



Jerrick Hernandez <jhernandez@guamopa.com>

In the Appeal of Johndel International, Inc. dba JMI-Edison, OPA-PA-21-010

R. Marsil Johnson <rmarsjohnson@bsjmlaw.com> Fri, Dec 10, 2021 at 4:36 PM
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Dear Mr. Hernandez:

Please see attached **Interested Party Aircraft Service International, Inc. dba Menzies Aviation's Reply in Support of its Motion for Summary Judgment** for e-filing in the above-referenced matter.

Should you have any questions or concerns, please let us know. Kindly confirm receipt via return e-mail.

Thank you.

Regards,

R. MARSIL JOHNSON



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110K**2021.12.10 - MENZIES REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT RE MENZIES AVIATION****OPA PA-21-010.pdf**

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12
13 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**
14 **PROCUREMENT APPEAL**
15

16 In the Appeal of)	Docket No. OPA-PA-21-010
)	
17)	INTERESTED PARTY
18 Johndel International, Inc. dba. JMI-)	AIRCRAFT SERVICE
19 Edison,)	INTERNATIONAL, INC. DBA
)	MENZIES AVIATION'S
20)	REPLY IN SUPPORT OF MOTION
21 Appellant.)	FOR SUMMARY JUDGMENT
)	

22 Interested Party **AIRCRAFT SERVICE INTERNATIONAL, INC. DBA MENZIES AVIATION**
23 (“Menzies”), hereby submits its Reply in Support of Motion for Summary Judgment in the above-
24 captioned Office of Public Accountability Procurement Appeal concerning Guam International
25 Airport Authority (“GIAA”) Request for Proposals RFP No. RFP-005-FY21 (the “RFP”).

26 **ARGUMENT**

27 **A. SUMMARY DISPOSITION OF MATTERS BEFORE THE OPA IS WITHIN ITS AUTHORITY**
28 **UNDER GUAM PROCUREMENT RULES AND REGULATIONS ADDRESSING THE**
29 **AUTHORITY OF HEARING OFFICERS**

30 Motions for summary judgment are routinely filed with the OPA, not under Guam R. Civ.
31 P. 56, but under the procurement rules and regulations, specifically 2 G.A.R. 12109, which
32 addresses the authority of the hearing officer. A hearing officer may “[h]old informal conferences
33 to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the

1 expeditious disposition of the proceeding.” 2 G.A.R. § 12109(a). Further, the hearing officer may
2 “[r]ule on motions, and other procedural items on matters pending before such officer.” 2 G.A.R.
3 § 12109(d).

4 The OPA has held, in considering its authority under 2 G.A.R. § 12109(a), that “such
5 authority may be used to find that there are no genuine issues of material fact concerning an issue
6 when the facts are clear from the record and the parties do not dispute them.” *In the Appeal of*
7 *Korando Corporation*, OPA-PA-15-009, Decision and Order re Appellant’s Motion for Summary
8 Judgment dated December 3, 2015, (Office of Public Accountability) (citing *In the Appeal of*
9 *Guam Pacific Enterprises, Inc.*, OPA-P A-09-003, Decision and Order Denying Appellant’s
10 Motion for Summary Judgment dated September 18, 2009, (Office of Public Accountability)).

11 JMI cited *In the Appeal of Core Tech International Corp.*, OPA-PA-17-009, Decision and
12 Order Denying re Purchasing Agency’s Motion to Dismiss dated December 18, 2017 (Office of
13 Public Accountability) to support its argument that motions for summary judgment are
14 inapplicable to proceedings before the OPA. However, even in that decision, the Public Auditor
15 went on to recognize, in the paragraph after the paragraph quoted by JMI, that the hearing officer’s
16 authority under 2 G.A.R. § 12109(a) “may be used to find that there are no genuine issues of
17 material fact concerning an issue when the facts are clear from the record and the parties do not
18 dispute them.” *In the Appeal of Guam Pacific Enterprises, Inc.*, OPA-P A-09-003, Decision and
19 Order Denying Appellant’s Motion for Summary Judgment dated September 18, 2009, (Office of
20 Public Accountability).

21 Menzies motion for summary judgment was filed for the purpose of considering “matters
22 that may aid in the expeditious disposition of the proceeding.” 2 G.A.R. § 12109(a). In that vein,
23 Menzies argues that there are no genuine issues of material fact that need to be addressed for the
24 Public Auditor (or more appropriately, the CLB) to determine the legal question of whether a CLB
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1 license (which is needed to perform construction work) is required for a party to bid on a the IFB,
2 which seeks to procure services. This legal issue should be addressed by the Public Auditor (acting
3 in this matter also as the Hearing Officer) pursuant to 2 G.A.R. § 12109(a).

4 **B. THE CONTRACTORS LAW SPECIFICALLY EXEMPTS PERSONS WHO INSTALL FINISHED**
5 **PRODUCTS, MATERIALS, ARTICLES, OR MERCHANDIZE WHICH DO NOT BECOME A**
6 **PERMANENT FIXED PART OF THE STRUCTURE FROM GUAM'S CONTRACTOR LICENSE**
7 **REQUIREMENTS**

8 JMI is preoccupied with the general definition of a “contractor” found in 21 G.C.A § 70100
9 and ignores the fact that there are exemptions to the contractors law. Most important to this appeal
10 is the exemption found at 21 G.C.A. § 70101(c):

11 § 70101. Exemptions.

12 This Chapter *shall not* apply to:

13 ...

14 (c) A person who sells *or* installs any finished products, materials *or* articles *or*
15 merchandise which are *not* actually fabricated into and *do not* become a permanent
16 fixed part of the structure, *or* to the construction, alteration, improvement *or* repair
of personal property;

17 21 G.C.A. § 70101(c) (emphasis in original). In short, the contractors law (and with it its license
18 requirements) does not apply to a person who sells or installs any finished products, materials, or
19 articles which do not become a permanent fixed part of a structure.

20 In its opposition, JMI argues that the work contemplated by the RFP requires a contractor’s
21 license because “failure of one or more of the numerous motors, to the need for replacement of the
22 thousands of feet of conveyor belts, to the changing of fuses, will require installation or
23 replacement of components.” *See* JMI Opposition at p. 12. Electric motors are finished products,
24 conveyor belts are finished products, and motor control panels are finished products. These
25 products are parts or elements of a larger whole (the conveyor system). They are not a “fixed part
26 of the structure” of the A.B. Won Pat International Airport. In fact, they aren’t even a fixed part
27 of the baggage conveyor system. Thus, installation of these finished products when the existing
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1 components break down or reach the end of their useful life clearly falls within the exemption
2 found in 21 G.C.A. § 70101(c). Since this act of installation and services for the operation of the
3 baggage conveyor system are all that the RFP contemplates, it is clear that the winning bidder need
4 not obtain any kind of CLB license, because this work is exempt under 21 G.C.A. § 70101(c).

5 For guidance from another jurisdiction, courts in California have held that the exemption
6 in California law, which is substantially similar to that found in 21 G.C.A. § 70101(c) applies even
7 to the installation of heavy equipment, cabinetry, and large appliances, so long as they do not
8 become a fixed part of the structure. *See Costello v. Campbell*, 184 P.2d 315, 315 (Cal. Dist. Ct.
9 App. 1947) (relating to two cold storage plants on a hatchery and poultry ranch), *E. A. Davis &*
10 *Co. v. Richards*, 260 P.2d 805, 806 (Cal. Dist. Ct. App. 1953) (relating to the installation of a
11 patented kitchen unit consisting of sink, dishwasher and cabinets, with incidental changes in
12 electrical outlets, laying of linoleum, painting, etc.), and *Walker v. Thornsberry*, 158 Cal. Rptr.
13 862, 862 (Ct. App. 1979) (installation of metal prefabricated restrooms).

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16 These California cases interpret Section 7045 of the California Business and Professions
17 Code, which read, at the time of the opinion in *Costello v. Campbell*, that “[t]his chapter does not
18 apply to the sale or installation of any finished products, materials or articles of merchandise,
19 which are not actually fabricated into and do not become a permanent fixed part of the structure.”

20 This section was substantially similar to 21 G.C.A. § 70101(c).

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22 At the time of the opinion in *Walker v. Thornsberry*, 7045(a) of the California Business
23 and Professions Code had been amended to exempt “the sale or installation of any finished
24 products, materials or articles of merchandise, which do not become a fixed part of the structure,
25 nor shall it apply to a materialman or manufacturer furnishing finished products, materials, or
26 articles of merchandise who does not install or contract for the installation of such items. The term
27 ‘finished products’ shall not include installed carpets.” Even with those amendments, the
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