

1 **LEEVIN T. CAMACHO, ESQ.**

194 Hernan Cortez Ave.,  
Suite 216  
Hagåtña, Guam 96910  
Telephone: (671) 477-8894

Attorney for *Cars Plus, LLC*

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

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6 **THE OFFICE OF PUBLIC ACCOUNTABILITY**

<p>8 <b>IN THE MATTER OF APPEAL OF</b></p> <p>9</p> <p>10 <b>TRIPLE J. MOTORS,</b></p> <p>11</p> <p style="text-align: center;">12 Appellant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>DOCKET NO. OPA-PA 15-015</b></p> <p><b>COMMENT ON AGENCY REPORT</b></p> <p><b>BY INTERESTED PARTY</b></p>
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14 **INTRODUCTION**

15 This appeal arises out of nothing more than Triple J's speculation that the Dodge  
16 Durango Special Service Vehicle does not comply with the bid specifications. This appeal should  
17 be dismissed because Triple J either failed to file a written protest or failed to appeal the decision  
18 denying its protest within the time required by Guam law. Furthermore, the Dodge Durango  
19 Special Service Vehicle offered by Cars Plus meets all specifications required by the Invitation for  
20 Bid ("IFB"). The acceptability of the Dodge Durango Special Service Vehicle was confirmed by  
21 the Guam Police Department ("GPD") and General Services Agency ("GSA"). GSA ultimately  
22 concluded that the claims made by Triple J and raised in the instant appeal were meritless.  
23 Therefore, this matter should be dismissed or, alternatively, the OPA should confirm the award  
24 to Cars Plus.  
25

**ORIGINAL**



1 Vehicle would meet all specifications. PR, Tab 9.

2 On September 28, 2015, Triple J submitted a request to review the bid packages  
3 submitted by Atkins Kroll and Cars Plus. PR, Tab 13. On or about October 5, 2015, submitted  
4 a letter stating:

5 It seems Triple J may have been the only responsible bidder in the above  
6 procurement for police SUV's. Upon review of the bid packages it's apparent that  
7 Plus did not meet the Plastic Rear Transport Seat Requirement, page 30 in "Seat  
8 Specifications" if I'm not mistaken I believe they offered a Plastic Seat Cover  
9 instead.

10 PR, Tab 13. In response to Triple J's complaint, GSA requested that Cars Plus confirm that the  
11 Dodge Durango Special Service Vehicle came with a "Rear seat, prisoner transport hard plastic."

12 PR, Tab 13. Cars Plus confirmed that it would meet the specifications requested. PR, Tab 13.

13 On or about November 4, 2015, GSA advised Triple J that Cars Plus had confirmed that  
14 the Dodge Durango Special Service Vehicle would meet the specifications of the IFB. PR, Tab  
15 13.

16 On November 11, 2015, Triple J filed its protest. PR, Tab 1. Triple J stated that its  
17 protest was based on its October 5, 2015 letter. PR, Tab 1. For the first time, Triple J raised the  
18 issue of whether the Dodge Durango Special Service Vehicle came equipped with "column shift"  
19 transmission. GSA denied Triple J's protest on or about November 19, 2015. Triple J filed this  
20 appeal on December 9, 2015.  
21

## 22 ARGUMENT

### 23 I. THE OPA LACKS JURISDICTION TO HEAR THIS MATTER 24 BECAUSE TRIPLE J FAILED TO SUBMIT A TIMELY PROTEST AND OR APPEAL.

25 A. Triple J failed to submit a protest within 14 days of knowing about  
26 the facts that are the basis of this appeal.

1 A protest “shall be submitted in writing within fourteen (14) days after such aggrieved  
2 person knows or should know of the facts giving rise thereto.” 5 GCA § 5425(a). Triple J has  
3 represented that it did not submit a protest until November 11, 2015. Notice of Appeal (Dec. 9,  
4 2015). However, the record establishes that Triple J reviewed the bids submitted in response to  
5 the IFB and made a complaint about the bid submitted by Cars Plus on October 5, 2015. PR,  
6 Tab 13. Triple J did not file its protest until thirty-six (36) days after it knew about the facts giving  
7 rise to its protest.

8 B. Alternatively, Triple J failed to appeal GSA’s decision denying its “protest.”

9 If the OPA finds that the October 5, 2015 letter was a protest, Triple J failed to appeal  
10 GSA’s decision to deny that protest in a timely manner. GSA promptly advised in writing of its  
11 finding that Cars Plus had complied with the bid specifications and its intent to award Cars Plus  
12 based on its offer. Specifically, GSA contacted Triple J directly on or about November 4, 2015  
13 and advised Triple J that Cars Plus met the requirement to provide a rear prisoner transport seat.  
14 GSA also issued a Notice of Intent of Possible Award on that same day based on its finding that  
15 Cars Plus was the lowest most responsive and responsible bidder. PR, Tab 8. A protest must be  
16 filed with the OPA within fifteen days of receipt by the protestor. 5 GCA § 5425(e). Triple J was  
17 required to file an appeal of that decision by November 19, 2015, but did not file the instant  
18 appeal until December 9, 2015.

19  
20 **II. THE DODGE DURANGO SPECIAL SERVICE VEHICLE MEETS  
21 ALL BID REQUIREMENTS AND CRITERIA AS SET FORTH IN  
22 THE IFB.**

23 A “Responsive Bidder means a person who has submitted a bid which conforms in all  
24 material respects to the Invitation for Bids.” 5 GCA § 5201(g). Triple J has alleged that the bid  
25 submitted by Cars Plus was “non-responsive.” However, it appears that Triple J actually contends  
26 that the Dodge Durango Special Service Vehicle fails to meet two specifications contained in the  
IFB: (1) a rear seat that is “prisoner transport hard plastic;” and (2) column shift transmission. As

1 set forth below, Triple J's unsubstantiated allegations were proven to be wrong.

2 A. The Dodge Durango Special Service Vehicle is equipped with a rear seat that is "prisoner  
3 transport hard plastic."

4 The Dodge Durango Special Service vehicles are equipped with prisoner transport plastic  
5 seats. "The invitation for Bids shall set forth any evaluation criterion to be used in determining  
6 product acceptability." 2 GAR § 3109(n)(3). The IFB required that all vehicles come with "Rear  
7 seat, prisoner transport hard plastic." Cars Plus offered a product that meets this criteria.

8 The record establishes that the Dodge Durango Special Service vehicle is equipped with  
9 "prisoner transport hard plastic" as set forth in the IFB. First, Cars Plus represented that the  
10 product supplied would comply with all bid specifications. PR, Tab 4. GPD reviewed the bid  
11 submitted by Cars Plus and agreed that the Dodge Durango Special Service Vehicle met all bid  
12 specifications. Moreover, in response to the protest filed by Triple J, Cars Plus again confirmed  
13 that the Dodge Durango Special Service Vehicle met all bid specifications and that the seats that  
14 came with that vehicle were comparable in "both function and durability" to those seats offered by  
15 Triple J. PR, Tab 13. The acceptability of the rear prisoner seat was later confirmed by both  
16 GSA and GPD.

17 Triple J relies solely on the use of the description given by Cars Plus of the prisoner  
18 transport plastic seats to establish non-conformance and unacceptability of the Dodge Durango  
19 Special Service Vehicle. In its bid, Cars Plus indicated that it would comply with the rear seat  
20 requirement and that the Dodge Durango Special Service Vehicle would have "[r]ear plastic  
21 covers." PR, Tab 4. The prisoner transport plastic seats are, literally, a rear seat that is covered  
22 by a plastic material. Both the bid and product provided by Cars Plus complied in every way with  
23 the specifications of the IFB.  
24

25 In short, there is *no evidence* that the Dodge Durango Special Service Vehicle does not  
26 comply with the bid specifications other than Triple J's allegations. There was no need for

1 Cars Plus to modify its bid, or correct its bid because it has always been prepared to provide a  
2 product that meets all bid specifications. Similarly, Triple J's argument that the bid was  
3 ambiguous is misplaced because the Dodge Durango Special Service vehicle comes with an  
4 integrated rear prisoner transport seat that is similar in form, function and durability to those  
5 found in the vehicle offered by Triple J.

6 B. The Dodge Durango Special Service Vehicle is equipped with "column shift"  
7 transmission.

8 Triple J failed to raise any issues regarding the column shift transmission until November  
9 11, 2015, long after it reviewed all bids submitted in response to the IFB. Therefore, assuming  
10 *arguendo* that the OPA determines that the October 5, 2015 letter was a protest *and* that this  
11 appeal was timely filed from denial of that protest, Triple J has waived that issue.

12 Cars Plus has represented in its bid that the Dodge Durango Special Service Vehicle will  
13 have column shift transmission. PR, Tab 4. GPD reviewed the bid and indicated that the Dodge  
14 Durango Special Service Vehicle met all bid specifications. PR, Tab 9. Cars Plus later  
15 confirmed, in response to an inquiry from GSA, that the Dodge Durango Special Service Vehicle  
16 came equipped with column shift transmission. PR, Tab 13.

17 Triple J again offers little more than its belief that the Dodge Durango Special Service  
18 Vehicle will not come equipped with column shift transmission. To illustrate how attenuated this  
19 claim is, the evidence Triple J has offered is a print-out of an article published on the internet on  
20 October 23, 2013. Notice of Appeal, Exhibit L. Cars Plus respectfully submits that speculation  
21 supported by a two-year-old article from the internet should be not used to establish non-  
22 compliance of a product being offered.  
23

24 **III. AWARDING THE BID TO CARS PLUS IS IN THE BEST**  
25 **INTEREST OF THE TERRITORY OF GUAM.**

26 After the award of a solicitation or award of a contract, the contract may be ratified and

1 affirmed "provided it is determined that doing so is in the best interests of the Territory." 5 GCA  
2 § 5452(a)(1)(A). GSA determined that Cars Plus was the lowest most responsive and responsible  
3 bidder after the bids were opened on September 25, 2015. GSA subsequently issued a notice of  
4 intent to award to Cars Plus on November 4, 2015. There are no allegations that Cars Plus has  
5 acted in bad faith or fraudulently in this matter.

6 The bid offered by Cars Plus was more than \$30,000 less than the next bidder and  
7 \$35,000 less than the bid submitted by Triple J. This constitutes greater than a 13% savings to the  
8 Government of Guam. To the extent that the OPA finds for Triple J on any of the issues raised  
9 in this matter, the award to Cars Plus should still be ratified because it is in the best interests of the  
10 Territory. 5 GCA § 5452(a)(1)(A).

### 11 CONCLUSION

12  
13 Triple J failed to file either its protest or its appeal in a timely manner and, therefore, this  
14 matter should be dismissed. If the OPA accepts jurisdiction, Cars Plus offered a product in its  
15 bid that meets all bid specifications including a rear prisoner transport seat and column shift  
16 transmission. Finally, assuming *arguendo* that the OPA accepts jurisdiction and finds that the  
17 Dodge Durango Special Service Vehicle does not meet one of the bid specifications, the award to  
18 Cars Plus should be ratified and affirmed because it is in the best interest of the Territory.

19 Dated: January 4, 2016.

20 Attorney for Cars Plus, LLC

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23 LEEVIN T. CAMACHO