

**CABOT  
MANTANONA LLP**  
Edge Building, Second Floor  
929 South Marine Corps Drive  
Tamuning, Guam 96913  
Telephone: (671) 646-2001  
Facsimile: (671) 646-0777

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
BY: \_\_\_\_\_  
DATE: \_\_\_\_\_  
TIME: \_\_\_\_\_ AM PM

**THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Matter of Appeal of )  
Triple J Motors, )  
Appellant )  
\_\_\_\_\_ )

**NOTICE OF APPEAL**

Docket No. OPA-PA 13-04<sup>12</sup> <sup>12</sup> <sub>12</sub>

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

**I. APPELLANT INFORMATION**

Name: Triple J Motors  
Mailing Address: C/O CABOT MANTANONA LLP  
EDGE BUILDING, SECOND FLOOR  
929 S. MARINE CORPS DRIVE  
TAMUNING, GUAM 96913  
Business Address: Triple J Motors  
470 N. Marine Corps Dr.  
Tamuning, Guam 96931

DATE: 10/2/13  
TIME: 4:05 AM PM BY: [Signature]  
FILE NO OPA-PA: 13-04<sup>12</sup> <sub>12</sub>

Daytime Contact No.: (671) 646-2001 Contact Person:  
Rawlen Mantanona, Esq.  
Matthew Kane, Esq.

**ORIGINAL**

## II. APPEAL INFORMATION

- (A) Purchasing Agency: General Services Agency o/b/o Guam Police Department.
- (B) Identification/Number of Procurement, Solicitation, or Contract: IFB NO.: GSA-172-13 for Police Patrol Vehicle, 2013-2014 Interceptors.
- (C) Decision being appealed was made on October 1, 2013 by Claudia S. Acfalle, Chief Procurement Officer, GSA, and received by Triple J Motors the same day.
- (D) Appeal is made from: Decision on Protest of Method, Solicitation or Award
- (E) Names of Competing Bidders, Offerors, or Contractors known to Appellant:
- (i) Atkins Kroll, Inc.
  - (ii) Cars Plus

### A. STATEMENT OF GROUNDS FOR APPEAL

1. This Appeal arises out of the General Services Agency ("GSA") decision on Triple J Motors' protest of the bid opening of IFB Bid Number GSA-172-13. Specifically, Triple J Motors appeals GSA's erroneous determination that its protest of this new bid opening was without merit because its post-award and post-contract objection to the cancellation of GSA Bid No. 097-13 was untimely. Triple J's completed IFB form<sup>1</sup> is attached as Exhibit "1".

2. On June 13, 2013, GSA amended the bid opening time for GSA-097-13 from 10:00am on June 18, 2013 to 9:00am on June 28, 2013. The Amendment is attached as Exhibit "2".

3. On July 17, 2013, GSA awarded Triple J Motors the contract for GSA-097-13 and called Triple J Motors to pick up Purchase Order P136A05480 for eight (8) units of customized police interceptor vehicles. Triple J Motors picked up this confirmed and signed Purchase Order on July 17, 2013. Purchase Order P136A05480 is attached as Exhibit "3".

4. After receiving Purchase Order P136A05480 on July 17, 2013, Triple J Motors informed Ford Motor Company of the award of the contract for GSA-097-13 and

---

<sup>1</sup> Triple J Motors' completed IFB form acts as their bid for GSA-097-13.

initiated the process of tendering a binding allocation in order to secure a slot in the production line for the purchase of eight (8) units of customized police interceptor vehicles, committing Triple J Motors to the purchase of these vehicles.

5. By letter dated July 30, 2013 and received July 31, 2013, GSA informed GSA that Cars Plus filed a protest on GSA-097-13 and requested that GSA stop all activities related to the bid until the protest is resolved. This letter is attached as Exhibit "4".

6. On July 31, 2013, GSA called Triple J Motors to pick up Purchase Order P136A05640 for two (2) additional units of customized police interceptor vehicles as part of the same bid. Triple J Motors picked up this confirmed and signed Purchase Order on July 31, 2013. Purchase Order P136A05640 is attached as Exhibit "5".

7. On July 31, 2013, then equipped with P136A05480, Triple J Motors finalized its tendering of a binding allocation, securing a slot in the production line for the purchase of a total of eight (8) units of customized police interceptor vehicles. Again, Triple J Motors was now committed to the purchase of these vehicles.

8. By its letter dated July 31, 2013 and received August 1, 2013, Triple J Motors informed GSA that its instructions to stop all activities related to GSA-097-13 cannot be followed because it understood that the GSA Purchase Order dated July 17, 2013 constitutes a contract, the rescission of which requires legal due process, and it also informed GSA that it received and was processing GSA Purchase Order P136A05640. This letter is attached as Exhibit "6".

9. On August 7, 2013, Triple J Motors, already contractually obligated, finalized the orders from Ford Motor Company for the customized police interceptor vehicles.

10. GSA, by its letter dated August 8, 2013, notified Triple J Motors that the bid for GSA-097-13 is cancelled and the award to Triple J Motors is cancelled because GSA determined that Cars Plus' protest had merit. This letter is attached as Exhibit "7".

11. By letter dated August 8, 2013 and faxed the same day, Triple J Motors acknowledged receipt of GSA's notice of cancellation of the bid for GSA-097-13, expressed that it considers GSA's cancellation a breach of contract and will be seeking compensation for any damages suffered, informed GSA that it was in contact with Ford

Motor Company in an effort to cancel the orders and the allocation committed in order to mitigate damages, and requested that GSA provide the details of the protest warranting cancellation and breach of contract. This letter is attached as Exhibit "8".

12. By letter dated August 12, 2013 and faxed August 14, 2013, GSA acknowledged receipt of Triple J Motors' August 8 letter, advised that the Government of Guam will not bear any costs incurred after the notice of cancellation, and explained that Cars Plus' protest had merit but only specified one of the grounds for protest, namely, that Triple J Motors failed to specify whether it would be providing 2013 or 2014 interceptor vehicles and to provide a brochure for the 2014 interceptor vehicles containing a statement regarding the limited warranty required by the bid. This letter is attached as Exhibit "9".

13. By letter dated August 13, 2013 and received August 15, 2013, Triple J Motors stated its policy to place orders immediately upon receipt of purchase orders due to the delivery time requirements, requested clarification on GSA's authority to cancel a bid after an award in lieu of 2 GAR § 3115, explained that the bid specifications and purchase orders do not specify whether the 2013 or 2014 models were ordered and that the brochure for 2013 interceptor vehicles, which is attached as Exhibit "10", was included in the bid and contained the same warranty contained in the brochure for 2014 interceptor vehicles, which is attached as Exhibit "11", but that the 2014 models were first produced in July 2013 and 2014 brochures were not available until August 2013, after the bid opening in June 2014, and criticized GSA for cancelling the bid rather than requesting clarification on this matter, resulting in further delays and rebidding after Triple J Motors' bid prices have been publicized. This letter is attached as Exhibit "12".

14. By letter dated September 10, 2013 and received September 11, 2013, Triple J Motors formally objected to GSA's cancellation of the bid, citing 2 GAR § 3115(d)(2)(A) to support its argument that a bid cannot be cancelled after an award is made, reiterated why the 2013 brochure and not the 2014 brochure was submitted as part of the bid, advising that its interpretation of the procurement rules do not necessarily render a responsible bidder "unresponsive," attached an email excerpt from

Ford Motor Company explaining that Triple J Motors cannot cancel its orders for ten (10) customized police interceptor vehicles despite its previous attempts to do so, and restated its intention to seek damages from GSA for the full amount of these ten (10) customized police interceptor vehicles if GSA does not accept delivery when they arrive. This letter is attached as Exhibit "13".

15. By letter dated September 11, 2013 and received the same day, GSA acknowledged receipt of Triple J Motors' September 10 letter, determined that the letter constituted an untimely protest pursuant to 2 GAR § 9101(c)(1), denied this "protest" as being "without merit," and advised Triple J Motors of its right to seek administrative or judicial review. This letter is attached as Exhibit "14".

16. On September 12, 2013, GSA ran an advertisement in the Marianas Variety Guam Edition for IFB No. GSA-172-13 for the procurement of Police Patrol Vehicles, 2013-2014 Interceptors, setting the opening date at 10:00am on September 27, 2013. The excerpted page from the Marianas Variety containing this advertisement is attached as Exhibit "15".

17. On September 19, 2013, Triple J Motors received two letters from GSA cancelling both purchase orders "due to error in award." These letters are attached as Exhibit "16".

18. By letter dated September 20, 2013, Ford Motor Company confirmed that the warranty coverage for the 2014 model year Police Interceptor Sedans is identical to the 2013 warranty coverage. This letter is attached as Exhibit "17".

19. By its letter to Triple J Motors dated September 20, 2013, Ford Motor Company confirmed that it was unable to cancel the orders made for the customized police interceptor vehicles and that its policy requires Triple J Motors to sell these vehicles to the Guam Police Department or an approved Guam Law Enforcement Agency, not to retail customers or wholesalers. This letter is attached as Exhibit "18".

20. By letter dated September 25, 2013, Triple J Motors formally protested the opening of IFB No. GSA-172-13 for the purchase of 2013-2014 police interceptor vehicles. This formal protest letter is attached as Exhibit "19".

21. On September 25, 2013, Triple J Motors filed a formal Notice of Appeal of GSA's determination that Triple J Motors' objection to GSA's cancellation of GSA-097-13 was untimely. Triple J Motors based its appeal on the fact that GSA's cancellation of an award and contract triggers a 60-day deadline for waging a protest, as opposed to the 14-day deadline alleged by GSA, and that, alternatively, GSA should be equitably estopped from denying Triple J Motors' protest because, *inter alia*, GSA did not furnish Triple J Motors with the requisite information to formally protest GSA's decision and sent mixed signals to Triple J Motors with respect to the status of its award and contract. This Notice of Appeal is attached as Exhibit "20".

22. On September 25, 2013, Triple J Motors filed a Motion for Expedited Relief to Stay Procurement of GSA-172-13 seeking a preliminary injunction to enjoin GSA from taking any further action with regard to GSA-172-13 until resolution of Triple J Motors' OPA Appeal. This injunction was sought on the grounds that rebidding for the same contract constituted bad faith following breach of contract founded on faulty and *de minimis* grounds, an act that would be injurious both to Triple J Motors and the Territory of Guam writ large because it would result in a protracted and unnecessary delay of a vital procurement for the Guam Police Department, duplicative expenses funneling out of taxpayer money, and a breach of contract action that chills vigorous participation by quality bidders in the public procurement process. This Motion for Expedited Relief to Stay Procurement is attached as Exhibit "21".

23. GSA, by its letter dated September 26, 2013 and received by Triple J Motors the same day, acknowledged that a protest was filed on IFB Bid Number GSA-172-13 and that, therefore, no action would take place on this bid until the protest is resolved. This letter is attached as Exhibit "22".

24. By its letter to Triple J Motors dated October 1, 2013, GSA acknowledged receipt of Triple J Motors' formal protest of the opening of IFB No. GSA-172-13 for the purchase of 2013-2014 police interceptor vehicles, erroneously determined that the protest lacked merit, denied the protest on the grounds that Triple J Motors failed to pursue its administrative remedies to appeal GSA's cancellation of GSA-097-13 after an award was made and a binding contract was formed, and advised Triple J Motors of its

right to pursue any administrative or judicial review authorized by law. Even though the exercise of good faith is required by 5 GCA § 5003 for all parties involved in the negotiation, performance, or administration of territorial contracts, rather than exercise its authority to resolve this issue informally pursuant to 5 GCA § 5425(b), GSA never contacted Triple J Motors or otherwise made any attempt to resolve this issue informally, and instead chose to reject Triple J Motors' formal protest of the opening of GSA-172-13, leading to further delay and greater damages. This letter is attached as Exhibit "23".

### **Jurisdiction for Appeal**

25. Triple J Motors appeals the GSA's denial of Triple J Motors' formal protest pursuant to Title 5 Guam Code Annotated ("GCA") § 5425(e) (2005).

26. Triple J Motors is an actual contractor for IFB Bid No. GSA-097-13, and a prospective bidder for IFB Bid No. GSA-172-13, and is aggrieved in connection with GSA's method of solicitation of a contract for 2013-2014 customized police interceptor vehicles conducted on behalf of the Guam Police Department.

27. Under 5 GCA § 5425(a) and the mirror provisions contained in 2 GAR § 9101(c)(1), Triple J Motors had fourteen (14) days to submit a formal protest in writing to the purchasing agency after receiving actual or constructive knowledge of the reasons underlying a protest.

28. Triple J Motors waged a formal protest against GSA's decision on September 25, 2013, which was subsequently denied on October 1, 2013.

29. Triple J Motors files this timely appeal to the OPA within the deadline of fifteen (15) days prescribed by 5 GCA § 5425(e) for appeals of the decision of a purchasing agency to deny a formal protest waged under 5 GCA § 5425(a).

### **B. PRAYER FOR RELIEF**

Appellant seeks injunctive relief in the form of specific performance and a decision and order that rectifies GSA's erroneous denial Triple J Motors' formal protest of GSA's decision to reopen a bid for 2013-2014 police interceptor vehicles vis-a-vis

GSA-172-13 after cancelling Triple J Motors' award in breach of its contract formed as a result of Triple J Motors' successful bid in GSA-097-13. In addition to other remedies that the OPA may deem are warranted, Appellant also respectfully requests that OPA order the following actions of GSA:

1. That GSA rescind its cancellation of its award and reaffirm its award of the contract to Triple J Motors in GSA-097-13 by issuing a formal, written "Notice of Intent to Award."

2. That GSA specifically perform on the contract awarded in GSA-097-13 by reinstating the two purchase orders it has already signed and confirmed, and by nullifying its cancellation of the same.

3. That OPA issue a determination that GSA acted in bad faith when cancelling Triple J Motors' award and contract in GSA-097-13 in breach of a binding contract with Triple J Motors and to the detriment of the Territory of Guam.

4. That GSA permanently cancel IFB No. GSA-172-13 in an effort to mitigate damages for the Territory and protect the integrity of the procurement process.

5. That GSA issue and immediately mail or otherwise furnish Triple J Motors with a formal, written decision on Cars Plus' protest as required by 5 GCA § 5425(e) and provide Triple J Motors with all of the reasons why it initially cancelled the award.

6. That OPA award to Triple J Motors its costs involved in its protest and appeal.

**C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS**

Exhibit "1"		Completed IFB No. GSA-097-13
Exhibit "2"	June 13, 2013	Amendment #1
Exhibit "3"	July 17, 2013	Purchase Order P136A05480
Exhibit "4"	July 30, 2013	GSA Letter to Triple J Motors
Exhibit "5"	July 29, 2013	Purchase Order P136A05640



Exhibit "6"	July 31, 2013	Triple J Motors Letter to GSA
Exhibit "7"	August 8, 2013	GSA Cancellation of Award
Exhibit "8"	August 8, 2013	Triple J Motors Objection Memo
Exhibit "9"	August 12, 2013	GSA Letter to Triple J Motors
Exhibit "10"		Brochure for 2013 Interceptor Vehicles
Exhibit "11"		Brochure for 2014 Interceptor Vehicles
Exhibit "12"	August 13, 2013	Triple J Motors Letter to GSA
Exhibit "13"	September 10, 2013	Triple J Motors Objection Memo
Exhibit "14"	September 11, 2013	GSA Denial of Objection
Exhibit "15"	September 12, 2013	Advertisement for GSA-172-13
Exhibit "16"	August 31, 2013	GSA Cancellation of Purchase Orders
Exhibit "17"	September 20, 2013	Ford Warranty Confirmation Letter
Exhibit "18"	September 20, 2013	Ford Letter to Triple J Motors
Exhibit "19"	September 25, 2013	Formal Protest of GSA-172-13
Exhibit "20"	September 25, 2013	OPA Appeal No. OPA-PA-13-011
Exhibit "21"	September 25, 2013	Motion for Expedited Relief to Stay
Exhibit "22"	September 26, 2013	GSA Letter to Triple J Motors
Exhibit "23"	October 1, 2013	GSA Denial of Formal Protest

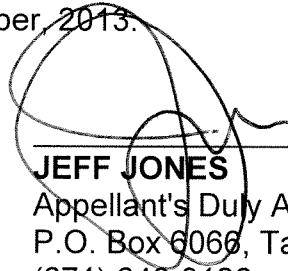
#### **D. DECLARATION RE COURT ACTION**

Pursuant to 5 GCA Chapter 5, unless the court requests, expects or otherwise expresses interest in a decision by the Public Auditor, the Office of the Public Auditor will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

The undersigned does hereby confirm that to the best of its knowledge, no case or action concerning the subject of this Appeal has been commenced in court. All parties are required to and the undersigned party agrees to notify the Office of the Public Auditor within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Submitted this 2nd day of October, 2013.

By:



**JEFF JONES**

Appellant's Duly Authorized Representative  
P.O. Box 6066, Tamuning, Guam 96931  
(671) 646-9126

By:



**RAWLEN M.T. MANTANONA and  
MATTHEW S. KANE**

Attorneys for the Appellant  
Edge Building, Second Floor  
929 S. Marine Corps Drive  
Tamuning, Guam 96913  
(671) 646-2001