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 238 Archbishop Flores St.  
 Hagåtña, Guam 96910



# FAX

<b>To:</b>	<b>Mr. John M. Quinata</b> <b>Executive Manager</b> Guam International Airport Authority P.O. Box 8770 Tamuning, Guam 96931 Phone: (671) 646-0300 Fax: (671) 646-8823 Email: <a href="mailto:john.quinata@guamaiport.net">john.quinata@guamaiport.net</a>	<b>From:</b>	<b>Benjamin J.F. Cruz</b> <b>Public Auditor</b> Office of Public Accountability
		<b>Pages:</b>	11 (including cover page)
<b>CC:</b>	<b>Mr. Joshua D. Walsh, Esq.</b> <b>Attorney for Appellant JMI-Edison</b> Razano Walsh & Torres, P.C. 139 Murrery Blvd. Hagåtña, Guam 96910 Phone: (671) 989-3009 Email: <a href="mailto:jdwalsh@rwtguam.com">jdwalsh@rwtguam.com</a>	<b>Date:</b>	April 11, 2023
		<b>Phone:</b> <b>Fax:</b>	(671) 475-0390 x. 204 (671) 472-7951

**Re:** OPA-PA-23-002 Notice of Receipt of Appeal

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Thank you,  
 Jerrick Hernandez, Auditor  
[jhernandez@guamopa.com](mailto:jhernandez@guamopa.com)



## OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910

Phone: (671) 475-0390 / FAX: (671) 472-7951

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April 11, 2023

Mr. John M. Quinata  
Executive Manager  
Guam International Airport Authority  
P.O. Box 8770  
Tamuning, Guam 96931

VIA FACSIMILE: (671) 646-8823

Re: Notice of Receipt of Appeal – OPA-PA-23-002

Dear Mr. Quinata,

Please be advised that Johndel International, Inc. dba. JMI-Edison (hereinafter referred to as “JMI”) filed an appeal with the Office of Public Accountability (OPA) on April 10, 2023, regarding the Guam International Airport Authority’s (GIAA) response to JMI’s protest of the procurement award for RFP-005-FY21, Management & Infrastructure Support Services to GIAA’s Baggage Conveyance Systems. OPA has assigned this appeal case number OPA-PA-23-002.

Immediate action is required of GIAA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at [www.opaguam.org](http://www.opaguam.org). The first eight pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Tuesday, April 18, 2023**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Tuesday, April 25, 2023**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (**electronic filings will be acceptable and highly encouraged**), and serve a copy to JMI.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or [jhernandez@guamopa.com](mailto:jhernandez@guamopa.com) should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read "Benjamin J.F. Cruz". The signature is stylized and cursive.

Benjamin J.F. Cruz  
Public Auditor

Enclosure: First Eight Pages of the Notice of Appeal – OPA-PA-23-002

Cc: Joshua D. Walsh, Esq., Attorney for Appellant JMI

**RAZZANO WALSH & TORRES, P.C.**

JOSHUA D. WALSH

JOSEPH C. RAZZANO

SUITE 100, 139 MURRAY BLVD.

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*Counsel for Appellant JMI-Edison*

**PROCUREMENT APPEAL OF DENIAL OF PROCUREMENT PROTEST  
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

**PART I.**

In the Appeal of

Johndel International, Inc. dba. JMI-  
Edison,

Appellant.

**DOCKET NO.**

**NOTICE OF APPEAL**

**PART II: APPELLANT INFORMATION**

Appellant's Name	Johndel International, Inc. dba JMI-Edison
Appellant's Mailing Address	130 Siket Street, Harmon Industrial Park, Tamuning, Guam 96913
Appellant's Business Address	130 Siket Street, Harmon Industrial Park, Tamuning, Guam 96913
Appellant Representative's Direct Email Address	ed_ilao@jmigum.com

Appellant is represented by legal counsel in this appeal. For purposes of this appeal, please direct correspondence to Johndel International, Inc. dba JMI-Edison's ("JMI") counsel, Joshua D. Walsh and Joseph C. Razzano of Razzano Walsh & Torres, P.C.

Counsel's Mailing Address	139 Murray Blvd. Ste. 100, Hagatna, Guam 96910
Counsel's Telephone	671-989-3009
Counsel's Facsimile	671-989-8750
Counsel's Direct Email Address	jdwalsh@rwtguam.com

**PART III: APPEAL INFORMATION**

- A. Purchasing Agency: Guam International Airport Authority ("GIAA")
- B. Solicitation Number: Emergency Procurement of GIAA RFP 005-FY21 – Management & Infrastructure Support Services to GIAA's Baggage Conveyance Systems.
- C. The Decision being appealed was provided to the Appellant on March 27, 2023, The Decision was made by the Executive Manager, John M. Quinata.
- D. This Appeal is made from the Denial of Procurement Protest on Award provided to JMI on March 27, 2023.
- E. The name of the only competing offeror known to Appellant is: Aircraft Service

International, Inc, doing business as “Menzies Aviation.”

## **PART IV: STATEMENT OF GROUNDS FOR APPEAL**

### **A. THE GROUNDS FOR APPEAL**

#### **1. Relevant Procedural and Factual History**

GIAA remains before the Superior Court of Guam on a procurement appeal raised by JMI regarding Request for Proposals (“RFP”) GIAA RFP 005-FY21. That appeal seeks judicial review of the dismissal, with prejudice, of the prior procurement appeal brought by JMI challenging the award of the RFP to Menzies Aviation (“Menzies”) — an entity that was neither responsive to the RFP nor responsible to perform the work contemplated. Citing an imminent threat to public health, safety, and welfare, GIAA declared the existence of an emergency on October 26, 2021, and pushed forward with entering into a contract for emergency services provided by Menzies to perform the same functions contemplated by the RFP. The initial 30-day term of that emergency contract has been extended multiple times since then. On March 15, 2023, GIAA published notice that it would be seeking to extend the contract again during the March 22, 2023, GIAA board meeting for an additional 90-day period (the “ERFP”).

On March 16, 2023, the Guam Contractors Licensing Board made public a legal opinion it received from the Office of the Attorney General of Guam confirming that the work under the RFP “requires that the selected offeror hold a Specialty Contractor license from the CLB in the C-13 Electrical Contractor sub-classification.” More, the Attorney General instructed that the CLB should “begin enforcement

proceedings to protect the public against this unlicensed contractor....”<sup>1</sup> It has become clear that Menzies cannot continue to perform the work contemplated by the RFP, or its subsequent emergency iterations, for the airport. Because of this, and the fact that GIAA’s use of emergency procurement power for more than 500 days directly contradicts the procurement code, JMI initiated an Agency level protest.<sup>2</sup> On March 27, 2023, the Agency denied the protest.<sup>3</sup> This appeal to the OPA followed.

## **2. Timeliness of Protest and Appeal.**

GCA 5 §5425(a) requires that Protests must be made within 14 days of the issues leading to the protest being known by the Protester (JMI in this case). The issues documented by JMI in this protest became known to JMI on March 15, 2023, when GIAA published notice about initiating another emergency procurement period with Menzies. JMI’s other protest ground became known the Office of the Attorney general issued its conclusions regarding Menzies’s illegal performance. JMI raised its protest to GIAA on March 21, 2023. This Appeal comes within fifteen days after GIAA issued its protest decision to JMI, and is within the fifteen day protest appeal period set by 5 GCA § 5425(e). Therefore, both JMI’s agency level protest and subsequent appeal to the OPA meet the timeliness standards required by applicable law and regulation.

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<sup>1</sup> The Attorney General Opinion released by the CLB is attached to this Notice of Appeal as **Attachment A**.

<sup>2</sup> JMI’s protest letter is attached to this Notice of Appeal as **Attachment B**.

<sup>3</sup> The GIAA Protest Denial of March 27, 2023, is attached to this Notice of Appeal as **Attachment C**.

### **3. Basis for Protest and Appeal**

#### **a. Menzies cannot legally perform the work required by the RFP.**

Contractors working on Guam may not do so, or even present themselves as being able to do so, “without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractor’s License Board (CLB).” 21 G.C.A. § 70108(a). GIAA’s March 15, 2023, notice indicates that GIAA is seeking to explicitly violate Guam law and the plain terms of the original RFP by the appointment of Menzies. This is especially troubling now given the clarity provided by the Attorney General that Menzies is unlicensed, and the nature of the work required by GIAA’s RFP does indeed require a contractor’s license. Menzies’s lack of appropriate contractor licensing renders it non-responsive to the RFP. More, since Menzies does not have “the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance,” Menzies is a non-responsible offeror. 5 GCA § 5201(f). To obtain such work was improper, and should have been rejected by GIAA.

#### **b. The Airport cannot legally engage the services of Menzies through the use of the emergency procurement process.**

GIAA’s intention to commit to a 90-day additional emergency contract with Menzies does not comport with the law that allows emergency procurement. While it may have been arguable to GIAA to access the emergency procurement procedures in October of 2021 at the inception of JMI’s first protest, more than 520 days have elapsed since then. There has been one emergency declaration issued with regard to

this procurement, and that was issued on October 27, 2021.<sup>4</sup> More than 500 days have elapsed since that “emergency,” straining the plain meaning of language beyond normal bounds.

It is fundamental that the emergency procurement processes cannot be used to correct management’s failure to work through planned procurement. The law is clear that “Emergency means a condition posing an imminent threat to public health, welfare, or safety which could not have been foreseen through the use of reasonable and prudent management procedures, and which cannot be addressed by other procurement methods of source selection.” (5 GCA § 5030(x); 2 GAR § 1106(47).

It is now clear that the government has not undertaken the steps necessary to trigger the emergency procurement regulations for this new period of performance more than 500 days after the original emergency performance period. Even if an “emergency” were somehow still in existence after 520 days, the law requires that “emergency procurements shall be made with such competition as is practicable under the circumstances.” 5 G.C.A. § 5215. That has not occurred here. Instead, GIAA has taken no steps to assure the people of Guam that it has obtained the best price for the emergency contractor services it continues to pay Menzies to perform, even as Menzies continues to operate illegally.

**B. RULING REQUESTED**

JMI respectfully requests that the Office of Public Accountability Order the

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<sup>4</sup> The Original Package of the Emergency Declaration of Need and Certification of Emergency are attached to this Notice of Appeal as **Attachment D**.

following:

- (1) That GIAA must disqualify Menzies from eligibility for Award under the ERFPP, as Menzies's does not have a valid contractor's license and as such, it cannot perform the work of the ERFPP;
- (2) That GIAA must disqualify Menzies from eligibility for Award under this RFP, as Menzies could not have legally and responsibly performed the work detailed under the RFP.
- (3) That GIAA award the emergency procurement under GIAA RFP 005-FY21, to JMI as the only responsible and responsive bidder to the RFP.

**C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS**

Submitted with this appeal are the following supporting exhibits, evidence, and documents:

- (1) The Attorney General Opinion released by the CLB is attached as **Attachment A**.
- (2) JMI's protest letter is attached as **Attachment B**.
- (3) The GIAA Protest Denial of March 27, 2023, is attached as **Attachment C**.
- (4) The Original Package of the Emergency Declaration of Need and Certification of Emergency are attached as **Attachment D**.

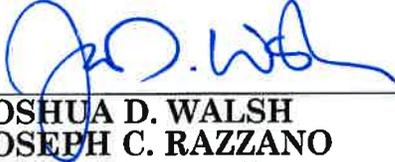
**PART V: DECLARATION RE COURT ACTION AND RELATED  
PROCUREMENT APPEAL**

The undersigned does hereby confirm that to the best of his knowledge, no case or action concerning the Emergency procurement that is subject of this Appeal has

been commenced in court. The protest appeal of GIAA RFP 005-FY21 is currently before the Superior Court of Guam in the case styled as *Johndel International, Inc. dba JMI-Edison v. Office of Public Accountability, Guam International Airport Authority, Aircraft Services International Inc. dba Menzies Aviation*, CV0095-22 (Superior Court of Guam). The undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Respectfully submitted this 10<sup>th</sup> day of April, 2023.

**RAZZANO WALSH & TORRES, P.C.**

By:   
\_\_\_\_\_  
**JOSHUA D. WALSH**  
**JOSEPH C. RAZZANO**  
*Attorneys for Appellant*  
*JMI-Edison*



Jerrick Hernandez <jhernandez@guamopa.com>

## OPA-PA-23-002 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Tue, Apr 11, 2023 at 8:55 AM

To: John Quinata <john.quinata@guamairport.net>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Joseph C. Razzano" <jrazzano@rwtguam.com>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-23-002. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Best Regards,



Jerrick J.J.G. Hernandez, MA, CFE, CGAP, CICA  
*Accountability Auditor*

**Office of Public Accountability**

+1 671 475 0390 (ext. 204)

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