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# FAX

<b>To:</b>	<b>Shannon Taitano</b> Assistant Attorney General Office of Attorney General	<b>From:</b>	<b>Doris Flores Brooks</b> Guam Public Auditor Office of Public Accountability
<b>Phone:</b> <b>Fax:</b>	(671) 475-3324 (671) 472-2493	<b>Pages:</b>	4 (including cover page)
<b>CC:</b>	<b>Rawlen Mantanona, Esq.</b> <b>Matthew Kane Esq.</b> (Attorneys for Triple J) Cabot Mantanona LLP Phone: (671) 646-2001 Fax: (671) 646-0777	<b>Date:</b>	December 30, 2014
<b>CC:</b>	<b>Kevin J. Fowler</b> Attorneys for Morrico Equipment, LLC Interested Party Phone: (671) 646-1222 Phone: (671) 646-1223	<b>Phone:</b> <b>Fax:</b>	475-0390 x. 210 472-7951

**Re:** OPA-PA-14-009 Decision and Order RE Motion to Set Aside Order Dismissing Appeal with Prejudice & Cross-Motion for Ratification and Affirmance of Contract

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Thank you,  
 Yuka Hechanova  
 Deputy Public Auditor  
[yhechanova@guamopa.org](mailto:yhechanova@guamopa.org)

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OFFICE OF PUBLIC ACCOUNTABILITY  
Doris Flores Brooks, CPA, CGFM  
Public Auditor  
**BEFORE THE PUBLIC AUDITOR**  
**PROCUREMENT APPEALS**  
**TERRITORY OF GUAM**

IN THE APPEAL OF

TRIPLE J ENTERPRISES, INC.,  
Appellant.

Docket No. OPA-PA-14-009

**DECISION AND ORDER RE MOTION TO  
SET ASIDE ORDER DISMISSING APPEAL  
WITH PREJUDICE & CROSS-MOTION  
FOR RATIFICATION AND AFFIRMANCE  
OF CONTRACT**

Before the Office of Public Accountability (“OPA”) are a Motion to Set Aside Order Dismissing Appeal With Prejudice, filed by Morrico Equipment, LLC (“Morrico”), on November 14, 2014, and a Cross-Motion for Ratification and Affirmance of Contract, filed by Appellant Triple J Enterprises, Inc. (“Triple J”) on December 1, 2014. The Public Auditor finds that no oral argument is necessary on the motion and cross-motion, and makes the following decision and order on the motion and cross-motion.

**1. Morrico’s Motion to Set Aside Order Dismissing Appeal With Prejudice.**

In the motion, Morrico requests that the OPA set aside its order dismissing this appeal with prejudice and allow Morrico to be heard on the merits of the appeal. Triple J and the Government of Guam, Department of Administration, General Services Agency (“GSA”), oppose the motion on the basis that the OPA lacks jurisdiction to grant Morrico’s requested relief, and Morrico lacks standing to bring its motion. In Morrico’s reply, it alternatively requests that the OPA rule that its execution of the Settlement Agreement was a procedural acknowledgement of Triple J’s dismissal of its appeal with prejudice, and that the OPA’s execution of that agreement was not an approval of its substantive terms and conditions.

1 The jurisdiction of the Public Auditor is set forth in 5 G.C.A. § 5703, which states in part:  
2 “The Public Auditor shall have the power to review and determine de novo any matter properly  
3 submitted to her or him.” 5 G.C.A. § 5703; see also 2 G.A.R. § 12103(a). Triple J’s Notice of  
4 Appeal indicates that the underlying appeal is made from a decision on protests of method,  
5 solicitation, or award.<sup>1</sup> (Notice of Appeal at 2.) Upon timely receipt of such appeal, “[t]he Public  
6 Auditor shall determine whether a decision on the protest of method of selection, solicitation or  
7 award of a contract ... is in accordance with the statutes, regulations, and the terms and  
8 conditions of the solicitation.” 2 G.A.R. § 12201(a).

9 Although Morrico initially requested that the OPA set aside its order dismissing the  
10 instant appeal with prejudice, Morrico later argued that the OPA lacks jurisdiction over the relief  
11 sought by Morrico if the OPA’s execution of the Settlement Agreement on November 10, 2014,  
12 was not substantive but for the purpose of dismissal of the appeal. (Reply at 2.) Thus, the OPA  
13 finds it necessary to clarify its order dismissing this appeal with prejudice. As Triple J’s appeal  
14 does not include the question of whether the settlement agreement between GSA and Triple J was  
15 properly entered, the OPA agrees that its jurisdiction over Triple J’s appeal does not include a  
16 substantive review of the terms of the settlement agreement. By signing the order which followed  
17 the terms of the Settlement Agreement, the Public Auditor was not ratifying or agreeing with any  
18 of the terms of the settlement. Rather, the Public Auditor was granting the request of the parties  
19 to dismiss with prejudice the instant appeal. (See Settlement Agreement at 3 (“**NOW**  
20 **THEREFORE**, the parties agree and request the Office of the Public Accountability to Dismiss  
21 with Prejudice the above-captioned appeal. ... **SO ORDERED** ....”))

22 Based on the foregoing, the Public Auditor DENIES Morrico’s motion to set aside the  
23 order dismissing this appeal with prejudice.  
24

25 <sup>1</sup> Specifically, Triple J is appealing GSA’s determination that Triple J’s failure to submit a drawing/seating  
26 plan for the buses was not a “minor formality” that could be waived under 2 G.A.R. § 3109(m)(4)(B). (Notice of  
27 Appeal at 2.)

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**2. Triple J's Cross-Motion for Ratification and Affirmance of Contract.**

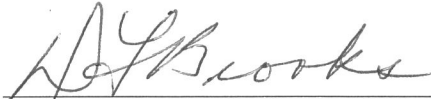
In the cross-motion, Triple J requests that the OPA deny Morrico's motion to set aside the order dismissing this appeal with prejudice and ratify and affirm the Settlement Agreement in the best interests of the Territory. Morrico opposes the cross-motion.

As discussed above, the propriety of Triple J's and GSA's settlement agreement is not a subject of Triple J's instant appeal and, thus, the OPA's jurisdiction over Triple J's appeal does not include a substantive review of the terms of the settlement agreement. Accordingly, Triple J's cross-motion for ratification and affirmance of the terms of the settlement agreement is DENIED.

In summary, Morrico's motion to set aside the order dismissing this appeal with prejudice is DENIED and Triple J's cross-motion for ratification and affirmance of the terms of the settlement agreement is DENIED.

This is a Final Administrative Decision. The Parties are hereby informed of their right to judicial review in the Superior Court of Guam of a Decision of the Public Auditor under 5 G.C.A. Chapter 5, Article 9 (Legal and Contractual Remedies) of the Guam Procurement Law. In accordance with 5 G.C.A. § 5481(a), such action shall be initiated within fourteen (14) days after receipt of a Final Administrative Decision. A copy of this Decision shall be provided to the Parties and their respective attorneys, in accordance with 5 G.C.A. § 5702, and shall be made available for review on the OPA website at [www.guamopa.org](http://www.guamopa.org).

SO ORDERED this 30<sup>th</sup> day of December, 2014.

  
DORIS FLORES BROOKS, CPA, CGFM  
Public Auditor of Guam

## TRANSACTION REPORT

DEC/30/2014/TUE 11:17 AM

## BROADCAST

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	DEC/30	11:14AM	4722493	0:00:48	4	MEMORY OK	SG3 2212
002		11:15AM	6460777	0:00:49	4	MEMORY OK	SG3 2212
003		11:16AM	6461223	0:00:49	4	MEMORY OK	SG3 2212
TOTAL				0:02:26	12		

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Yuka Hechanova  
Deputy Public Auditor