

immediately appointed and a hearing is held to address this Motion. This Motion is supported by the record currently before the OPA, the appended supporting memorandum, the Notice of Appeal incorporated by reference herein, and any argument that the OPA may entertain on this matter.

II. MEMORANDUM IN SUPPORT OF MOTION

A. Relevant Factual and Procedural Background

Triple J Motors respectfully incorporates by reference the "Statement of Grounds for Appeal" contained in its Notice of Appeal in this case, as well as the jurisdictional basis thereunder and all Exhibits appended thereto.

B. Argument

1. The OPA has the jurisdiction and power to stay a procurement pending final resolution of Triple J Motors' appeal.

In accordance with Section 5703 of Title 5 Guam Code Annotated ("GCA"), the Public Auditor has the power to promote the integrity of the procurement process and the purposes of Guam's procurement laws. See 5 GCA § 5703 (2005) ("The Public Auditor's jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 GCA Chapter 5."). The Public Auditor also has the power to conduct a *de novo* review and determine "any matter properly submitted" to her. *Id.* Additionally, the Public Auditor possesses the power to adopt rules of procedure to catalyze a swift resolution of procurement controversies. *Id.* § 5701 (2005).

Guam's legislature has determined the OPA's power to be as broad as necessary to carry out its obligations under Guam law, and its jurisdictional mandate provides for the OPA to exercise the powers of a court, such as entertaining testimony and other evidence, and even compelling the attendance and testimony of, and production of documents by, Government of Guam employees, even those comprising autonomous agencies. See 2 GAR § 12103(a). Moreover, the OPA has the power vis-a-vis a hearing officer, to, *inter alia*, "[r]ule on motions, and other procedural items on matters pending before such officer." *Id.* § 12109(d).

2. The OPA should immediately stay this procurement to prevent immediate and irreparable harm to the Territory and Triple J Motors.

Triple J Motors respectfully asks the Public Auditor to exercise its power to employ quasi-judicial functions, and utilize its inherent powers and jurisdiction to immediately stay the procurement in this case pending final resolution of Triple J Motors' appeal, in the paramount interests of preserving the integrity of the procurement process and protecting both the Territory and Triple J Motors from irreversible injury.

As the record abundantly reflects, Triple J Motors and GSA had entered into a binding contract for the purchase of ten (10) customized police interceptor vehicles and both parties started performance on the contract. Thereafter, imprudently and in bad faith, GSA baldly cancelled the award to Triple J Motors without furnishing GSA with the full details and reasons for taking this action, and thereafter only provided to Triple J Motors one reason for cancellation, a reason that is *de minimis* and did not merit cancellation.

Of greater concern, while Triple J Motors worked to resolve this issue with GSA informally, as encouraged by 5 GCA § 5427(b), GSA surreptitiously and in bad faith proceeded to rebid for the contract. Opening for this new bid is imminent and is slated for September 27, 2013 at 10:00am.

Given GSA's non-retractable obligations under its contract with Triple J Motors, any award stemming from this new bid would place the Territory on the hook for double commitments, bringing objectively measurable and quantifiable injury to the Territory in the form of wasted money and time, a result that is antithetical to the purpose of the procurement process to encourage and incentivize fair, efficient, and competitive bidding. A new award would also leave Triple J Motors in the dust, because Triple J Motors has already tendered an irrevocable promise to purchase to Ford Motor Company in the form of an allocation for a slot in the production line, a slot that must be filled with customized police interceptor vehicles that can only be sold to a police department. Triple J Motors tendered this allocation, and subsequently ordered the customized police interceptor vehicles, as part of its performance obligations under the contract and in reasonable reliance thereupon. Furthermore, Triple J Motors' bid prices have already been exposed and cannot be re-cloaked.

By contrast, both Triple J Motors--the winning bidder, awardee, and aggrieved contractor--and the Territory of Guam would only suffer *de minimis* injury, if any, were the OPA to issue a preliminary injunction and immediately stay the procurement before bidding begins. We implore the OPA to make such a decision. A decision to the contrary might condone and enable agencies in the Government of Guam to have free reign to enter into binding contracts, but then send mixed stop and go signals to

contractors, proffer wishy-washy explanations for their fickle course of action, and move on to a new prospective contractor at their discretion.

In the event that the OPA does not find that Triple J Motors and GSA had entered into a binding contract after GSA awarded the bid to Triple J Motors, we respectfully request that the OPA find that GSA is equitably estopped from denying Triple J Motors' protest as untimely, and that the OPA therefore impose an automatic stay in accordance with its powers under 5 GCA § 5425(g). See 5 GCA § 5425(g) (2005) ("[T]he Territory shall not proceed further with the solicitation or with the award of the contract prior to final resolution of such protest, and any such further action is void . . .").

C. Conclusion

GSA's flip-flop maneuvering on the valid contract it entered into with Triple J Motors requires the imposition of an immediate stay of this procurement, pursuant to the OPA's mandate and express and inherent powers to utilize its jurisdiction to safeguard the integrity of the procurement process and to avoid government waste and inefficiency. Without a preliminary injunction enjoining GSA from opening its new bid, Bid No. GSA-172-13, both Triple J Motors and the Territory of Guam will suffer immediate and irreparable harm, and in turn, contractors' faith in the fairness and efficiency of Guam's procurement process will falter.

Triple J Motors respectfully requests that the OPA, vis-a-vis a hearing officer, entertains and grants this motion for expedited relief to stay the procurement pending

final resolution of its appeal to the OPA in the interests of good faith and fair dealings and administrative economy.

Submitted this 25th day of September, 2013.

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