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OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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FILE NO OPA-PA: 14-009

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Appeal of

Triple J Enterprises, Inc.

Appellant.

) Docket No. **OPA-PA-14-009**

) **OPPOSITION TO THE MOTION TO SET**  
) **ASIDE ORDER DISMISSING APPEAL**  
) **WITH PREJUDICE**

The Government of Guam, Department of Administration, General Services Agency ("GSA") hereby submits its opposition to Morrigo Equipment, L.L.C's ("Morrigo") Motion to Set Aside the Order Dismissing the Appeal with Prejudice.

The Chief Procurement Officer has the authority to settle a protest of an aggrieved bidder. 5 G.C.A. § 5425(b). In this case, Triple J Enterprises, Inc. ("Triple J") filed a protest on G.S.A Bid No. 065-14. The protest was denied by GSA and Triple J filed an appeal with the Public Auditor. GSA and Triple J entered into a settlement agreement to resolve the protest. The settlement agreement was approved by the Public Auditor. The appeal was dismissed with prejudice.

**ORIGINAL**

The Office of Public Accountability does not have jurisdiction to grant the relief requested by Morrico. Morrico is not an interested party in Triple J's protest and appeal on G.S.A. Bid No. 065-14 and therefore lacks standing to request relief in this case.

According to the Public Auditor's Rules for Procurement Appeals, an interested party "means an actual or prospective bidder, offeror, or contractor who appears to have a substantial and reasonable prospect of receiving an award if the Appeal is denied." 2 GAR § 12102(b).

Morrigo's bid was rejected for failure to meet an exterior rivet specification. Triple J's bid was also rejected for being non-responsive. GSA cancelled the procurement and notified Morrico and Triple J the IFB would be re-bid. Triple J appealed. Morrico did not receive notice of the appeal because their bid was rejected and the IFB was cancelled.

GSA and Triple J agreed to resolve the protest and entered into a settlement agreement. In the agreement, GSA agrees to award the sale of buses to Triple J and Morrico. The award is contingent on Triple J's schematics complying with the bid specifications. A notice to award will be issued thereafter to Morrico and Triple J. In the event, the schematics do not comply, no award will be issued and the bid will be cancelled.

Morrigo does not have a reasonable prospect of receiving an award in this procurement absent the settlement agreement which Morrico now seeks to set aside. Therefore, Morrico is not an interested party as defined in the rules. Since Morrico is not an interested party, the OPA does not have jurisdiction to grant Morrico's request for relief.

Although OPA may have implied or inherent power to rehear its final decision, such power is by no means unlimited. *Guam Public Safety v. Guam Civil Service Commission*, 1982 WL 30789 (D. Guam App. Div. Sept.8, 1982). Before the power of administrative reconsideration can be exercised, there must be good cause shown, it must be exercised

reasonably and the petition seeking its exercise must be made with reasonable diligence. *See In re Department of Agriculture v. Civil Service Commission (Rojas)*, 2007 Guam 21 (The record contained no showing of good cause, such as fraud, misconception of facts or law or mistake, that would support reconsideration. The exercise of reconsideration was not reasonable under the circumstances. There was no showing of reasonable diligence in seeking reconsideration, as the reconsideration motion was filed more than two years after the appeal was dismissed.) *Blas v. Guam Customs & Quarantine Agency*, 2000 Guam 12 (The court rejected the argument that there was good cause based on a misapprehension of facts and law because this contention was not supported by the record. It would be unreasonable to exercise reconsideration when doing so contradicted the record. The motion was not diligently made.) *Guam Public Safety v. Guam Civil Service Commission*, 1982 WL 30789 (D. Guam App. Div. Sept.8, 1982). (The court did not permit the Commission to rehear its decision on the basis of newly discovered evidence submitted more than nineteen months after its final determination would allow the Commission unlimited time within which to review or correct its final decisions.)

In this instance, OPA does not have jurisdiction to set aside the dismissal. As submitted above, Morrico does not have standing to bring such motion. Morrico argues it did not receive notice of the appeal. Morrico is not an interested party to the appeal requiring notice to Morrico.

Morrico also argues that OPA did not have jurisdiction over the purported settlement agreement. As cited above, GSA has the authority to settle a protest. The appeal was dismissed because GSA and Triple J agreed to resolve the protest. Since there was a resolution in the matter, the order to dismiss was warranted. The OPA's order is final. *See* 5 G.C.A. § 5425(f).


**CONCLUSION**

Morrigo is not an interested party and therefore lacks standing to bring this motion. OPA does not have jurisdiction to grant Morrigo's relief as GSA is authorized to settle protests. For these reasons, the OPA should deny Morrigo's Motion to Set Aside Order Dismissing Appeal with Prejudice for Lack of Jurisdiction.

Respectfully submitted this 1st day of December, 2014.

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By:   
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