Text as published on gao.gov, https://www.gao.gov/products/b-249006, archived 2026-07-10. GAO published no original file for this decision. Rendered by Comptroller Desk.

United States Department of Interior-- Purchase of Warranties in Advance

Number: B-249006

Date: 1993-04-06

Matter of: United States Department of Interior-- Purchase of Warranties in Advance File: B-249006 Date: April 6, 1993

APPROPRIATIONS/FINANCIAL MANAGEMENT Appropriation Availability Purpose availability Specific purpose restrictions Warranties APPROPRIATIONS/FINANCIAL MANAGEMENT Appropriation Availability Time availability Advance payments Warranties Payments for warranties presented as separately priced items are not prohibited by the advance payment statute so long as they represent a reasonable charge for the vendor's acceptance of deferred liability and are not designed to provide periodic maintenance service. Agreements for the provision of periodic maintenance service, even if labelled as extended warranties, are prohibited by 31 U.S.C. Sec. 3324.

DECISION This decision responds to a request by the United States Department of the Interior, Bureau of Mines (Bureau), for an advance decision on the propriety of purchasing warranties presented as separately priced items on a purchasing invoice. For the reasons set forth below, we conclude that payments for such warranties are not prohibited by the advance payment statute when they represent a reasonable charge for the vendor's acceptance of deferred liability. To the extent an "extended warranty", often provided after the expiration of an original warranty, contemplates the provision of periodic maintenance service, such agreements are prohibited by 31 U.S.C. Sec. 3324.

BACKGROUND

On several occasions the Bureau has been asked to certify payments for the cost of a warranty on equipment at the time the equipment is purchased. Typically, the warranty is listed as a separate item on the purchase order or invoice for the purchased equipment. The Bureau also has been asked to certify payments for the purchase of additional warranties after the manufacturer's original warranty expires and after purchase of the equipment. The latter are also listed as separately priced items on purchase orders.

The Bureau asks what criteria should be used to determine the difference between a warranty and a maintenance agreement, since vendors often use the terms interchangeably. The significance of this distinction, as the Bureau points out, is that our Office has held that payment for maintenance agreements are prohibited by the advance payment statute.

DISCUSSION

The Bureau's concern stems from the advance payment prohibition found in 31 U.S.C. Sec. 3324(a) which, in pertinent part, provides that:

"a payment under a contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered."

The purpose of 31 U.S.C. Sec. 3324 is to preclude the possibility of loss to the government in the event that a contractor, after receipt of payment, should fail to perform his contract or refuse or fail to refund moneys advanced. 25 Comp.Gen. 834, 835 (1949). Thus, in 64 Comp.Gen. 710 (1985), VA requested our views concerning the propriety of contracting for the periodic maintenance of office equipment in advance. We held that advance payments for such maintenance contracts by government agents were prohibited by 31 U.S.C. Sec. 3324. Id.

In contrast, a warranty is a statement or representation of the seller of goods contemporaneously with and as part of a contract of sale having reference to the character, quality or title of goods and by which seller promises or undertakes to insure that certain facts are or shall be as then represented. Black's Law Dictionary 1586 (6th ed. 1990). The Federal Acquisition Regulation (FAR) defines warranties as a promise or affirmation given by a contractor to the government regarding the nature, usefulness, or condition of the supplies or performance of the services furnished under the contract. FAR, Sec. 46.701. So long as the warranty made at the time the government purchases the equipment (or subsequent thereto) creates a contractual right in the government for the correction of defects resulting from the failure of the goods to conform to the represented quality of the goods, we would not object to such an agreement on the basis of the Advance Payment Statute, 31 U.S.C. Sec. 3324.

So long as a warranty conforms to the criteria described above, i.e., it is a representation of the quality of the goods made contemporaneously as part of the contract of sale and is reasonably priced, then we would not object even if it is priced as an individual item. As we noted earlier, if the "extended warranty", offered upon expiration of the original warranty, envisions routine, periodic maintenance, then, even if a vendor characterizes the agreement as a "warranty", our decision in 64 Comp.Gen. 710 controls.