warranty shall be covered by either retention money in an amount equivalent to at least ten percent (10%) of every progress payment, or a special bank guarantee equivalent to at least ten percent (10%) of the total contract price. The said amounts shall only be released after the lapse of the warranty period: *Provided, however,* That the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met.¹

The warranty requirement provided under R.A. 9184 and its IRR-A is mandatory. By clear dictate of the aforequoted provision, procuring entities are mandated to retain a part of the contract price, or require a bank guarantee from its suppliers, manufacturers or distributors in the procurement of goods. This provision provides for no exception and is applicable notwithstanding that the item/equipment sought to be procured is merely reconditioned or second-hand.

For a broader sense of this statutory mandate on warranty, emphasis is made on the following prominent features of the provision:

The warranty period for goods is for a minimum period of three (3) months for supplies and one (1) year for equipment, which will commence after performance of the contract. This warranty shall then be covered by either a retention money or a special bank guarantee and no other arrangements or credit instruments are allowed. It must be noted though that the amount of the retention money should be equivalent to at least ten percent (10%) of every progress payment and in case of special bank guarantee, it shall be equivalent to at least ten percent (10%) of the total contract price. In addition, such retention money or bank guarantee shall only be released after the lapse of warranty period.

As can be deduced from the above discussion, the warranty requirement provided under R.A. 9184 and its IRR-A is mandatory.

Warranty on secondhand/reconditioned transport and heavy equipment

It is posited² that warranty is required only for brand new equipment in order to assure that manufacturing defects shall be corrected by the supplier, manufacturer

¹ Emphasis supplied.

² First Indorsement, Provincial Engineer's Office, dated November 25, 2004

or distributor and may not be applicable to second-hand and/or reconditioned equipment as it has lost the patented and manufactured structure components and spare parts of an equipment. This contention, however, does not hold water. As earlier adverted to, the legal requirement on warranty does not make distinction between brand new and second-hand/reconditioned equipment.

In other words, the law also requires warranty on second-hand/reconditioned equipment. The primary reason why such warranty is required is to have some form of security or assurance where an immediate indemnity is readily available to the procuring entity in case the goods or the construction works procured are found to be defective or of substandard quality. The general policy of the state in this case is to promote the optimum utilization of public resources. The same principle and reasoning is – and should be – present even in the case of procurement of secondhand/reconditioned equipment where such procurement is allowed.³

Conclusion

With the foregoing elucidations, we reiterate that the requirement for a warranty under Sections 62 (a) of R.A. 9184 and 62.1 of its IRR-A is mandatory for all types of goods, regardless of the kind, amount, quantity and method of procurement used for the goods procured.

With the foregoing elucidations, we trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

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³ Per DBM National Budget Circular No. 446-A, January 30, 1998, only in exceptional cases, particularly when acquisition of brand new units by outright purchase is not feasible, may purchase of second-hand/reconditioned transport equipment as an alternative mode of acquisition be authorized.