

NPM No. 40 -2009

31 July 2009

MR. RAUL B. AGUILOS
Regional Director
LAND TRANSPORTATION OFFICE
Regional Office No. 8
Tacloban City

Re: Trade-in Transactions

Dear Dir. Aguilos:

This refers to your request for opinion with respect to the applicable provisions relative to trade-in transactions. Based on your letter,¹ the Land Transportation Office Regional Office 8 intends to procure a photocopying machine to replace an unserviceable machine by offering the latter for trade-in with the agreement that the price that will be quoted by suppliers would be the net amount of the trade-in value of your unserviceable photocopying machine.

The trade-in transaction mentioned appears to involve two distinct but relatively connected activities of government agencies, namely: (i) disposal of government property and (ii) procurement of goods, which transactions are covered by different rules. The rules on disposal of government property is governed by Commission on Audit (COA) Circular 89-296 while that of procurement of goods is covered by Republic Act 9184 (RA 9184) and its Implementing Rules and Regulations Part A (IRR-A).

It appears from the intended transaction that the main intention of your agency is to acquire new machines to replace the unserviceable photocopying machine such that the disposal of the unserviceable property becomes ancillary thereto. The unserviceable property in the trade-in transaction becomes part of the payment for the new machines. In ordinary circumstances, the amount realized from the disposal of government property redounds to the profit of the agency, which may then be used in procuring its needs. In the trade-in transaction the transformation of a capital asset into a liquid asset is eliminated because the capital asset itself was made as payment for the new photocopying machine instead of using the cash which would have been received as a result of its disposal.

Per COA Circular 89-296, the foremost mode of disposal of government property is through public auction. On the other hand, the general mode of

¹ Letter dated 4 October 2007

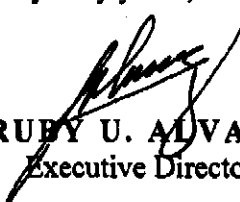
procurement of goods is public bidding. Public bidding of government contracts and for the disposition of government assets should have the same principles and objectives. Their only difference, if at all, is that in the public bidding for public contracts, the award is generally given to the lowest bidder while in the disposition of government assets, the award is to the highest bidder. Under Section 504 of the Government Auditing Rules and Regulations, a public auction, which is the mode of divestment or disposal of government property, shall adhere to established mechanics and procedures in public bidding.²

A review of COA Circular 89-296 in correlation with the provisions of RA 9184 and its IRR-A reveals that the principles involved in public bidding for disposal of government property are also present in procurement of public contracts, such that the fusion of the rules on disposal and the rules on procurement would not undermine the rationale behind and the principles governing the former. It is necessary, however, that the winning bidder has the lowest bid for the delivery of the photocopying machine and at the same time has the highest quote for the unserviceable property, which should not be less than the book value of such unserviceable property.

Based on the foregoing, it is our considered opinion that the rules on procurement of goods under RA 9184 and its IRR-A may be used in the intended trade-in transaction, subject to the suppletory application of relevant provisions under COA Circular 89-296.

We trust that this clarifies matters.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III

² JG Summit Holdings, Inc. vs. Court of Appeals. G.R. No. 124293.



TECHNICAL SUPPORT OFFICE

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

6 February 2008

MR. RAUL B. AGUILOS
Regional Director
Land Transportation Office
Regional Office No. 8
Tacloban City

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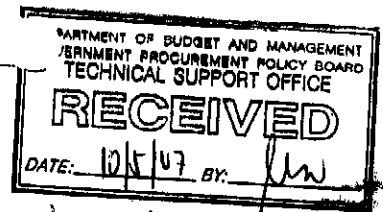
Very truly yours,

RUBY U. ALVAREZ
Executive Director III

¹ JG Summit Holdings, Inc. vs. Court of Appeals. G.R. No. 124293.



Republic of the Philippines
 Department of Transportation and Communications
LAND TRANSPORTATION OFFICE
REGIONAL OFFICE NO. 8
 Tacloban City



Fax 10/4

October 4, 2007

THE HEAD

Government Procurement Policy Board
 Unit 2506, Raffles Corporate Center, F. Ortigas Jr. Road,
 Ortigas Center, Pasig City 1106

Annex
 Is this the interesting
 question you mentioned
 last month, can you
 prepared to discuss?
 Rf 10/10/07

Dear Sir/Madam,

This has reference to the plan of this office to procure a photocopying machine for the regional office use to replace an unserviceable machine with an estimated book value in the amount of P7,200.00 as of September 30, 2007.

Eligible suppliers available within our jurisdiction can offer a trade-in option with the agreement that the price that will then be quoted by them would be the net amount of the trade-in value of our unserviceable photocopying machine, the latter being understood to be transferred to the winning bidder. It can easily be analyzed that it would be economical and advantageous to the government if we pursue the trade-in option compared to an ordinary purchase as the remaining book value of said unserviceable machine would be of economic use.

We made ample efforts researching for some legal basis, policies, rules or regulations relative to trade-in transactions but we could not find one. Moreover, RA 9184 or the Government Procurement Reform Act and its IRR are silent about the matter; hence, this query.

In this connection, may we request for some legal opinion on the matter for our appropriate guidance. Rest assured that your prompt action on this would benefit us a lot as we are very much concerned on the fact that the book value of said unserviceable machine decreases on a daily basis by way of depreciation. It is also worth mentioning that it is necessary for us to procure a new machine for obvious reasons.

Anticipating for your favorable response to this request.

Thank you so much and more power.

Very truly yours,

[Signature]
RAUL B. AGUILOS, CESO IV
 Regional Director

Involves application of rules on disposition of property and procurement of goods.