



Jerrick Hernandez <jhernandez@guamopa.com>

In the Appeal of Johndel International, Inc. dba. JMI Edison, Docket N. OPA-PA-23-002

Merlyna W. Smith <mwsmith@bsjmlaw.com>

Fri, May 5, 2023 at 4:13 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, William Brennan <Wbrennan@arriolafirm.com>, "R. Marsil Johnson" <rmarsjohnson@bsjmlaw.com>, Isa Baza <ibbaza@bsjmlaw.com>

Dear Mr. Hernandez:

Please see the attached **Comments of Interest Party Aircraft Service International, Inc. dba Menzies Aviation** (14 pages) for e-filing in the above-referenced matter. Kindly acknowledge receipt via return e-mail.

Thank you. Should you have any questions, please let us know.

Regards,

Merlyna Weilbacher Smith

Secretary to R. Marsil Johnson



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2 attachments

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9 *Attorneys for Party in Interest*
10 *Aircraft Service International, Inc.*
11 *dba Menzies Aviation*

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

14 In the Appeal of)	Docket No. OPA-PA-23-002
)	
15 Johndel International, Inc. dba. JMI-)	COMMENTS
16 Edison,)	OF INTERESTED PARTY
)	AIRCRAFT SERVICE
17 Appellant.)	INTERNATIONAL, INC. DBA
)	MENZIES AVIATION
)	

18 Interested Party **AIRCRAFT SERVICE INTERNATIONAL, INC. DBA MENZIES AVIATION**
19 (“Menzies”), hereby submits these Comments of Interested Party in response to the Agency
20 Statement submitted by the **A.B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY**
21 (“GIAA”) on April 25, 2023.

22 The origin of this appeal lies in the selection of Menzies as the highest ranked offeror in
23 RFP 05-FY21 (the “RFP”) on August 26, 2021. That RFP sought management and support
24 services for the baggage conveyance systems at GIAA. Losing offeror Johndel International, Inc.
25 dba JMI-Edison (“JMI”) appealed GIAA’s denial of its protest to the Office of Public
26 Accountability (“OPA”). The OPA dismissed JMI’s procurement appeal on February 3, 2022. JMI
27 then appealed the OPA’s dismissal of its appeal to the Superior Court of Guam on February 10,
28 2022. That appeal is still pending before the Superior Court of Guam as CV0095-22.

1 It is important to note that OPA’s dismissal of OPA-PA-21-010 was based on its
2 determination that JMI had engaged in deliberate and egregious misconduct when it fraudulently
3 obtained a decision from the CLB and presented it to the OPA as a neutral and independent
4 decision which the OPA was required to follow. Specifically, the President of JMI sent an email
5 to his “bro” Cecil Orsini who was the Executive Director of the Contractor’s License Board
6 (“CLB”). The email contained a draft decision drafted by JMI that was favorable to JMI and asked
7 Orsini to formally issue that decision to help JMI with its appeal at the OPA. The Public Auditor
8 found that the purported CLB “Findings and Decisions” constituted a fraud on this tribunal and
9 held that JMI’s deliberate and egregious misconduct jeopardies the integrity of the procurement
10 process.
11

12 The previous baggage handling services contract at GIAA expired on October 31, 2021.
13 Given JMI’s protest, pending appeals, and the resulting automatic stay, GIAA was forced to
14 conduct an emergency procurement so that incoming and outgoing baggage could continue to be
15 handled at GIAA, Guam’s only commercial airport. GIAA awarded the emergency procurement
16 to Menzies, entering into an agreement on November 1, 2021 (the “Emergency Procurement”).
17

18 JMI now seeks to protest GIAA’s emergency procurement.

19 Menzies agrees with GIAA that JMI’s latest appeal is a frivolous abuse of the procurement
20 process. This should not be tolerated by the OPA.
21

22 In this appeal, JMI claims that Menzies cannot legally perform work required by the RFP
23 and that GIAA cannot engage Menzies through the emergency procurement process because other
24 documents, none of them constituting final decisions of the CLB, have been issued and that the
25 OPA should rely on these documents and rule in JMI’s favor. This is all too familiar.

26 Menzies agrees with GIAA’s position that there is no valid basis for this appeal and that
27 the OPA should rule against JMI, for the reasons explained below.
28

1 **A. JMI’s Claim is Premature Because no Final Decision Has Been Issued by the**
2 **CLB.**

3 JMI’s argument is premature because none of the documents it cites constitutes a final
4 decision of the CLB setting forth a requirement that a C-13 license is required to perform baggage
5 handling services under the RFP or the Emergency Procurement.

6 Just as before, no final decision has been issued by the CLB. As noted above, JMI
7 previously offered fraudulent “Findings and Decisions” of the CLB and claimed that the OPA was
8 bound by that document. Because of JMI’s last attempt, the former Executive Director of the CLB
9 was asked to resign by the Governor of Guam because the Governor of Guam believed the actions
10 of JMI and Orsini called into question the community’s confidence in the CLB as a whole:

11 The Guam Contractors Licensing Board must have the confidence of the
12 community in order for it to perform its job. Because that confidence is in question,
13 on Thursday, February 3, 2022, the acting Chief of Staff Alice Taijeron had asked
14 for Mr. Orsini’s resignation...

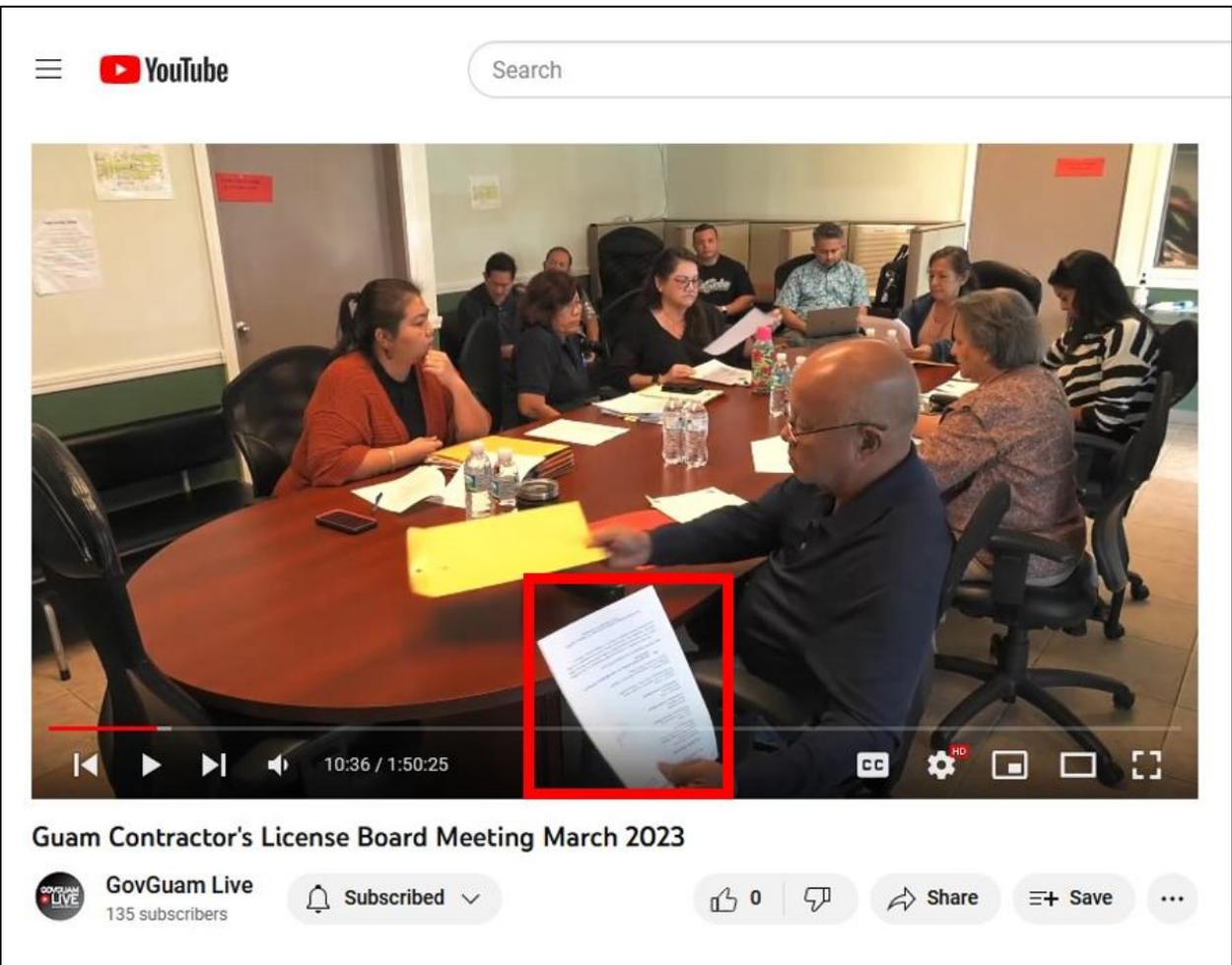
15 *See Haidee Eugenio Gilbert, UPDATE: Orsini resigns at Adelup’s request over ‘troubling action*
16 *in OPA report, GUAM DAILY POST, Feb. 4, 2022, [https://www.postguam.com/news/update-orsini-](https://www.postguam.com/news/update-orsini-resigns-at-adelup-s-request-over-troubling-action-in-opa-report/article_593d9548-8572-11ec-9f25-0ba40f09348f.html)*
17 *[resigns-at-adelup-s-request-over-troubling-action-in-opa-report/article_593d9548-8572-11ec-](https://www.postguam.com/news/update-orsini-resigns-at-adelup-s-request-over-troubling-action-in-opa-report/article_593d9548-8572-11ec-9f25-0ba40f09348f.html)*
18 *[9f25-0ba40f09348f.html](https://www.postguam.com/news/update-orsini-resigns-at-adelup-s-request-over-troubling-action-in-opa-report/article_593d9548-8572-11ec-9f25-0ba40f09348f.html).*

19 Undaunted by what its actions have already done to the CLB and its credibility, JMI
20 continues its secretive and underhanded attempts to improperly influence and undermine the CLB,
21 to the point of confusing CLB board members about what actions the CLB has taken. At the March
22 28, 2023 working session of the CLB, meant to discuss a potential citation to be issued to Menzies,
23 board member Michelle Leon Guerrero discussed a letter submitted to the CLB by JMI’s attorneys.
24 She mentioned that:

25 The first and second paragraph talk about allowing a May 14 date for Menzies to
26 transition the services to JMI. Has that been decided already? Because we haven’t
27 issued the cease and desist. Isn’t that the airport’s job to decide what to do?
28

1 See GovGuam Live, Guam Contractor's License Board Meeting March 2023, YouTube (Mar. 28,
2 2023), <https://www.youtube.com/live/xYyj5xkW7es?feature=share&t=4913> at 10:40 to 11:07.

3 Strangely, copies of the JMI's letter were passed to each CLB board member by CLB staff
4 in sealed manila envelopes. Even though the meeting was called to determine what type of citation
5 the CLB would issue to Menzies, no copy of the document was provided to Menzies by JMI or the
6 CLB and no offer was extended to Menzies to submit any documents for review or provide any
7 comments at the meeting. Menzies has submitted a Sunshine Reform Act Request to the CLB
8 seeking a copy of that letter and anything else submitted to the CLB by JMI for its consideration
9 during its March 28, 2023 meeting. That request is pending. The following screenshot shows both
10 a copy of the letter and an envelope used to distribute it to CLB board members:
11



1 See GovGuam Live, Guam Contractor’s License Board Meeting March 2023, YouTube (Mar. 28,
2 2023), <https://www.youtube.com/live/xYyj5xkW7es?feature=share&t=4913> at 10:36.

3 The CLB has not made a final determination of whether a license is required to perform
4 work under the RFP or the Emergency Procurement. JMI relies heavily on an Office of the
5 Attorney General (“OAG”) opinion issued to the CLB opining on the CLB’s investigation. That
6 OAG opinion is **not a CLB determination, and the OAG does not have authority to classify**
7 **CLB licenses.** The CLB is specifically authorized by law to address these issues, not the OAG.
8 Further, Menzies disputes the erroneous conclusions reached by the OAG opinion.
9

10 First, the opinion fails to account for the fact that a C-13 Electrical Contractor is a Specialty
11 Contractor sub-classification and to be a Specialty Contractor a person must perform construction
12 work. *See* 5 G.C.A. § 57106(d) (“A *Specialty Contractor* is a contractor whose operations as such
13 are the performance of construction work requiring special skill and whose principal contracting
14 business involves the use of specialized building trades *or* crafts.” (emphasis in original)). Neither
15 the RFP nor the Emergency Procurement involves any construction work. Therefore, a person
16 performing work under the RFP or the Emergency Procurement is not a Specialty Contractor and
17 does not need any Specialty Contractor subclassification license, including a C-13 Electrical
18 Contractor license.
19

20 Second, the letter fails to consider any of the exceptions to the applicability of the Guam
21 Contractor Law, including the exception for persons involved in the installation of finished
22 products, materials, articles, or merchandise which are not actually fabricated into and do not
23 become a permanent fixed part of a structure. 5 G.C.A. § 70101(c). At most, the RFP and the
24 emergency procurement involve occasional repair of the baggage handling system. These repairs
25 involve replacement of motors, conveyors, and circuit breakers, all of which are finished products
26 and materials. Given their replaceable nature, these finished products never become a permanent
27
28

1 fixed part of the structure. The Superior Court of Guam has previously found this exception to
2 apply in the context of cooling systems because a cooling system does not become a permanent
3 fixed part of the structure and can be removed without causing damage to the property:

4 Plaintiff argues that because the installations can be removed without causing
5 damage to the property, they are not a “permanent fixed part of the structure” as
6 defined in Exemption § 70101 (c). Defendant does not disagree, but rather argues
7 that because the air conditioning system is not a permanent fixed part of the
8 structure, Plaintiff does not have a right to a Mechanic's lien as a matter of law. See
9 *infra*. Therefore the Court finds that Plaintiff is indeed exempt from the Contractors
license requirement under 21 G.C.A. § 70101(c) and entitled to maintain the
lawsuit. As such, dismissal is inappropriate on summary judgment.

10 *VSST Co., Ltd, v. UFB Guam Hotel Corp.* CV0552-09 (Super Ct. Guam July 7, 2011). If this
11 exception applies to the installation of a building’s cooling system, it surely applies to the
12 replacement of motors, conveyor belts, and circuit breakers.

13 The March 4, 2023 Citation (the “Citation) is itself not final. The Citation was issued
14 without a hearing and without an opportunity for Menzies to defend itself. The Citation states that
15 “[y]ou are required to pay the penalty assessed and correct the violation referred to in this Citation
16 **unless within fifteen (15) days from receipt of this Citation, you notify the CLB in writing**
17 **that you intend to contest and appeal the Citation and the penalty imposed.”**

18 Menzies notified the CLB in writing that it intended to contest and appeal the Citation. on
19 March 18, 2023 when Menzies filed its Notice of Defense. In response, the CLB forwarded the
20 Notice of Defense to the OAG so a hearing officer could be appointed and a hearing conducted.
21 See GovGuam Live, *Guam Contractor’s License Board Meeting April 2023*, YouTube (Apr. 19,
22 2023), <https://www.youtube.com/live/AMYB0wAhZdI?feature=share&t=1491> at 24:53 to 25:43.
23 That hearing has yet to occur. Therefore, the entire matter is still pending at the CLB and no final
24 decision has yet been issued.
25
26

27 \\
28 \\
29

1 See Menzies C-13 Electrical Contractor license (Apr. 7, 2023) attached as Exhibit “A”.

2 When it submitted its C-13 Electrical Contractor application, Menzies also submitted a
3 letter to Deputy Assistant Attorney General Sandra Miller, noting that:

4 We wish to inform you and clarify that Menzies’ application is not and should not
5 be taken as an admission that Menzies is required to apply for or obtain any type of
6 Specialty Contractor license through the Guam Contractors License Board (“CLB”)
7 to perform baggage handling services under RFP No. RFP-002-FY15 or under
8 Agreement No. GIAA-S22-02 between Guam International Airport Authority and
9 Menzies. This application was filed out of an abundance of caution, given the
10 position the CLB has taken with respect to CLB Case No. 2021-09-04 and the
11 citation issued by the CLB on April 4, 2023.

12 Menzies reserves its right to raise any and all claims and defenses it is entitled to
13 as a matter of law in response to the complaint filed in CLB Case No. 2021-09-04,
14 the citation issued by the CLB on April 4, 2023, and the procurement protest and
15 appeals filed by Johndel International, Inc. concerning RFP No. RFP-002-FY15.

16 See Letter from Menzies to Sandra Miller (Apr. 6, 2023), attached as Exhibit “B”. The C-13
17 Electrical Contractor application was filed only out of an abundance of caution and to limit
18 exposure given that the CLB Citation included an ongoing fine of \$1,000 per day.

19 JMI filed the protest and this appeal based on its understanding that JMI does not have a
20 C-13 Electrical Contractor license. This is noted in JMI’s March 21, 2023 protest letter and in
21 JMI’s Notice of Appeal as a basis for the appeal:

22 **Menzies’s lack of appropriate contractor licensing renders it non-responsive**
23 **to the RFP.** More, since Menzies does not have “the capability in all respects to
24 perform fully the contract requirements, and the integrity and reliability which will
25 assure good faith performance,” Menzies is a non-responsible offeror. 5 GCA §
26 5201(f).

27 See JMI Protest Letter (Mar. 21, 2023) at pp. 2–3 and JMI Notice of Appeal (Apr. 10, 2023) at p.
28 5 (emphasis added) (identical language is found in both documents).

Given that JMI’s protest and appeal are built on JMI’s claim that Menzies has no C-13
Electrical Contractor license, the fact that Menzies has a license renders JMI’s protest and appeal
moot.

\\

Exhibit "A"

2023

CONTRACTOR'S LICENSE

LOU LEON GUERRERO
Governor of Guam

JOSH TENORIO
Lt. Governor of Guam

Pursuant to the provisions of Chapter VII Title XI of the Government of Guam and the Rules and Regulations of the Contractors License Board, the Executive Director of Contractors hereby issues this license to:

**Ignacio C. Urlanda RME For:
Aircraft Service International, Inc. dba: Menzies Aviation**

**To engage in the business or act in the capacity
of a contractor in the following classifications**

C13

This license is the property of the Executive Director of Contractors, not transferable, and shall be returned to the Executive Director upon demand when suspended, revoked, or invalidated for any reason. It becomes void if not renewed on or before the expiration date.

Signature of RME
RME # CLB23-1830

Signature of LICENSEE
License #

GRT #
Issued: April 07, 2023

Certificate # R-0423-1450
Expires: June 30, 2023



BERNARD S. BENAVENTE
BOARD CHAIRMAN



CIRIACO C. SANCHEZ, Jr.
EXECUTIVE DIRECTOR



Exhibit “B”

April 6, 2023

VIA E-MAIL

smiller@oagguam.org

Sandra Cruz Miller
Assistant Deputy Attorney General
Office of the Attorney General of Guam Solicitor Division
590 S. Marine Corps Drive
ITC Bldg., Ste. 802
Tamuning, Guam 96913

**RE: AIRCRAFT SERVICE INTERNATIONAL, INC.
dba MENZIES AVIATION
APPLICATION FOR C-13 SPECIALTY CONTRACTOR LICENSE**

Dear Ms. Miller:

This letter concerns the C-13 Specialty Contractor License application filed by Aircraft Service International, Inc. dba Menzies Aviation ("Menzies") on April 5, 2023.

We wish to inform you and clarify that Menzies' application is not and should not be taken as an admission that Menzies is required to apply for or obtain any type of Specialty Contractor license through the Guam Contractors License Board ("CLB") to perform baggage handling services under RFP No. RFP-002-FY15 or under Agreement No. GIAA-S22-02 between Guam International Airport Authority and Menzies. This application was filed out of an abundance of caution, given the position the CLB has taken with respect to CLB Case No. 2021-09-04 and the citation issued by the CLB on April 4, 2023.

Menzies reserves its right to raise any and all claims and defenses it is entitled to as a matter of law in response to the complaint filed in CLB Case No. 2021-09-04, the citation issued by the CLB on April 4, 2023, and the procurement protest and appeals filed by Johndel International, Inc. concerning RFP No. RFP-002-FY15.

Very truly yours,

BLAIR STERLING JOHNSON & MARTINEZ
A Professional Corporation


R. MARSIL JOHNSON