



Jerrick Hernandez <jhernandez@guamopa.com>

In the Appeal of Johndel International, Inc. dba JMI-Edison, Docket No. OPA-PA-23-002

Merlyna W. Smith <mwsmith@bsjmlaw.com>

Fri, May 19, 2023 at 4:44 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:

Attached herewith for e-filing in the above-referenced matter are the following:

- 1. Interested Party Aircraft Service International, Inc. dba Menzies Aviation Motion for Summary Judgment; and**
- 2. Interested Party Aircraft Service International, Inc. dba Menzies Aviation Motion to Dismiss.**

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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Motion for Summary Judgment, OPA-PA-23-002.PDF
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Motion to Dismiss, OPA-PA-23-002.PDF
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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-	)	INTERESTED PARTY
16 Edison,	)	AIRCRAFT SERVICE
	)	INTERNATIONAL, INC. DBA
17 Appellant.	)	MENZIES AVIATION MOTION FOR
	)	SUMMARY JUDGMENT
)	

18 Interested Party AIRCRAFT SERVICE INTERNATIONAL, INC. DBA MENZIES AVIATION
19 (“Menzies”), hereby submits its Motion for Summary Judgment in the above-captioned Office of
20 Public Accountability (“OPA”) procurement appeal concerning Guam International Airport
21 Authority (“GIAA”) Request for Proposals No. RFP-005-FY21 (the “RFP”) and Agreement No.
22 GIAA-S22-002.

23 **UNDISPUTED FACTS**

- 24 1. The basis of this dispute lies in the procurement of management and support
25 services for the baggage conveyance systems at GIAA.
 - 26 2. On August 30, 2021, GIAA informed Menzies that it was the RFP’s highest ranked
27 offeror.
- 28

1 3. On September 21, 2021, losing offeror Johndel International, Inc. dba JMI-Edison
2 (“JMI”) filed its first protest relating to the RFP.

3 4. On September 30, 2021, GIAA denied JMI’s protest. *See* OPA-PA-21-010 Notice
4 of Appeal (Oct. 8. 2021).

5 5. On October 8, 2021, JMI appealed the GIAA protest denial to the OPA in OPA-
6 PA-21-010.

7 6. JMI’s protest resulted in an automatic stay of the RFP.

8 7. Given the automatic stay, GIAA determined that the absence of a provider to
9 manage and maintain the baggage handling system at GIAA posed a public emergency. *See* OPA-
10 PA-23-002 Notice of Appeal (Apr. 10, 2023), Ex. D.

11 8. GIAA documented the emergency through a Determination of Need for Emergency
12 Procurement and Certificate of Emergency dated October 27, 2021. *Id.*

13 9. The emergency determination was authorized by the Governor of Guam. *Id.*

14 10. On November 1, 2021, Menzies was awarded the emergency procurement
15 (“ERFP”) and entered into Agreement No. GIAA-S22-002 with GIAA.

16 11. Menzies has continued to provide emergency services under the ERFP since
17 November 1, 2021.

18 12. On February 3, 2022, the OPA dismissed JMI’s first appeal.

19 13. The OPA’s dismissal was due to its finding that a Contractor’s License Board
20 (“CLB”) “findings and decision” presented as evidence by JMI constituted a fraud on this tribunal.
21 *See In the Appeal of Johndel International, Inc. dba JMI-Edison, OPA-PA-21-010, Decision (Feb.*
22 *3, 2022).*

23 14. Instead of the actual CLB decision that JMI purported it to be, the document had
24 never been approved by the CLB and was just “a bro helping out another bro”. *Id.* at 5.

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1 15. The OPA gave JMI an opportunity to mitigate the harm caused by its misconduct,
2 but JMI instead asserted that the OPA was bound by the fraudulent decision. *Id.* at 6.

3 16. The OPA found that, “[g]iven JMI’s lack of understanding or remorse for its
4 misconduct, dismissal is the only appropriate sanction....” *Id.*

5 17. On March 1, 2022, the CLB rescinded the purported “findings and decisions” at its
6 March 1, 2022 meeting. *See* OPA-PA-23-002 Notice of Appeal, Ex. A at 6.

7 18. On February 10, 2022, JMI filed a Verified Complaint seeking judicial review of
8 the OPA’s February 3, 2022 Decision and Order by the Superior Court of Guam. That case is
9 CV0095-22.
10

11 19. CV0095-22 is currently pending before the Superior Court of Guam.

12 20. On March 14, 2023, the Office of the Attorney General (“OAG”) issued an opinion
13 letter to the CLB, which opined that a C-13 license may be required to perform under the RFP. *See*
14 OPA-PA-23-002 Notice of Appeal, Ex. A, at 11.

15 21. On March 15, 2023, GIAA issued notice of a public hearing to extend its emergency
16 contract with Menzies.
17

18 22. On March 21, 2023, JMI filed a second procurement protest claiming that Menzies
19 cannot legally perform the work required by the RFP and that GIAA could not legally engage the
20 services of Menzies through the emergency procurement process.

21 23. JMI knew that Menzies did not have a C-13 license and that GIAA contracted with
22 Menzies to perform work under the ERFP more than 14 days before it filed its March 21, 2023
23 procurement protest.
24

25 24. JMI President Ed Ilaos wrote an email to CLB investigator Marcus Finona stating,
26 “GIAA is continuing to contract with an improperly licensed entity (Menzies)...” *See* OPA-PA-
27

28

1 23-002 Notice of Appeal, Ex C (email from Ed Ilaio to Marcus Finona). That email was sent on
2 December 20, 2021, which is more than 14 days before JMI filed its March 21, 2023 protest.

3 25. JMI stated in its Verified Complaint in CV0095-22 that “Menzie’s is performing for
4 GIAA under an ‘emergency’ contract without appropriate licensing.” *Id.* (Verified Complaint at ¶
5 41). That Verified Complaint was filed on February 10, 2022, which is more than 14 days before
6 JMI filed its March 21, 2023 protest.

7
8 26. On March 27, 2023, GIAA denied JMI’s second protest.

9 27. Also on March 27, 2023, JMI issued a letter to CLB board members encouraging
10 them to issue a cease-and-desist notice to Menzie’s. *See* JMI Letter to the CLB (Mar. 27, 2023),
11 attached as Exhibit “A”. The letter suggested a transition period that would give Menzie’s up until
12 May 14, 2023 to hand over ERFPS services to JMI. *Id.*

13 28. On March 28, 2023, the CLB held a board meeting to address whether it should
14 issue a citation to Menzie’s.

15
16 29. During the CLB meeting, Copies of the JMI’s March 27, 2023 letter were provided
17 to each CLB board member in sealed manila envelopes. *See* GovGuam Live, Guam contractor’s
18 License Board Meeting March 2023, YouTube (Mar. 28, 2023),
19 <https://www.youtube.com/live/xYyj5xkW7es?feature=share&t=636> at 10:36. No copies of the
20 letter were provided to Menzie’s by JMI or the CLB until after Menzie’s submitted a Sunshine
21 Reform Act Request to the CLB. Menzie’s was never given an opportunity to view or respond to
22 the suggested cease and desist parameters provided by JMI prior to or during the March 28, 2023
23 CLB meeting.

24
25 30. During the CLB meeting, the CLB voted to issue a citation to Menzie’s for operating
26 without a C-13 license, and to order a cease and desist of all work at the airport falling under the
27 C-13 subclassification only. *See* GovGuam Live, *Guam Contractor’s License Board Meeting*
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1 *March* 2023, YouTube (Mar. 28, 2023),
2 <https://www.youtube.com/live/xYyj5xkW7es?feature=share&t=4913> at 1:21:53 to 1:24:04.

3 31. On March 31, 2023, before the CLB formally issued the Citation (the “Citation”)
4 to Menzies, an agreement was entered into between Menzies and a local electrical contractor
5 holding a C-13 license so that the subcontractor could perform any needed C-13 work under the
6 ERF.
7

8 32. This subcontractor agreement was permitted by Article 16 of Agreement No.
9 GIAA-S22-002. *See* Procurement Record at 304.

10 33. On April 4, 2023, the CLB served Menzies with the Citation *See* Citation (Apr. 4,
11 2023) at 6 attached hereto as Exhibit “B”.

12 34. The Citation provided Menzies with fifteen (15) days to notify the CLB in writing
13 that it intended to contest the Citation. *Id.*

14 35. Menzies did so by filing its Notice of Defense on April 18, 2023. *See* Notice of
15 Defense (Apr. 18, 2023) attached hereto as Exhibit “C”.

16 36. The CLB has since forwarded the Notice of Defense to the OAG. *See* GovGuam
17 Live, *Guam Contractor’s License Board Meeting April 2023*, YouTube (Apr. 19, 2023),
18 <https://www.youtube.com/live/AMYB0wAhZdI?feature=share&t=1491> at 24:53 to 25:43.
19

20 37. The OAG has appointed a hearing officer, but no hearing date has been set.

21 38. On April 5, 2023, Menzies submitted a C-13 Electrical Contractor license
22 application to the CLB. *See* Comments of Interested Party Aircraft Service International, Inc. dba
23 Menzies Aviation (“Menzies Comments”) (May 5, 2023), Ex. B (Letter from Menzies to AAG
24 Sandra Miller).
25

26 39. On April 6, 2023, Menzies sent a letter to Assistant Deputy Attorney General
27 Sandra Miller to inform her that: “Menzies’ application is not and should not be taken as an
28

1 admission that Menzies is required to apply for or obtain any type of Specialty Contractor license
2 through the [CLB]...This application was filed out of an abundance of caution, given the position
3 the CLB has taken..." *Id.* The CLB granted Menzies' C-13 license on April 7, 2023. *See* Menzies
4 Comments, Ex. A.

5 40. On April 10, 2023, JMI filed the notice of appeal in this appeal with the OPA.

6 41. Neither the RPF nor the ERFPP mention that a specialty contractor's license is
7 required.
8

9 42. The RFP provides only a general licensing requirement mandating compliance with
10 Guam licensing laws. *See* RFP-005-FY21 attached as Exhibit "D", General Terms and Conditions,
11 at 3, § 14.

12 43. Licenses were not required upon submission of proposals but were instead to be
13 presented upon contract signing. *Id.*, Basic Information, at 1, § 4.

14 44. Agreement No. GIAA-S22-002, procured through the ERFPP, permits the contractor
15 to subcontract work to licensed subcontractors. *See* Procurement Record at 304.
16

17 ARGUMENT

18 A. JMI's appeal is baseless as the CLB has not made any final determination that 19 a C-13 license is required to perform work under the RFP.

20 This is not the first time that JMI has made premature claims alleging that a C-13 specialty
21 contractor's license is required absent any final determination by the CLB. Back on October 8,
22 2021, JMI sang the same tune with its first appeal in OPA-PA-21-010, where it again claimed that
23 a specialty contractor's license was needed to perform work under the RFP, **despite the fact that**
24 **the CLB had never made any such determination and the RFP required no such license.** JMI
25 then submitted what it purported to be an official CLB findings and decisions that it improperly
26 obtained from the CLB, and which was later rescinded by the CLB at its March 1, 2022 meeting
27 because it was improperly issued.
28

1 Despite being reprimanded for its actions, which the OPA determined to be a fraud on this
2 tribunal, JMI continued its underhanded attempts to influence the CLB at the CLB's March 28,
3 2023 meeting. Prior to that meeting, JMI issued a letter to CLB members encouraging the CLB to
4 issue a cease and desist notice to Menzies. The letter attempted to address concerns that certain
5 CLB members held concerning the negative effects that a cease and desist could have on the airport
6 by suggesting a transition period that would provide Menzies until May 14, 2023 to transition
7 ERFP services to JMI. Copies of the letter were passed to each CLB member in sealed manila
8 envelopes and no copies were ever provided to Menzies until after Menzies submitted a Sunshine
9 Reform Act Request to the CLB. Menzies never had an opportunity to view, let alone respond, to
10 the letter provided by JMI.
11

12 On April 4, 2023, the CLB issued a Citation to Menzies ordering it to cease all C-13
13 subclassification work at the airport. Menzies contested the Citation within the fifteen (15) day
14 deadline and filed its Notice of Defense on April 18, 2023. The CLB has forwarded the Notice of
15 Defense to the Office of the Attorney General ("OAG"), which has appointed a hearing officer.
16 No hearing is expected to take place until June 5, 2023, and thus the matter is still pending at the
17 CLB.
18

19 Even though the CLB has not made any final determination as to whether a C-13 license
20 is required to perform under the RFP, JMI relies heavily on an OAG opinion issued to the CLB
21 opining on the CLB's investigation and preliminary findings. Frankly, the OAG opinion is not a
22 CLB determination, and the OAG has no authority to determine CLB license requirements. That
23 authority rests solely in the hands of the CLB. 5 G.C.A. § 70103.
24

25 Menzies also disputes the conclusions reached by the OAG because the opinion letter fails
26 to account for applicable exemptions under the Guam Contractors Law. In particular, the letter
27 fails to consider that Menzies is not engaged in any construction work under the RFP, and that
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1 Guam law defines a “specialty contractor” as one whose operations involve the performance of
2 construction work. 21 G.C.A. § 70106(d). Additionally, the OAG opinion fails to consider the
3 exemption provided at 21 G.C.A. § 70101(c), which exempts the installation of “finished products,
4 materials *or* articles *or* merchandise which are *not* actually fabricated into and *do not* become a
5 permanent fixed part of the structure....” (emphasis in original). While work under the RFP may
6 include the installation of finished products and materials, such as electric motors, conveyor belts
7 or fuses, such work is exempted from contractor licensing requirements under 21 G.C.A. §
8 70101(c).
9

10 Thus, because the CLB has not reached a final decision on the issue and because the OAG
11 has no authority to determine the issue, JMI’s appeal is baseless.
12

13 **C. Menzies has a C-13 license and can legally perform the work under the ERFP.**

14 The whole premise of JMI’s protest is baseless as the CLB has yet to determine that any
15 C-13 license is required to perform work under the RFP or ERFP, but even if a C-13 license were
16 required, Menzies obtained its C-13 license on April 7, 2023, despite *continuing to contest* that a
17 C-13 Electrical Contractor license is required. Furthermore, on March 31, 2023, before the CLB
18 formally issued a Citation ordering Menzies to cease any C-13 subclassification work at GIAA,
19 Menzies entered into an agreement with a local electrical contractor holding a C-13 license so that
20 the subcontractor could perform any needed C-13 work as permitted by Article 16 of Agreement
21 No. GIAA-S22-002. Menzies then submitted its C-13 Electrical Contractor license application to
22 the CLB on April 5, 2023, and received its license two days later. Menzies obtained this C-13
23 license out of an abundance of caution and to limit exposure given the CLB’s Citation but
24 continues to contest that any such license is needed. As Menzies now possesses the specialty
25 contractor license at issue, JMI’s claims are moot.
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1 **D. GIAA properly utilized the emergency procurement process.**

2 In the wake of the stay caused by JMI's initial protest, GIAA recognized that the absence
3 of a provider to manage and maintain the baggage handling system at Guam's only public airport
4 posed a public emergency. GIAA properly documented the emergency that existed, with the
5 concurrence of the Governor of Guam, and executed and extended that emergency contract as
6 needed to address the difficult situation caused by JMI's continued protests and appeals. *See also*
7 5 G.C.A. § 5215. JMI has failed to show that GIAA acted in contravention of Guam's emergency
8 procurement law, and instead engages in innuendo and rhetoric to claim that the ERFPP was not
9 properly conducted. Without more, the OPA should grant summary judgment against JMI.

11 **E. JMI's claims that Menzies is not responsive or responsible are meritless.**

12 Finally, the OPA should grant summary judgment in favor of Menzies because JMI's
13 claims that Menzies is not responsive or responsible are meritless. JMI provides nothing more than
14 conclusory allegations that Menzies is not responsible and nonresponsive to the ERFPP without any
15 substantive justification for its claims. For example, JMI's claim that Menzies is a contractor (21
16 G.C.A. § 70100(b)) and that it must not present itself as a contractor without a contractor's license
17 assumes what the CLB has yet to determine – that Menzies is a specialty contractor subject to the
18 contractor licensing laws under the RFP and ERFPP.

19 GIAA has also found that Menzies is a responsible offeror "who has the capability in all
20 respects to perform fully the contract requirements, and the integrity and reliability which will
21 assure good faith performance." 5 G.C.A. § 5201(f). This is not surprising, as Menzies has
22 successfully provided baggage handling services to GIAA for many years. JMI provides no
23 *credible* evidence to contest this. 5 G.C.A. § 5201(f).

24 Further, Guam procurement law provides that an award should be made to an offeror
25 determined "to be best qualified **based on the evaluation factors set forth in the Request for**
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1 **Proposals....**” 5 G.C.A. § 5216(e). Here, the RFP generally provides that offerors must comply
2 with Guam licensing laws. However, the RPF does not specify that a C-13 license, or any specialty
3 contractor’s license, is required to be submitted with proposals. Instead, the RFP requires licenses
4 to be presented upon contract signing. Thus, upon contract signing, Menzies would have had the
5 opportunity to present any licenses deemed required to GIAA. Guam law also does not prohibit
6 the use of separately licensed specialty subcontractors, so Menzies also could have engaged a
7 licensed subcontractor, which was not prohibited by the RFP. *See Interstate Indus. Inc.*, B-241974
8 (Nov. 13, 1990) (a contractor may meet certain license requirements through subcontracting work
9 to licensed subcontractors).

11 The OPA has previously considered whether a Guam contractor’s license is required upon
12 bid submission for a bidder to be found responsive. In OPA-PA-15-012, PDS argued that a bid
13 submitted by G4S must be rejected as non-responsive because it did not include the C68 and C17
14 contractor’s licenses required by the invitation for bid (“IFB”). *See In the Appeal of Pacific Data*
15 *Systems, Inc.*, OPA-PA-15-012, Decision (Jan. 13, 2016). That IFB did not require bidders to
16 submit proof of licensure contemporaneously with their bids. *Id.* at 7. The OPA found that G4S
17 had the contractors’ licenses at issue and held that PDS failed to establish that the G4S bid must
18 be rejected for failure to include its contractor licenses with its bid. *Id.* at 6. Similarly here, the
19 instant RFP did not require offerors to submit proof of licensure contemporaneously with their
20 proposals. The instant RFP did not even require offerors to hold a specific contractor’s license.
21
22 Thus, this decision supports a finding that proof of licensing was not necessary prior to award.

24 Finally, case law is well-established that where a solicitation contains a general license
25 requirement, a bidder’s failure to possess a particular license is not a prerequisite to award. In
26 *Rowe*, for example, incumbent contractor Rowe Contracting Service, Inc. protested the award of a
27 request for proposal to Drytech, Inc. after claiming that Drytech did not have the licenses required
28

1 by the solicitation. *Rowe Contracting Serv., Inc.*, B-228647 (Oct. 29, 1987). The Government
2 Accountability Office (“GAO”) determined that “where a solicitation contains a general licensing
3 requirement—i.e., a requirement that the contractor have all applicable licenses—without
4 requiring specific licenses, the contracting officer properly may make the award without regard to
5 whether the bidder possesses the licenses at the time of award.” *Id.* This is because compliance
6 with licensing requirements is a matter between the contractor and local authorities. *Id.* This is also
7 because contracting officers generally are not competent to determine whether a particular license
8 is required. *See Kyrokin Constr., Inc.*, B-226238 (Feb. 20, 1987); *see also Metro. Ambulance Serv.,*
9 *Inc.*, B-213943 (Jan. 9, 1984); *see also Am. Mut. Protective Bureau*, B-208067 (July 16, 1982).
10 Thus, Rowe’s protest was denied.
11

12 Similarly, in *Hap Construction, Inc.*, B-278515 (Feb. 9, 1998), the losing bidder protested
13 a contract award by arguing that the possession of a Virgin Islands license was a responsibility
14 criterion that must be satisfied prior to award, despite the IFB not requiring bidders to provide
15 evidence of licensing with their bids. *Id.* Instead, the IFB generally required compliance with any
16 applicable licensing requirement during performance of the contract. *Id.* The GAO held that:

17
18 **A general requirement such as this to comply with federal, state or local laws**
19 **and to obtain necessary local licenses does not itself render the requirement a**
20 **definitive responsibility criterion** even if local statutes require licenses as a
21 precondition to submitting a bid. Rather, the requirement is a performance
22 requirement which may be satisfied during contract performance... (internal
23 citations omitted).

24 *Id.* (emphasis added). As supported by these decisions, proof of licensure should not be required
25 prior to award when the solicitation contains only a general licensing requirement. To require so
26 would be unduly restrictive, in contravention of Guam’s policy to promote the maximum
27 practicable competition. 5 G.C.A. § 5001(a)(6) and 5 G.C.A. § 5265.
28

1 **F. JMI's claim is untimely and is therefore barred.**

2 The jurisdiction of the OPA is limited to matters that are *properly* submitted for his review.
3 5 G.C.A. § 5703(a). JMI needed to submit its protest within fourteen days after it knew *or should*
4 *have known* of the facts giving rise thereto. 5 G.C.A. § 5425(a). By December 20, 2021, JMI knew
5 that Menzies lacked a C-13 license and that GIAA contracted with Menzies to perform work under
6 the ERFP. JMI also demonstrated this knowledge on February 10, 2022 when it filed its Verified
7 Complaint in CV0095-22, alleging that Menzies performed work for GIAA on an emergency basis
8 without appropriate licensing.
9

10 JMI's claim that the facts giving rise to its second protest only became known to it when
11 GIAA published its notice of its intent to extend the emergency contract with Menzies on March
12 15, 2023 belies common sense. JMI clearly demonstrated knowledge of these facts as far back as
13 December 20, 2021 and February 10, 2022. Further, it is proper to infer that JMI, which is actively
14 engaged in litigation adverse to GIAA and Menzies concerning the RFP, **should have known** that
15 Menzies continued to perform services for GIAA under the emergency contract, as it has known
16 since 2021. Failing to find this protest untimely would leave the door open for JMI to continue
17 filing protests far beyond the time limits contemplated by 5 G.C.A. § 5425(a).
18

19 Additionally, the March 14, 2023 OAG letter to the CLB does not change the fact that JMI
20 knew that Menzies did not have a C-13 license as far back as December 2021 or that the CLB has
21 yet to make a final determination on whether any license is required. The March 14, 2023 OAG
22 letter is nothing more than an opinion and it does not create a new, independent basis for an appeal.
23 Thus, JMI's post-award protest is untimely and was properly denied.
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CONCLUSION

For the reasons stated above, Menzies respectfully requests that the OPA grant summary judgment in favor of Menzies on all the claims raised by JMI in the instant protest appeal and that the OPA enter any other relief it may deem appropriate.

BLAIR STERLING JOHNSON & MARTINEZ
A PROFESSIONAL CORPORATION

BY: 
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1BU:68V01367-01
GAPLDRMJ312-INTERESTED PARTY MOTION FOR
SUMMARY JUDGMENT WITH UNDISPUTED FACTS
RE MENZIES AVIATION OPA PA-23-002.DOCX

EXHIBIT “A”
JMI 3/27/23 LETTER
TO THE CLB

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March 27, 2023

VIA HAND DELIVERY

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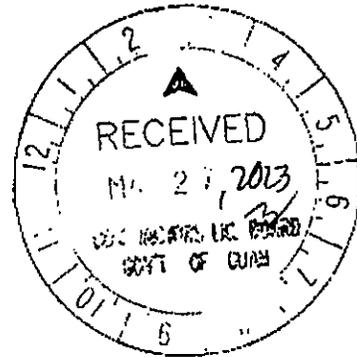
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Re: *Johndel International, Inc. dba JMI-Edison (CLB Case No. 2021-09-04)*

Dear Chairman Benavente and members of the board,

Our office continues to represent Johndel International, Inc. dba. JMI-Edison ("JMI"). The Contractors Licensing Board ("CLB") still has before it the issue of JMI's complaint regarding the unlicensed contract work being performed at the Guam International Airport Authority ("GIAA") by "Menzi's Aviation" ("Menzi's").



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On March 15, 2023, GIAA published notice that it would be extending its contract with Menzies for an additional 90 day emergency period. On March 16, 2023, the CLB made public a legal opinion it received from the Office of the Attorney General of Guam confirming that Menzies's work at the airport "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..." Because of this clarity brought by the Attorney General, JMI has initiated a further procurement protest of Menzies's continued work at the airport under the proposed extended 90 day period.¹

JMI fully understands the CLB's concern with issuing an immediate cease and desist instruction as the opinion of the Attorney General instructs. This is why JMI's recently lodged protest with GIAA contemplates allowing until May 14, 2023, for Menzies to transition contracting services over to JMI so that JMI can begin its work on May 15, 2023. This transition period will allow for the public to obtain the licensed contracting services required by law, but would assure GIAA that services for airport customers will not be interrupted.

The CLB, of course, must follow Guam law. JMI understand that certain members of the CLB board have expressed concern that following the law may negatively impact commerce at the airport. While JMI knows of no tenet of law that would allow the CLB to simply ignore Menzies's illegal performance, JMI has no objection to the CLB issuing a Cease and Desist notice to Menzies, but allowing a transition period until May 14, 2023 before Menzies must end its GIAA operations. This transition period matches the one that JMI's protest before the airport seeks and would allow for the CLB to both conform to its legal duties and act in a way that minimally disrupts GIAA operations.

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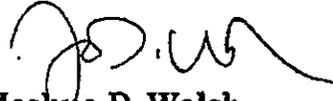
¹ JMI's recent protest is attached to this letter for the CLB's ease of reference.

March 27, 2023

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The CLB has a strong history of zealously protecting the public from unlicensed contractors. While that duty is important, JMI understands that the CLB also considers the wider effects of its decisions. JMI looks forward to the CLB's further action on its complaint, and we continue to stand ready to assist the CLB as its investigation into our client's complaint draws to a conclusion.

Sincerely,



Joshua D. Walsh

Enclosure

EXHIBIT A

RAZZANO WALSH & TORRES, P.C.

www.rwtguam.com

Sender's Direct E-Mail:
jrazzano@rwtguam.com

March 21, 2023

VIA HAND DELIVERY

John M. Quinata
Executive Director
Guam International Airport Authority
355 Chalan Pasaheru B224-A
Tamuning, Guam 96913

TIME: 9:15 AM
RECD BY: [Signature]

***Re: Procurement Protest Guam International Airport Authority Emergency
Procurement regarding RFP-005-FY21***

Dear Mr. Quinata:

Our office continues to represent Johndel International, Inc. dba. JMI-Edison ("JMI"). The Guam International Airport Authority ("GIAA") issued Request for Proposals GIAA RFP-005-FY21 on July 20, 2021 ("RFP"). On August 18, 2021, two offerors, JMI and "Menzies Aviation" ("Menzies") submitted proposals in response to the request. JMI brought a procurement protest and asserted that the selection of Menzies for possible award violated procurement law, because Menzies was nonresponsive to the RFP by failing to have and provide necessary licensing from the Guam Contractor's Licensing Board, ("CLB") and further, could not responsibly perform the work of the RFP without such licensing. A stay of procurement was issued that remains in place until final resolution of the protest. JMI's protest was denied by GIAA, and JMI appealed GIAA's decision to the Office of Public Accountability. The matter is now before the Superior Court of Guam for review, and the stay of procurement remains in place.

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.

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Executive Director
Guam International Airport Authority
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March 21, 2023

On March 16, 2023, the CLB 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...”¹ It has become clear that Menzies cannot continue to perform the work contemplated by the RFP, or its subsequent emergency iterations, for the airport.

These facts and legal realities, the impending continued award under the emergency procurement regime to Menzies, and the requirement that JMI bring these reasons for its aggrievement under the procurement law to GIAA’s attention in a timely manner compel us to lodge this protest with your agency.

Protest Grounds

To avoid any doubt, the grounds for JMI’s protest are as follows:

1. **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.² 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

¹ The Attorney General Opinion released by the CLB is attached to this protest letter for your ease of reference as **Attachment A**.

² GIAA’s RFP explains that it “will not consider for award any proposal submitted by an Offeror who has not complied with the Guam Licensing Law.” RFP General Terms and Condition, §14, *See, also*, RFP General Terms and Condition, §11 (“It is the policy of GIAA to award proposals to Offerors duly authorized and licensed to conduct business in Guam.”)

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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).

2. 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. 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).

More, it is not clear that the government has undertaken the steps necessary to trigger the emergency procurement regulations for this new period of performance. It is also unclear what Governor emergency executive order is allowing for the actions being taken by GIAA *vis a vis* the RFP, and what approvals her office has provided. It also remains unclear if the certified determination undergirding the supposed emergency has been given to the Governor and Legislature's Speaker as required by the law.

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.

This would require more than simply blessing continued performance at the airport by an unlicensed foreign contractor. The record, however, does not indicate that GIAA has taken any 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. The law allows for multiple pathways for GIAA to take to secure pursuant to the procurement code the services it needs during the pendency of JMI's original protest. An unthinking recurring contract issued without competition to an unlicensed

John M. Quinata
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contractor is not one of them.

Remedy Requested

Given the inability of Menzies to responsibly or legally perform work for the airport contemplated by the RFP, the GIAA should immediately adhere to the procurement code's requirement of issuing a planned procurement seeking licensed services. To that end, GIAA should do the following:

1. Immediately inform Menzies that Menzies will not be allowed to perform further work for the airport after a grace period ending on May 14, 2023;
2. Determine that JMI should begin to, on an emergency basis following the orderly transition of Menzies out of the airport, perform work for the airport contemplated by the RFP on May 15, 2023;
3. Immediately begin discussions with JMI regarding commencing services for the airport as contemplated under the RFP, and undertaking such action necessary to secure such performance; and
4. Make a final determination that the only responsible and responsive contractor for the RFP was JMI, and move forward with finalizing a contract with JMI under the RFP.

Stay of Procurement

This is a pre-award procurement protest of the March 15, 2023, emergency procurement related to the scope of services outlined in GIAA RFP-005- FY21. As such, this protest serves as a statutory trigger for an Automatic Stay regarding the continued procurement of the IFB.

Sunshine Act Record Request

In addition to the instant protest, JMI also requests, pursuant to the Guam Sunshine Act, PL 25-06 and 5 G.C.A. § 10101, *et seq.* copies of the following documents:

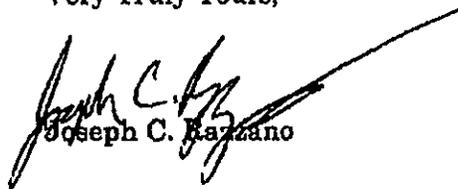
1. The Governor's emergency declaration used to justify the emergency procurement contemplated by the March 15, 2023, GIAA meeting notice;
2. The certified determination of emergency relied upon by GIAA to justify

John M. Quinata
Executive Director
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the emergency procurement contemplated by the March 15, 2023, GIAA meeting notice;

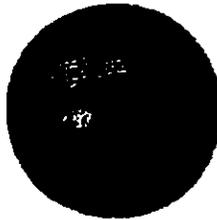
3. Record(s) of transmission of the certified determination of emergency to the Office of the Governor and the Office of the Speaker of the Guam legislature; and
4. The Governor's written authorization for the emergency procurement. contemplated by the March 15, 2023, GIAA meeting notice.

Very Truly Yours,

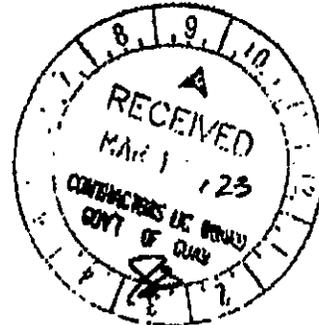


Joseph C. Razzano

Attachment A



March 14, 2023



Mr. Ciriaco C. Sanchez, Jr.
Executive Director
Contractors License Board
542 N Marine Corps Drive
Tamuning, Guam 96913

Subject: JMI-Edison Administrative Complaint re: Aircraft Service International Group, Inc. dba Menzies Aviation, CLB Case No. 2021-09-04 OAG PCF No. 23-0026

The purpose of this legal opinion is to address the request for legal opinion regarding investigative procedures conducted by the Contractors License Board ("CLB") with respect to the administrative Consumer Complaint filed by JMI-Edison in order to determine whether the investigation was conducted according to law.

Background.

Beginning approximately August 2015, the baggage handling and conveyance system at the Guam Airport Authority (GIAA) has been managed by Aircraft Service International Group, Inc. ("ASIG") dba Menzies Aviation. Menzies is a global corporation that provides airport and airline services around the world, including baggage handling, ground fueling, and air cargo services.

Menzies has been authorized to transact business in Guam as a foreign corporation since March 11, 2015.¹ Previously, however, between June 29, 2008 and June 30, 2010, its parent company, ASIG, held a contractor's license which has never been renewed.

On July 20, 2021, GIAA issued a Request for Proposal ("RFP") for the baggage handling system.² Two offerors responded to the RFP: (1) Menzies; and (2) Jhndel International dba JMI-Edison.

¹ DRT CERTIFICATE OF AUTHORIZATION to Aircraft Service International Inc., Registration No. F-2459 issued March 11, 2015; JMI Consumer Complaint to CLB at Exhibit 1.

Office of the Attorney General
Douglas B. Moylan · Attorney General of Guam

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"Guam's Toughest Law Enforcers"

On August 26, 2021, GIAA selected Menzies as the highest ranked offeror. On September 21, 2021, and before the contract could be awarded,² JMI filed a procurement protest with GIAA over the selection of Menzies on the grounds that Menzies was not qualified because it did not hold a valid contractor's license.⁴ On the same day, JMI also filed a written complaint with the CLB reporting Menzies' alleged unlicensed activities.⁵

On September 30, 2021, JMI's procurement protest was denied by GIAA.⁶ The following week on October 8, 2021, JMI appealed the GIAA's denial to the Office of Public Accountability (OPA).⁷

With respect to JMI's Consumer Complaint filed with the CLB, on December 22, 2021, the former CLB Executive Director issued a written "*Findings & Decision*" to JMI which confirmed that Menzies was not a licensed contractor and that a license was necessary in order to do the work on the GIAA baggage handling system.

However, the Findings & Decision was not approved by the CLB Board of Directors prior to its release by the former Executive Director. At a Special Meeting held on March 1, 2022, the Board determined that the Findings & Decision exceeded the former Director's authority and ordered that it be rescinded.⁸

In the meantime, the OPA dismissed JMI's appeal over GIAA's denial of its procurement protest.⁹ On February 10, 2022, JMI filed a complaint with the Superior Court of Guam seeking judicial review of the OPA's dismissal.¹⁰ That case is ongoing.

² GIAA RFP No. 005-FY21 *Management & Infrastructure Support Services to GIAA's Baggage Conveyance Systems*.

³ Pursuant to 5 GCA § 5425(g), the contract award to Menzies has been automatically stayed pending final resolution of JMI's protest.

⁴ *JMI-Edison v. Guam International Airport Authority*, Case No. OPA-PA-21-010, NOTICE OF APPEAL at Exhibit G.

⁵ CLB CONSUMER COMPLAINT No. 2021-09-04 (filed Sept. 21, 2021).

⁶ OPA-PA-21-010, NOTICE OF APPEAL at Exhibit H.

⁷ OPA-PA-21-010, NOTICE OF APPEAL.

⁸ 36th Guam Legislature Messages & Communications Doc. No. 36GL-22-1761, CLB Minutes of March 1, 2022 at pp. 2-4.

⁹ OPA-PA-21-010, DECISION AND ORDER (Feb. 3, 2022).

¹⁰ *JMI-Edison v. OPA, GIAA, et al.*, VERIFIED COMPLAINT, CV0095-22 (Super. Ct. Guam Feb. 10, 2022).

Questions Presented By Jmi To The Cib & Short Answers.

It is undisputed by all parties that Menzies is not a licensed (*unlicensed*) contractor in Guam, although its parent company ASIG once held a C-13 Electrical Contractor license which expired in 2010. At the present time, however, neither Menzies nor ASIG hold a Guam contractor's license of any classification.

The CLB has requested of this Office its legal opinion as to the following:

- (1) **Is Menzies required to have a contractor's license in order to do the work at GIAA involving the management and support of the airport's baggage handling and conveyance system?**
- (2) **If yes, what type of contractor's license is Menzies required to have?**

In response to JMI's complaint, and pursuant to its authority under 21 GCA § 70109, the CLB conducted an investigation. Based on the facts, the CLB investigators have concluded that the work being done by Menzies on the GIAA baggage handling system, and which is sought by GIAA RFP No. 005-FY21, requires a ***Specialty Contractor's License in the C-13 Electrical Contractor sub-classification***. The conclusion of the investigators is set forth in a written Investigation Report that is awaiting the decision of the CLB Board of Directors.

Review of the CLB Investigation Report.

1. Overview of the CLB.

"The CLB is an administrative agency [of the Government of Guam] empowered to oversee contractor licensing and behavior and [to] promulgate Rules and Regulations to execute this power."¹¹ By legislative mandate, the purpose of the Rules and Regulations "is the protection of the general public."¹²

For purposes of coming within the CLB's jurisdiction, a "*contractor*" is defined as any person who undertakes to do construction or repair work for a fee.¹³ With the exception of

¹¹ *Id.*, CV0095-22 DECISION & ORDER DENYING GIAA MOTION TO DISMISS at p. 7.

¹² 21 GCA § 70103(b) (The CLB shall "[m]ake, amend or repeal such rules and regulations as it may deem proper to fully effectuate this Chapter and carry out the purpose thereof, *which purpose is the protection of the general public.*"); 25 GARR §12101(b).

¹³ 21 GCA § 70100(b) ("*Contractor* means any person who undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project development or improvement or do any part thereof, including the erection of scaffolding or other structure of works in connection therewith for another person for a fee.>").

projects for less than \$2,500,¹⁴ all contractors are required to obtain and maintain a license appropriate to the classification of work being performed.¹⁵

The law expressly authorizes the CLB to oversee contractors and to "make licensing determinations, investigate compliance with its Rules and Regulations, and issue citations and cease work orders."¹⁶

2. The CLB's Investigation Process.

When handling any consumer complaint, the CLB is required to follow the procedures set forth in the Administrative Adjudication Law (AAL), Title 5 GCA Chapter 9.¹⁷ To this end, the CLB has adopted a Standard Operating Procedure (SOP).¹⁸

As shown below, the SOP requires service of a Notice to Appear before the CLB Investigation Unit in order to allow a party to personally respond to the complaint. It also requires that if a jobsite visit is deemed necessary, a time and date will be scheduled.

If no violations are found after the investigation is completed, then the case is closed. If a violation is found, then the CLB Board of Directors may impose disciplinary action.

¹⁴ 21 GCA § 70101(d) (CLB law does not apply to "[a]ny project or operation for which the aggregate contract price for labor, materials and all other items is less than Two Thousand Five Hundred Dollars (\$2,500).").

¹⁵ 21 GCA § 70108(a) ("No person within the purview of this Chapter shall act, or assume to act, or advertise, as a general engineering contractor, a general building contractor or a specialty contractor without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractors License Board (CLB)."). See also, 21 GCA § 70106 (Classification).

¹⁶ *Supra*, CVG095-22 DECISION & ORDER at 7; see also 21 GCA § 70109.

¹⁷ 5 GCA § 9200 ("The procedure of any agency shall be conducted pursuant to the provisions of this Chapter in any proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after an agency hearing."). See also, *DCK Pacific v. CLB*, 2010 Guam 16 ¶ 9 (the AAL governs hearing and review procedures according to the contractors licensing law).

¹⁸ http://clb.guam.gov/wp-content/uploads/2018/05/CLB-Standard-Operating-Procedures_February-2019.pdf



CONTRACTORS LICENSE BOARD

Instituhon Makikansabayang Kontraktor
342 North Alarico Corp Drive A, Tapaning, Cebu 6011
649-2211, 649-9670, 649-2465 649-2210(Fax) Website: www.clb.gov.ph



LOURDEN A. LEON GUERRERO
GOVERNOR

CECIL "Bud" L. ORANI
EXECUTIVE DIRECTOR

JOSHUA S. TEKORIO
LIEUTENANT GOVERNOR

STANDARD OPERATING PROCEDURES

INVESTIGATION SECTION:

Application for License

1. Impose investigation on every applicant, new/additional classification by:
 - a.) Verifying each certifier on both experience and character.
 - b.) An interview must be conducted to assure that the applicant is qualified for the classification he/she is applying for.
 - c.) Applicant must know how to read the blueprint, specifications and contract documents.

Consumer Complaints:

1. Receive stamped copy of complaints filed.
2. Log in complaint and assign case number.
3. Forward complaint to Supervisor/Director who will assign an Investigator.
4. OPEN a file.
5. The Investigator assigned will examine alleged violation(s).
6. The Investigator will send a Notice to Appear (NTA) to the contractor.
7. If job site visit is necessary, the Investigator will advise the contractor & the consumer within ten (10) working days of the scheduled time & date.
8. If the Investigator concludes that the allegations have no merit, the consumer and contractor will be notified in writing (Findings & Recommendation) and the case is closed.
9. Notice to Correct: If there are any violations to the Rules & Regulations, a Citation will be issued to the contractor stating the nature of the violation & the penalty. The contractor can either pay the penalty & correct the violation or can contest the Citation.
10. Notice of Hearing: If the contractor decides to make an appeal, a formal "Notice of Hearing" before the Contractors License Board of Directors will be scheduled. The consumer will be requested to appear at the hearing to testify to the facts of the case.
11. Decision & Order: At the conclusion of the hearing the Board of Directors will make a decision regarding the alleged violation(s) and may impose disciplinary action (Suspension, Revocation or Refusal to renew the License (21 GCA Chapter 70 §70116).

CLB STANDARD OPERATING PROCEDURES (INVESTIGATION SECTION)

In JMI's Consumer Complaint Case No. 2021-09-04, the following timeline of events in accordance with the SOP were documented by the CLB:

2021 September 21	JMI files Consumer Complaint against Menzies.
2021 October 07	Notice to Appear on October 14, 2021, for a meeting with CLB Investigative Unit is issued to Menzies.
2021 November 16	Meeting with CLB Investigative Unit held (rescheduled from 10/14/21 at request of Menzies' legal counsel).
2021 November 19	Menzies files a Written Statement responding to the Notice to Appear and the allegations made by JMI in its Consumer Complaint.
2021 December 8	JMI files a written reply to Menzies' Statement.
2021 December 21	Former CLB Executive Director issues a Findings & Decision that the scope of work at GIAA requires Menzies to have a contractor's license.
2022 March 1	The CLB Board rescinds the Findings & Decision dated 12/21/2021 for being issued without authority.
2022 September 23	CLB Investigators conduct a field/jobsite inspection at GIAA.
2022 September 26	CLB written Investigation Report is completed.

3. The CLB's Findings and Conclusion.

The CLB's Investigation Report documents that there were several obstacles to the field/jobsite inspection conducted at GIAA on September 23, 2022.

In one instance, the Menzies electrician would not permit the CLB to look at the troubleshooting log for the baggage handling system without prior approval "from the higher ups." Although CLB investigators were able to photograph the electrical panel boxes, they were not able to access and observe the electrical panels that power part of the baggage conveyor system because of "passcode problems" with the security door.

Nevertheless, the investigators were able to examine the baggage conveyor system and take pictures of the system's conveyors and motors. They noted that the system is "composed of hundreds of 480 volt electric motors, motor control panels, electronic sensors driving thousands of feet of conveyor belts inside the airport facility."

Based on the inspection, together with information received from Menzies at the Notice to Appear meeting in November 2021 and in Menzies' Written Statement, the CLB found that Menzies is a "contractor" as defined by 21 GCA § 70100(b) because it is doing alteration and repair work on the GIAA baggage handling system for a fee.¹⁹

This work is described in Attachment 1 (Preliminary Scope of Services) to GIAA RFP No. 005-FY21 which is excerpted below. The services sought to be rendered by the RFP and expected to be performed by Menzies includes among other things, preventative maintenance services and repairs, compliance with Federal and Local regulatory codes, and the staffing of certified technical personnel with "extensive knowledge to mechanical aspects":

¹⁹ 21 GCA § 70100(b) ("*Contractor* means any person who undertakes to construct, *alter, repair, add to, subtract from, improve, move, wreck or demolish* any building, highway, road, railroad, excavation or *other structure, project development or improvement or do any part thereof, including the erection of scaffolding or other structure of works in connection therewith for another person for a fee.*").

GIAA RFP No. 005-FY21 at Attachment No. 1, pp. 3-4 (Preliminary Scope of

B. The Support Services Program must:

1. Be sufficiently staffed with trained or certified technical personnel.
2. Include complete inspection and the scheduled preventive maintenance services to be provided. Include the relevant manufacturer's schedule of recommended preventative and regular maintenance, if any. The frequency of the inspection and the maintenance service shall be consistent with the requirements of the equipment, or it shall be established so the reliability and proper operation characteristics of the equipment are not degraded.
3. Include handling of incidental servicing, minor repairs and emergency service of equipment. Services shall include, but not be limited to, the provision of qualified labor; supervision, transportation, establishment of maintenance records, all parts, tools, equipment and cleaning.
4. Must have good recording system. Maintenance records shall include service date; work performed, spare parts used, identification of technical personnel and recommendations.

PRELIMINARY SCOPE OF SERVICES

PAGE 8 of 8

MANAGEMENT & INFRASTRUCTURE SUPPORT SERVICES
TO GIAA'S BAGGAGE CONVEYANCE SYSTEMS

RFP No. 005-FY21

5. All work to be performed shall be patterned and conform to any required/applicable then-existing Federal and Local regulations and/or codes.

6. The support services program schedules shall minimize, to the extent practicable, any impacts to the Airport's operational schedule and security requirements (i.e. flight schedules, peak and non-peak hours, and security access to secured areas).

C. Quality Control Program:

1. The Proposer shall have an effective quality control program.
2. The Q.C. Program shall ensure all of the measures and elements of an inspection and / or test is performed in accordance with the requirements of the applicable Manufacturers Specifications.

D. Safety Program must include:

1. Compliance with the Occupational Safety and Health Act of 1970 and/or any other Federal and Local Department of Labor, Safety and Health Regulations.
2. Handling and regulations pertaining to Material Safety Data Sheets (MSDS)

E. In addition to the above or besides the requirement of personnel with extensive knowledge to mechanical aspects, Contractor should also hire electronic technician and electricians who has sufficient experience in power, controls, and PLC software.

Based on the Scope of Services sought by the RFP and the observations made of the baggage handling system operations during the field/jobsite inspection at GIAA, the CLB concluded that the repair and maintenance work is of the type that falls within the **Specialty Contractor classification** as defined by 21 GCA §70106(d):

21 GCA §70106. Classification. ****

(d) A *Specialty Contractor* is a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

See also, 25 GARR § 12016(a)(3).

The CLB additionally concluded that within the Specialty Contractor classification, the work further falls under the **C-13 Electrical Contractor subclassification**:

25 GARR § 12016(a)(4). Definitions of Sub-Classifications. ****

(C-13) *Electrical Contractor*: An *Electrical Contractor* is a specialty contractor whose contracting business is the execution of contracts requiring the ability to **place, install, erect or connect any electrical wires, fixtures, appliances, apparatus, raceways or conduits and lines which transmit, transform or utilize electrical energy**. This classification also includes the work of the C19 Fire and Burglar Alarm Contractor.

CLB Enforcement Responsibility.

Guam law under Chapter 70, of Title 21 Guam Code Annotated, provides that as part of its administrative enforcement responsibilities that the CLB:

§ 70109.1. Investigation Citation Authority.

(a) In addition to any other remedy available, the investigator of the Contractors License Board may issue citations to acting contractors, licensed or unlicensed, in violation of the provisions of this Chapter and rules promulgated pursuant to the requirements of the Administrative Adjudication Law.

(b) Each citation *shall* be in writing and *shall* describe the basis of the citation, including the statutory provisions alleged to have been violated. The citation *shall* also contain an order to cease and desist from the violation, and an assessment of civil penalties of *no less than* Two Hundred Dollars (\$200.00), but *not to exceed* fifty percent (50%) of the value of the project.

(c) Citations for unlicensed contractors shall each contain an order to cease and desist from the violation, and an assessment of civil penalties of

fifty percent (50%) of the value of the project – of which no less than fifty percent (50%) shall be used to compensate affected consumers. Payments shall be made in accordance with rules promulgated by the CLB in accordance with the requirements of the Administrative Adjudication Law.

(d) Recipients of contractual work shall be notified of each violation in a timely manner. (Emphasis added).

21 G.C.A. § 70109.1. It appears clear that the CLB's Investigator's determination was well founded that a violation of Guam law occurred. It further appears that the violation was knowing, willful and intentional given the fact that ASIG was previously licensed and how it seemingly interfered with CLB's investigation. That violation resulted in injury to a properly licensed contractor on Guam that has previously followed the statutory and regulatory requirements set forth by the legislature. Moreover, the unlicensed contractor is by virtue of not applying for and obtaining a license required under Guam law, is conducting business operations that endanger the public's safety at the Guam Airport. CLB should therefore immediately begin enforcement proceedings to stop the injury. Section 70109.1(c) sets forth the following mandatory CLB remedies once a citation issues (in addition to other remedies):

1. issue cease and desist order from conducting business in the unlicensed activity; and
2. assess a penalty of Fifty Percent (50%) of the project.

21 G.C.A. § 70109.1(c). Without enforcement against willful violations, not only will ASIG *dba* Menzies Aviation continue to operate in derogation of Guam's law thereby endangering the public, but such allowance will make meaningless the statutory purposes and existence for the CLB.

Summary.

The CLB exists to regulate the construction industry and to safeguard consumers in matters related to construction. By law, it is authorized to conduct investigations into complaints about unlicensed contractors and to take appropriate disciplinary action which may include fines, injunctions, or cease & desist orders.²⁰

Upon receiving the Consumer Complaint filed by JMI, the CLB followed its Standard Operating Procedures. This included:

- Issuing a Notice to Appear and personally meeting with Menzies and its legal counsel.
- Permitting Menzies to submit a Written Statement responding to the allegations made by JMI.

²⁰ 21 GCA § 70109.1 (citation, civil penalty, cease & desist), § 70109.3 (cease work order), § 70121 (fine equaling 50% of project value), § 70122 (injunction); 25 GARR § 12101(e) (injunction).

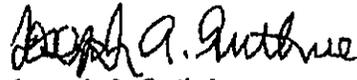
- Permitting JMI to submit a reply to the Written Statement filed by Menzies.
- Conducting a field/jobsite inspection at GIAA to observe and photograph the baggage handling and conveyance system; and
- Preparing a written Investigation Report of its findings for consideration by the CLB Board of Directors.

As an administrative body of the government of Guam, the CLB "has primary jurisdiction to make determinations of matters within its authority, and such decisions are entitled to deference unless contrary to law or unsupported by substantial evidence." *Govt. of Guam v. Gutierrez ex rel Torres*, 2015 Guam 8 ¶ 16, citing the AAL at 5 GCA §§ 9239-9240.

The ongoing Superior Court of Guam proceedings do not affect the ability and responsibility of the CLB to proceed with its administrative duties in enforcing all of Guam's laws under its jurisdiction. Protection of the public against unlicensed contractors remains paramount in the CLB's mandate and responsibilities.

In this matter, and absent the presentation of anything to the contrary, it appears that the CLB followed all applicable administrative due process requirements and that substantial evidence exists to support its conclusion that under Guam law, the scope of work described in GIAA RFP No. 005-FY21 requires that the selected offeror hold a Specialty Contractor license from the CLB in the C-13 Electrical Contractor sub-classification. Further, that it appears appropriate that the CLB begin enforcement proceedings to protect the public against this unlicensed contractor, and to assess fines as required by Guam law. *Supra*.

Respectfully,



Joseph A. Guthrie
Chief Deputy Attorney General

**EXHIBIT “B”
CLB CITATION**

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CONTRACTORS LICENSE BOARD
GOVERNMENT OF GUAM
542 NORTH MARINE CORPS DRIVE - A
TAMUNING, GUAM 96913
TEL. NOS. (671) 649-2211/9676 FAX NO. (671) 649-2210

BEFORE THE GUAM CONTRACTORS LICENSE BOARD

**IN THE MATTER OF THE GUAM
CONTRACTORS LICENSE
BOARD FOR VIOLATION AND
PENALTY ASSESSED AGAINST:**

CLB CASE NO. 2021-09-04

CITATION

**AIRCRAFT SERVICES GROUP (ASIG)
DBA: MENZIES AVIATION,**

Respondent.

**c/o Guam Integrated Air Cargo Facility
Ste 227, 770 East Sunset Boulevard
Tamuning, Guam 96913**

TO AIRCRAFT SERVICES GROUP (ASIG) DBA: MENZIES AVIATION:

1. After an investigation, and pursuant to the 21 GCA § 70109.1, the Guam Contractors License Board (CLB) issues this Citation which serves as your notice of the violation(s) of Guam law found and referenced herein. You are required to pay the penalty assessed and correct the violation referred to in this Citation unless within fifteen (15) days from receipt of this Citation, you notify the CLB in writing that you intend to contest and appeal the Citation and the penalty imposed. *See*, 5 GCA §§ 9205-9210.

2. Pursuant to 21 GCA § 9210 and § 9211, should you desire to make such an appeal, and unless a written request for an administrative hearing signed by or on your behalf is delivered to the CLB without fifteen (15) calendar days after receipt of this Citation, the CLB may proceed to enforce the penalty stated herein without a hearing.

3. The request for hearing may be made by delivering the enclosed form entitled "*Notice of Defense*" or by delivering or mailing a notice of defense as provided in 21 GCA § 9205 to the CLB. Failure to file the Notice of Defense form within fifteen (15) days after receipt of this Citation shall constitute a waiver of right to a hearing.

4. If you file the Notice of Defense form within fifteen (15) days after receipt of this Citation and if you request a hearing, then an administrative hearing will be scheduled within thirty (30) days, at which time you may present any rebuttal evidence to the specified violation(s). Should a hearing be necessary, you will be advised in writing, of the scheduled date, time and place of such hearing. Should you fail to attend the hearing as scheduled, all penalties will stand as assessed. Should you fail to pay the penalties assessed, the CLB may initiate collection proceedings and pursue further legal action with the Office of the Attorney General.

INVESTIGATION DETAILS AND BASIS OF CITATION

5. Guam law authorizes the CLB to investigate, classify and qualify applicants for contractor's licenses and to investigate for compliance with the rules and regulations of the Board and the provisions of Title 21 GCA Chapter 70. [21 GCA § 70109].

6. Investigation Date: September 22, 2021

7. Investigator Names: Marcus Finona and Nida Bailey

8. Investigation Location: Guam International Airport Authority (GIAA)

9. Investigation Description: On September 21, 2021, a consumer complaint was filed with the CLB by JMI Edison/Ed Ilaio (JMI) against Aircraft Services Group (ASIG) dba: Menzies Aviation (Menzies). In its complaint, JMI alleged that Menzies has been performing maintenance and repair work on the GIAA baggage conveyance system without a proper contractor's license since August 2015. JMI further alleged that without a contractor's license, Menzies is not qualified to respond to GIAA Request for Proposals No. GIAA-RFP-005-FY21 for Management and Infrastructure Support Services for the airport baggage conveyance systems. Upon receipt of JMI's complaint, the CLB Investigation Unit initiated their investigation.

10. Investigation Timeline:

- September 21, 2021 JMI files Consumer Complaint against Menzies. Case assigned to Investigator Marcus Finona.
- October 7, 2021 Notice to Appear Investigation Unit on Thursday, October 14, 2021 is issued to Menzies.
- October 13, 2021 Legal counsel for Menzies requests to reschedule the meeting with the CLB Investigation Unit. Meeting is rescheduled to November 16, 2021.
- November 16, 2021 CLB Investigation Unit meets with legal counsel of Menzies.
- November 19, 2021 Menzies files a Written Statement responding to the Notice to Appear and the allegations made by JMI in its Consumer Complaint.
- December 8, 2021 JMI files a written response to Menzies' Written Statement.
- December 22, 2021 The former CLB Executive Director issues a Findings & Decision that Menzies is in violation of 21 GCA § 70108(a) for failing to obtain a specialty contractor license in categories C-13, C-15, C-25, and C-68.

- March 1, 2022 The CLB Board rescinds the Findings & Decision issued on December 22, 2021.
- September 23, 2022 CLB investigators conduct a field/jobsite inspection at GIAA.
- September 26, 2022 CLB completes its investigation and investigation report.
- March 14, 2023 Chief Deputy Attorney General Joseph A. Guthrie sends legal opinion to CLB Executive Director Ciriaco C. Sanchez, Jr.

DESCRIPTION OF VIOLATION

11. **Violation No. 1 of 1:** Menzies is required to hold a valid Specialty Contractor's License in the C-13 Electrical Contractor subclassification from the Guam Contractors License Board in order to do the work that it currently performs at GIAA on the airport baggage conveyance systems. Further, the scope of work and services described in GIAA RFP No. 005-FY21 is of the type that requires offerors responding to the RFP to hold a Specialty Contractor license from the CLB in the C-13 Electrical Contractor sub-classification.

12. Menzies's failure to have a valid Specialty Contractor's License in the C-13 Electrical Contractor subclassification from the Guam Contractors License Board is a violation of the following Guam laws and CLB Regulations:

21 GCA §70106. Classification.

(a) For the purpose of classification, the contracting business includes any or all of the following branches: (1) General Engineering Contracting; (2) General Building Contracting; (3) Specialty Contracting; and (4) Responsible Management Employee (R.M.E.).

(d) A *Specialty Contractor* is a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

21 GCA §70108.

(a) No person within the purview of this Chapter shall act, or assume to act, or advertise, as a general engineering contractor, a general building contractor or specialty contractor without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractors License Board (CLB).

25 GARR §12106.

(a) All Contractors Classified. All persons heretofore or hereinafter licensed under these rules and regulations will be classified by the Board into one or more classifications and/or sub-classifications as follows:

GENERAL ENGINEERING CONTRACTOR "A"
GENERAL BUILDING CONTRACTOR "B"
SPECIALTY CONTRACTOR "C"

(3) **SPECIALTY CONTRACTOR:** This classification shall not prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work is less than thirty five percent (35%) and supplemental to the performance of work in the craft for which the specialty contractor is licensed. . .

(4) **Definitions of Sub-Classifications:** ****

(C-13) **Electrical Contractor:** An Electrical Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to place, install, erect or connect any electrical wires, fixtures, appliances, apparatus, raceways or conduits and lines which transmit, transform or utilize electrical energy. This classification also includes the work of the C19 Fire and Burglar Alarm Contractor.

PENALTY ASSESSMENT AND ORDER FOR VIOLATION

13. In addition to any other remedy available, the investigator of the CLB may issue citations to acting contractors, licensed or unlicensed, in violation of the provisions of Title 21 Chapter 70 and the CLB Rules & Regulations. [21 GCA § 70109.1(a)].

14. The citation “*shall* also contain an order to cease and desist from the violation, and an assessment of civil penalties of no less than Two Hundred Dollars (\$200.00), but *not to exceed* fifty percent (50%) of the value of the project.” [21 GCA § 70109.1(b); *also*, § 70109.2 (investigator may issue cease work order; § 70109.3 (executive director may issue cease work order))].

15. Citations for *unlicensed* contractors “*shall* each contain an order to cease and desist from the violation, and an assessment of civil penalties of fifty percent (50%) of the value of the project – of which *no less than* fifty percent (50%) *shall* be used to compensate affected consumers.” [21 GCA § 70109.1(c)].

16. Any person who violates or omits to comply with any of the provisions of Title 21 GCA Chapter 70 “*shall* be fined an amount of *no less than* Two Hundred Dollars (\$200) but *not to exceed* fifty percent (50%) of the value of the project.” [21 GCA § 70121].

17. Pursuant to authorities cited herein and the findings of the Board of Directors at a public meeting duly noticed and held on March 28, 2023, the Contractors License Board now hereby issues the instant citation to ASIG dba: MENZIES and **ORDERS** as follows:

18. ASIG dba: Menzies is **ORDERED TO CEASE & DESIST** from performing any work in the C-13 Electrical Contractor subclassification until a valid and appropriate Specialty Contractor’s license is obtained from the CLB.

19. ASIG dba: Menzies is **FURTHERED ORDERED TO PAY** a penalty of Three Hundred Thousand Dollars (\$300,000.00) to the CLB within fifteen (15) days of receipt of this

Citation, plus an additional penalty of One Thousand Dollars \$1,000.00 per day until a valid Specialty Contractor's license in the C-13 Electrical Contractor subclassification is obtained from the CLB.

20. Should you, ASIG dba: Menzies, fail to fully comply with this citation, this case shall be forwarded to the Office of the Attorney General's Office for further legal action.

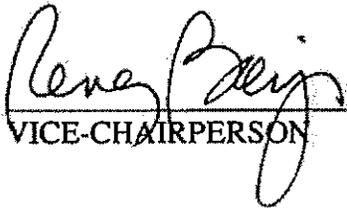
SO ORDERED this 4th day of April, 2023.

BERNARD S. BENAVENTE

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

CHAIRPERSON

RENA BORJA



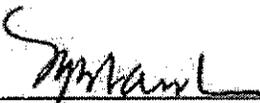
VICE-CHAIRPERSON

VINCENT ARRIOLA



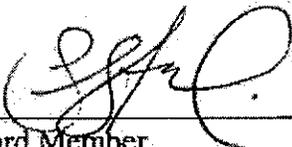
Department of Public Works
Ex-officio

MICHELE SANTOS



Department of Revenue & Taxation
Ex-officio

SELINA ASHLAND



Board Member

MATTHEW CRUZ

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Board Member

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**EXHIBIT “C”
MENZIES NOTICE OF
DEFENSE**



CONTRACTORS LICENSE BOARD
GOVERNMENT OF GUAM
542 NORTH MARINE CORPS DRIVE – A
TAMUNING, GUAM 96913
TEL. NOS. (671) 649-2211/9676 FAX NO. (671) 649-2210

BEFORE THE GUAM CONTRACTORS LICENSE BOARD

IN THE MATTER OF THE GUAM)
CONTRACTORS LICENSE)
BOARD FOR VIOLATION AND)
PENALTY ASSESSED AGAINST:)

CLB CASE NO. 2021-09-04

NOTICE OF DEFENSE

AIRCRAFT SERVICES GROUP (ASIG))
DBA: MENZIES AVIATION,)

Respondent.)

c/o Guam Integrated Air Cargo Facility)
Ste 227, 770 East Sunset Boulevard)
Tamuning, Guam 96913)

Pursuant to Title 5, Guam Code Annotated § 9205-§ 9210, you may fill out and return this NOTICE OF DEFENSE to the Chairman, Contractor's License Board, 542 North Marine Corps Drive – A, Tamuning, Guam, 96911, within fifteen (15) days after the attached Citation has been served upon you.

A failure to submit this Notice of Defense within the 15-day period specified shall constitute a waiver of your right to a hearing.

(1) Indicate whether you request a hearing by placing an "X" in the appropriate box:

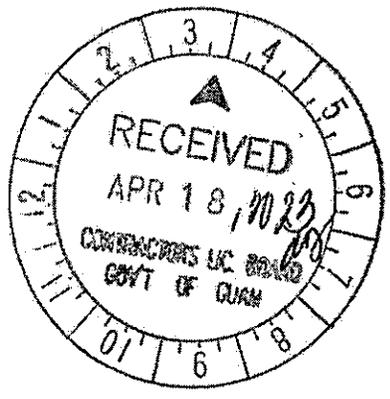
- YES, I do request a hearing.
- NO, I do *not* request for a hearing.

(2) Indicate which of the following objections, if any, you wish to make concerning the accusations against you by placing an "X" in the appropriate box:

- I object to the Citation upon the grounds that it does not state acts or omissions upon which the Contractors License Board may proceed.
- I object to the form of the Citation on the grounds that it is indefinite or uncertain that I cannot identify the transaction or nature of the alleged acts committed to adequately prepare my defense.

(3) Place an "X" in any of the following boxes, if appropriate:

- I admit to the Citation in it's entirely.
- I admit only to the following parts of the Citation:



**CONTRACTORS LICENSE BOARD
GOVERNMENT OF GUAM**
542 NORTH MARINE CORPS DRIVE - A
TAMUNING, GUAM 96913
TEL. NOS. (671) 649-2211/9676 FAX NO. (671) 649-2210

BEFORE THE GUAM CONTRACTORS LICENSE BOARD

**IN THE MATTER OF THE GUAM
CONTRACTORS LICENSE
BOARD FOR VIOLATION AND
PENALTY ASSESSED AGAINST:**

**CLB CASE NO. 2021-09-04
NOTICE OF DEFENSE**

**AIRCRAFT SERVICES GROUP (ASIG)
DBA: MENZIES AVIATION,**

Respondent.

**c/o Guam Integrated Air Cargo Facility
Ste 227, 770 East Sunset Boulevard
Tamuning, Guam 96913**

Pursuant to Title 5, Guam Code Annotated § 9205-§ 9210, you may fill out and return this NOTICE OF DEFENSE to the Chairman, Contractor's License Board, 542 North Marine Corps Drive - A, Tamuning, Guam, 96911, within fifteen (15) days after the attached Citation has been served upon you.

A failure to submit this Notice of Defense within the 15-day period specified shall constitute a waiver of your right to a hearing.

COPY

(1) Indicate whether you request a hearing by placing an "X" in the appropriate box:

- YES, I do request a hearing.
- NO, I do *not* request for a hearing.

(2) Indicate which of the following objections, if any, you wish to make concerning the accusations against you by placing an "X" in the appropriate box:

- I object to the Citation upon the grounds that it does not state acts or omissions upon which the Contractors License Board may proceed.
- I object to the form of the Citation on the grounds that it is indefinite or uncertain that I cannot identify the transaction or nature of the alleged acts committed to adequately prepare my defense.

(3) Place an "X" in any of the following boxes, if appropriate:

- I admit to the Citation in it's entirely.
- I admit only to the following parts of the Citation:

(4) I submit the following new matter by way of defense or as a defense not previously specified:

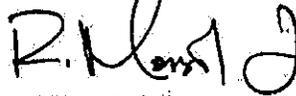
See the attached document.

RESPONDENT:

Aircraft Services International, Inc.
dba Menzies Aviation

Print Name

BLAIR STERLING JOHNSON & MARTINEZ, P.C.



R. Marsil Johnson
Attorneys for Aircraft Services International, Inc.
dba Menzies Aviation

Signature

April 13, 2023

Date

P.O. Box 7418, Tamuning, Guam 96931

Mailing Address

Please direct all correspondence
and service of documents to:

R. Marsil Johnson
238 ARCHBISHOP FLORES ST
STE 1008
HAGATNA, GU 96910

1 R. MARSIL JOHNSON
BLAIR STERLING JOHNSON & MARTINEZ
2 A Professional Corporation
238 Archbishop Flores St. Ste. 1008
3 Hagåtña, Guam 96910-5205
Telephone: (671) 477-7857
4 Facsimile: (671) 472-4290
5 *Attorneys for Aircraft Service International, Inc.*
dba Menzies Aviation

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8 **BEFORE THE GUAM CONTRACTORS LICENSE BOARD**

9	IN THE MATTER OF THE GUAM)	CLB CASE NO. 2021-09-04
	CONTRACTORS LICENSE BOARD FOR)	
10	VIOLATION AND PENALTY ASSESSED)	
	AGAINST:)	
11)	
12	AIRCRAFT SERVICES GROUP (ASIG)	)	AIRCRAFT SERVICE
	DBA MENZIES AVIATION,	)	INTERNATIONAL, INC. DBA
13		)	MENZIES AVIATION's
	Respondent.	)	ATTACHMENT TO ITS NOTICE OF
14		)	DEFENSE
)	
15	c/o Guam Integrated Air Cargo Facility)	
	Ste 227, 770 East Sunset Boulevard)	
16	Tamuning, Guam 96913)	

17 Respondent **AIRCRAFT SERVICE INTERNATIONAL, INC. DBA MENZIES AVIATION**
18 (“Menzies”), does not admit to the violation identified in the Citation issued by the CLB on April
19 4, 2023 (the “Citation”) in the above-captioned Contractor’s License Board (the “CLB”)
20 proceeding and hereby provides these defenses not previously specified.
21

22 **INTRODUCTION**

23 Menzies maintains that a C-13 Electrical Contractor license is not required for it to perform
24 work under RFP-005-FY21 or the Emergency Procurement.

25 Menzies believes it does not need a 13 Electrical Contractor because such licenses are a
26 Specialty Contractor subclassification and in order to fall within the definition of a Specialty
27

1 Contractor, one must perform construction work. Menzies does not perform any construction work
2 and so therefore it is not a Specialty Contractor.

3 Menzies also believes it does not need a C-13 Electrical Contractor license because
4 Menzies performs only repair work involving the installation of finished products, materials,
5 articles, and merchandise which do not become a permanent fixed party of the structure of the A.B.
6 Won Pat International Airport. Pursuant to 21 G.C.A. § 70101(c), the Guam Contractor Law does
7 not apply to a company that installs finished products, materials, articles, or merchandise which
8 are not actually fabricated into and do not become a permanent fixed part of the structure. Menzies
9 work involves the incidental installation and replacement of motors, conveyor belts, and fuses,
10 which are all finished products and they never become a permanent, fixed part of the A.B. Won
11 Pat International Airport.
12

13 Additionally, Menzies takes issue with the fact that the Citation is conclusory in nature,
14 containing no analysis of how the Guam Contractor's Law itself nor the C-13 Electrical Contractor
15 license requirements apply to the work performed by Menzies. No description of the work
16 performed by Menzies is provided in the Citation and no analysis is included in the Citation
17 explaining how the CLB reached the conclusion that Menzies is required to hold a C-13 Electrical
18 Contractor license.
19

20 **I. MENZIES DOES NOT NEED A C-13 SPECIALTY CONTRACTOR LICENSE BECAUSE**
21 **MENZIES IS NOT A SPECIALTY CONTRACTOR BECAUSE IT IS NOT ENGAGED IN**
22 **CONSTRUCTION WORK**

23 **A. THE C-13 ELECTRICAL CONTRACTOR LICENSE IS A SPECIALTY CONTRACTOR**
24 **SUB-CLASSIFICATION.**

25 The description of the C-13 Electrical Contractor license specifically states that a C-13
26 Electrical Contractor is a Specialty Contractor:

27 (C-13) Electrical Contractor: An Electrical Contractor is a specialty contractor
28 whose contracting business is the execution of contracts requiring the ability to
place, install, erect or connect any electrical wires, fixtures, appliances, apparatus,

1 raceways or conduits and lines which transmit, transform or utilize electrical
2 energy. This classification also includes the work of the C-19 Fire and Burglar
Alarm Contractor.

3 25 G.A.R. § 12106(a)(4)(C-13) and 29 G.A.R. § 1421(4)(C-13) (emphasis added). Therefore, to
4 fit within the C-13 Electrical Contractor sub-classification a contractor must first be a Specialty
5 Contractor.

6 **B. TO BE A SPECIALTY CONTRACTOR, A CONTRACTOR MUST BE ENGAGED IN**
7 **CONSTRUCTION WORK.**

8 The Contractors License Law defines a "Specialty Contractor" as "a contractor whose
9 operations as such are **the performance of construction work** requiring special skill **and** whose
10 principal contracting business involves the use of specialized building trades or crafts." 21 G.C.A.
11 § 70106(d) (emphasis added). This type of rule is known as a "conjunctive rule" because it contains
12 an "and" between two requisite elements, meaning that both elements must be met for a contractor
13 to meet the statutory definition of a Specialty Contractor.

14 Thus, for Menzies to be a Specialty Contractor, Menzies' operations must be such that they
15 involve the performance of construction work requiring special skill **and** Menzies' principal
16 business must involve the use of specialized building trades or crafts.

17 Menzies's operations do not involve the performance of construction work at all; therefore,
18 Menzies is not a Specialty Contractor.

19 **C. MENZIES IS ENGAGED IN NO CONSTRUCTION WORK IN THE EMERGENCY**
20 **PROCUREMENT AND NO CONSTRUCTION WORK IS CONTEMPLATED BY RFP-005-**
21 **FY21.**

22 Neither RFP-005-FY21 nor the Emergency Procurement include any construction work
23 within their scopes of work and Menzies has never performed any construction work at GIAA as
24 part of the baggage handling services it provides.

25 The term "construction" is not defined in the Guam's Contractor Law. However, it is
26 defined in Guam's procurement law. The definition found in the procurement law is relevant to
27

1 RFP-005-FY21 and the Emergency Procurement, because they involve contracts with GIAA and
2 both were issued under Guam's procurement law. Under Guam's procurement law, construction
3 involves the process of building, altering, repairing, improving, or demolishing structures,
4 buildings, real property, and improvements thereon. See 5 G.C.A. § 5030(d):

5 (g) Construction means the process of building, altering, repairing, improving, or
6 demolishing any public structure or building, or other public improvements of any
7 kind to any public real property. It does not include the routine operation, routine
8 repair, or routine maintenance of existing structures, buildings, or real property.

9 5 G.C.A. § 5030(d).

10 Neither the work contemplated by RFP-005-FY21 nor the Emergency Procurement
11 qualifies as construction under the definition found at 5 G.C.A. § 5030(d). The term "construction"
12 does not appear anywhere in the 96-page Request for Proposals for RFP-005-FY21. *See* RFP-005-
13 FY21, Preliminary Scope of Services. Similarly, the term "construction" does not appear anywhere
14 in the Emergency Procurement Scope of Services. *See* Agreement No. GIAA-S22-002, Scope of
15 Services. Further, nothing in the text of RFP-005-FY21 or the Emergency Procurement mentions
16 construction or comes close to resembling anything that could be characterized as "construction"
17 under 5 G.C.A. § 5030(d).

18 Even if the repair work performed by Menzies is not construction, because 5 G.C.A. §
19 5030(d) specifically excludes "routine operation, routine repair, or routine maintenance of existing
20 structures, buildings, or real property."

21
22 Even the CLB appeared to understand that neither the RFP-005-FY21 nor the Emergency
23 Procurement involved construction when it voted to issue the Citation on March 28, 2023. When
24 the CLB took up the issue of the Citation, it acted specifically to remove the word "construction"
25 from paragraph 7 of the citation, which addressed the order to cease and desist. Paragraph 7
26 initially stated that Menzies must cease and desist from all construction work. Board Member
27
28

1 Vincent Arriola moved to amend the draft citation to remove the word construction and instead
2 order Menzies to cease and desist only work that fell within the C-13 subclassification. This motion
3 was seconded by Michelle Santos and the CLB voted unanimously to approve the change. *See*
4 *GovGuam Live, GovGuam Live, Guam Contractor's License Board Meeting March 2023,*
5 *YouTube (Mar. 28, 2023), <https://www.youtube.com/live/xYyj5xkW7es?feature=share&t=4913>*
6 *at 1:21:53 to 1:23:04* In so acting, it appears that the CLB did not understand that Specialty
7 Contractor licenses, like the C-13 Electrical Contracting license, are Specialty Contractor licenses
8 and thus must involve construction.
9

10 **D. BECAUSE MENZIES IS NOT ENGAGED IN CONSTRUCTION WORK, MENZIES DOES**
11 **NOT NEED A C-13 ELECTRICAL CONTRACTOR LICENSE AND THE CLB'S**
12 **CITATION IS IMPROPER.**

13 The CLB Citation is completely devoid of any analysis showing how the CLB reached the
14 conclusion that the work Menzies is engaged in requires a C-13 Electrical Contractor license. It
15 does not identify or describe any electrical construction work that is part of RFP-005-FY21 or the
16 Emergency Procurement. Further, the Citation is devoid of any legal analysis showing how
17 Menzies fits within the definition of a Contractor, a Specialty Contractor, or a C-13 Electrical
18 Contractor. Paragraph 12 of the Citation simply makes the conclusory statement that "Menzies'
19 failure to have a valid Special Contractor's License in the C-13 Electrical Contractor
20 subclassification from the Guam Contractor's License Board is a violation of the following Guam
21 law and CLB Regulations." The Citation then goes on to quote several sections of Guam law
22 without explaining how a violation has occurred.
23

24 In contrast to the Citation, the analysis provided above by Menzies shows clearly that C-
25 13 Electrical Contractors are Specialty Contractors. *See* 25 G.A.R. § 12106(a)(4)(C-13) and 29
26 G.A.R. § 1421(4)(C-13) ("An Electrical Contractor is a specialty contractor..."). It also shows that
27 to be a Specialty Contractor, a company must be engaged in the performance of construction work
28

1 requiring special skill and the company's principal contracting business involves the use of
2 specialized building trades or crafts. Because Menzies is not engaged in the performance of
3 construction work under the only definition of the term that exists under Guam law, Menzies is
4 not a Specialty Contractor and thus does not need a C-13 Electrical Contractor license.

5 **II. THE GUAM CONTRACTOR'S LAW DOES NOT APPLY TO THE WORK PERFORMED BY**
6 **MENZIES BECAUSE IT IS SPECIFICALLY EXCLUDED BY 21 G.C.A. § 70106(d)**

7 Even if Menzies fell within the definition of a "specialty contractor" found in 21 G.C.A. §
8 70106(c), no license would be required for the work performed by Menzies at GIAA because that
9 work falls within the exception provided in 21 G.C.A. § 70101(c), which provides that the Guam
10 Contractor Law does not apply to work done to install finished products, materials, articles, or
11 merchandise which are not actually fabricated into and do not become a permanent fixed part of
12 the structure. The full text of the exception is provided here:

13
14 **§ 70101. Exemptions.**

15 This Chapter *shall not* apply to

16 ...

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

21 *See* 21 G.C.A. § 70101(c) (emphasis in original). For ease of reference, this brief will refer to 21
22 G.C.A. § 70101(c) as the "Personal Property Exception."

23 Thus, if anything installed by Menzies in performing the baggage handling contract does
24 not become a permanent part of the fixed structure of the airport, then Menzies is exempt from the
25 requirements of the Guam Contractor's Law, including the requirement of having any type so
26 Specialty Contractor license such as a C-13 Electrical Contracting license.

27 Notably and importantly, neither the OAG opinion letter nor the Citation reference the 21
28 G.C.A. § 70101 at all. The Personal Property Exception nor any other exception is mentioned,
discussed, or analyzed in either document. Neither document explains why the OAG and the CLB

1 never considered this exception even though it clearly applies to the work performed by Menzies
2 under RFP-005-FY21 and the Emergency Procurement.

3 In its procurement appeal before the Office of Public Accountability (the "OPA"), JMI
4 argued that the work contemplated by the RFP requires a contractor's license because "failure of
5 one or more of the numerous motors, to the need for replacement of the thousands of feet of
6 conveyor belts, to the changing of fuses, will require installation or replacement of **components.**"
7 *Omnibus Opposition filed by Johndel International, Inc. dba JMI-Edison, OPA-PA-21-010, p. 12*
8 *of 16 (emphasis added)*¹.

10 Electric motors are finished products, conveyor belts are finished products, and fuses are
11 finished products. These products are parts or elements of a larger whole (the baggage conveyor
12 system). They are not a "fixed part of the structure" of the A.B. Won Pat International Airport. In
13 fact, because they can be removed and replaced, they are not even a fixed part of the baggage
14 conveyor system. Thus, installation of these finished products when the existing components break
15 down or reach the end of their useful life clearly falls within the Personal Property Exception.
16 Since this act of installation and services for the operation of the baggage conveyor system are all
17 that the RFP contemplates, Menzies need not obtain any kind of CLB license, because this work
18 is exempt under the Personal Property Exception.

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

24 Plaintiff argues that because the installations can be removed without causing
25 damage to the property, they are not a "permanent fixed part of the structure" as
defined in Exemption § 70101(c). Defendant does not disagree, but rather argues

26 ¹ The full document is available on the Office of Public Accountability website at the following link:
27 [https://www.opaguam.org/sites/default/files/opa-pa-21-](https://www.opaguam.org/sites/default/files/opa-pa-21-010_omnibus_oppsotion_to_1_interested_party_aircraft_service_inc_dba_mezies_aviations_motion_to_dismiss_and_2_interested_party_menzies_aviations_motion_to_dismiss_motion_for_summary_judgment.pdf)
28 [010_omnibus_oppsotion_to_1_interested_party_aircraft_service_inc_dba_mezies_aviations_motion_to_dismiss_and_2_interested_party_menzies_aviations_motion_to_dismiss_motion_for_summary_judgment.pdf](https://www.opaguam.org/sites/default/files/opa-pa-21-010_omnibus_oppsotion_to_1_interested_party_aircraft_service_inc_dba_mezies_aviations_motion_to_dismiss_and_2_interested_party_menzies_aviations_motion_to_dismiss_motion_for_summary_judgment.pdf)

1 that because the air conditioning system is not a permanent fixed part of the
2 structure, Plaintiff does not have a right to a Mechanic's lien as a matter of law. See
3 *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.

4 *VSSST Co., Ltd. v. UFB Guam Hotel Corp.* CV0552-09 (Super Ct. Guam July 7, 2011). Here,
5 Menzies is not even installing the baggage handling system, it is simply performing incidental
6 repairs to the baggage handling system. Repairs involving pieces that do not become a permanent
7 and fixed part of the structure and which can be removed without causing damage to the structure
8 of the airport.

9
10 Additionally, courts in California have held that the exemption in California law, which is
11 substantially similar to that found in 21 G.C.A. § 70101(c), applies even to the installation of heavy
12 equipment, cabinetry, and large appliances, so long as they do not become a fixed part of the
13 structure. See *Costello v. Campbell*, 184 P.2d 315, 315 (Cal. Dist. Ct. App. 1947) (relating to two
14 cold storage plants on a hatchery and poultry ranch), *E. A. Davis & Co. v. Richards*, 260 P.2d 805,
15 806 (Cal. Dist. Ct. App. 1953) (relating to the installation of a patented kitchen unit consisting of
16 sink, dishwasher and cabinets, with incidental changes in electrical outlets, laying of linoleum,
17 painting, etc.), and *Walker v. Thornsberry*, 158 Cal. Rptr. 862, 862 (Ct. App. 1979) (installation
18 of metal prefabricated restrooms).

19
20 These California cases interpret Section 7045 of the California Business and Professions
21 Code, which read, at the time of the opinion in *Costello v. Campbell*, that “[t]his chapter does not
22 apply to the sale or installation of any finished products, materials or articles of merchandise,
23 which are not actually fabricated into and do not become a permanent fixed part of the structure.”
24 This section was substantially similar to the Personal Property Exception.

25
26 At the time of the opinion in *Walker v. Thornsberry*, 7045(a) of the California Business
27 and Professions Code had been amended to exempt “the sale or installation of any finished
28

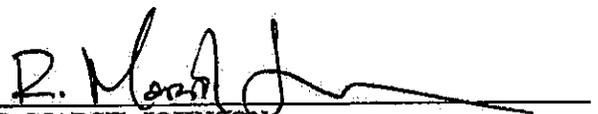
1 products, materials or articles of merchandise, which do not become a fixed part of the structure,
2 nor shall it apply to a materialman or manufacturer furnishing finished products, materials, or
3 articles of merchandise who does not install or contract for the installation of such items. The term
4 'finished products' shall not include installed carpets." Even with those amendments, the
5 exemption is substantially similar to Guam's exemption because it also exempts the sale or
6 installation of any finished products, materials or articles of merchandise which do not become a
7 fixed part of the structure.
8

9 **CONCLUSION**

10 For the reasons stated above, Menzies does not need a C-13 Electrical Contracting license
11 because the work it performs is exempt from the Guam Contractors Law. No Specialty Contractor
12 license, including the C-13 Electrical Contracting license is required to perform the baggage
13 handling license.
14

15 DATED this 18th day of April, 2023.

16 **BLAIR STERLING JOHNSON & MARTINEZ**
17 **A PROFESSIONAL CORPORATION**

18 BY: 
19 **R. MARSIL JOHNSON**
20 *Attorneys for Party in Interest Aircraft Service*
21 *International, Inc. dba Menzies Aviation*
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Caselaw Cited in
Respondent Aircraft Service International,
Inc. dba Menzies Aviation's
Attachment to Notice of Defense

IN THE SUPERIOR COURT OF GUAM

27th FEB -7 AM 11:07

VSST CO., LTD,

Plaintiff,

vs.

UFB GUAM HOTEL CORP.,

Defendants.

CIVIL CASE NO. CV 0552-09

AMENDED DECISION AND ORDER
(Defendant's Motion for Summary
Judgment)

INTRODUCTION

This matter came before the Honorable Anita A. Sukola on May 26, 2011, for a status conference. Attorney Benjamin F. Hueber of Teker Torres & Teker, P.C. appeared on behalf of UFB Guam Hotel Corp. ("Defendant"). There were no appearances made by VSST CO., LTD ("Plaintiff"). Plaintiff requested that the Court rule on their previous summary judgment motion. The Court took the matter under advisement. Upon review of the evidence, oral and written arguments, and legal authorities presented by both parties, the court hereby issues this Amended Decision and Order.

BACKGROUND

Plaintiff filed a Complaint for Labor and Materials Furnished and Foreclosure of a Mechanic's Lien on April 8, 2009. In the Complaint, Plaintiff alleges that Defendant unreasonably and without contractual justification terminated his services. Plaintiff alleges that the value of his labor and equipment was over Four Million Dollars (\$4,000,000.00).

Defendant filed a Motion for Summary Judgment on August 6, 2010. A hearing on Defendant's motion was held on September 28, 2010. The Court granted the parties leave to file supplemental briefs. Plaintiff filed his Supplemental Brief in Opposition to Defendant's Motion Summary Judgment on November 1, 2010.

1 A further proceeding was held on November 16, 2010 to address mediation and
2 Plaintiff's Motion for Summary Judgment. The hearing was continued to January 27, 2011. On
3 January 6, 2011, the Court authorized Attorney Thomas M. Tarpley, Jr. to withdraw as counsel
4 of record for Plaintiff. On May 26, 2011 the Court held a status hearing on the matter. At the
5 hearing, the Court took Defendant's Motion for Summary Judgment under advisement.

6 DISCUSSION

7 Defendant moves the case be dismissed on summary judgment because Plaintiff no
8 longer has a current business license, did not have a Contractors license and is not entitled to a
9 mechanic's lien. Plaintiff rebuts that he no longer need a business license on Guam, he was
10 exempt from the contractor licensing requirement, and he is entitled to a mechanic's lien.
11 Summary judgment is appropriate under G.R.C.P 56(c) if the pleadings and discovery
12 documents in a case, along with affidavits, show "that there is no genuine issue as to any
13 material fact and that the moving party is entitled to judgment as a matter of law." Attorney
14 General v. Perez, 2008 Guam 16 ¶ 12. In order to defeat a motion for summary judgment, the
15 non-moving party must come forward with sufficient evidence that a genuine issue of fact
16 remains in dispute. Id. at ¶ 13.

17 **I. Plaintiff does not need a current business license to maintain a lawsuit pursuant to**
18 **11 G.C.A. § 70131(b) if he is no longer conducting business on Guam.**

19 Defendant first argues that because Plaintiff does not currently have a business license,
20 Plaintiff's suit must be dismissed. It is well settled under Guam Business License law that any
21 person conducting business on Guam cannot maintain a lawsuit here without a business license.
22 Guam Business License law states in pertinent part that "[a]ny person engaging in, transacting,
23 conducting, continuing, doing or carrying on a business in Guam without a business license . . .
24 may not *maintain* a proceeding in any court of Guam until it obtains a business license. 11
25 G.C.A § 70131(b).

26 In Taijeron v. Kim, the Supreme Court of Guam upheld a trial court's dismissal on
27 summary judgment where the claimant did not have a business license at the time of the alleged
28 breaches of contract. 1999 Guam 16 ¶ 13. However, the Supreme Court has since clarified

1 that where a corporation had a valid business license *when the underlying dispute arose*, it has
2 fulfilled the procedural requirements to sue on the dispute, even when it no longer has a
3 business license at the time of filing the lawsuit. Jenkins v. Montallana, 2007 Guam 12.
4 (Emphasis added.) The Court reasoned that filing a suit does not fall within the meaning of
5 “engaging in...or carrying on business on Guam” as contemplated in Guam’s Business License
6 law. Id. at ¶ 1.

7 Here, Plaintiff did not renew its business license and certificate of authority in 2010
8 because it is no longer conducting business on Guam. Declaration of Min, ¶ 5. However,
9 Plaintiff did have a business license and certificate of authority when it contracted with
10 Defendant. Plaintiff’s suit arises out of an alleged breach of this contract. Therefore, because
11 Plaintiff had the proper licensing at the time the underlying the dispute arose, Plaintiff met the
12 procedural requirements for filing suit pursuant to § 70131(b).

13 Thus, Defendant fails to apply all of the law. It is true under Taijeron that Plaintiff must
14 have had a business license during a transaction to sue on that transaction. However, under
15 Jenkins Plaintiff does not need to have a business license to maintain the lawsuit as long as it is
16 no longer conducting business on Guam. Plaintiff is no longer conducting business on Guam.
17 Therefore, he is entitled to maintain the lawsuit under Guam Business License Law and
18 dismissal is inappropriate.

19 **II. Defendant is entitled to dismissal on summary judgment if the court determines as**
20 **a matter of law that Plaintiff was a contractor and not exempt from the licensing**
21 **requirement.**

22 Defendant argues that because Plaintiff was an unlicensed contractor and not exempt for
23 the licensing requirements, his suit must be dismissed pursuant to Guam’s Business License
24 Law. Guam law requires that contractors be licensed in order to bring suit. 11 G.C.A. §
25 70131(b). Whether Plaintiff is required to have a Contractors license pursuant to 21 G.C.A. §
26 70108, or is exempt under 21 G.C.A. § 70101(c) are questions of law, not of fact as Plaintiff
27 suggests. If Plaintiff is not exempt from the Contractors licensing requirement, then he is not
28 entitled to maintain a lawsuit as matter of law under 11 G.C.A. § 70131(b), and summary
judgment would be proper pursuant to G.R.C.P 56(c).

1 Plaintiff argues that § 70131(b) only requires those conducting business in Guam to (1)
2 obtain a business license, and (2) as may be required by law, a certificate of authority.
3 However, this is not the interpretation a complete reading of the statute renders. The
4 Contractors License Board is the appropriate regulating agency of contractors on Guam and
5 those subject to its licensing requirement must be licensed in order to maintain a suit. It is
6 undisputed that Plaintiff does not have a Contractors license. In addition, Plaintiff does not
7 argue that it substantially complied with the Contractors license requirement. If Plaintiff is
8 indeed not a contractor, Plaintiff would be prohibited from maintaining a suit under § 70131(b)
9 for not being licensed by the Contractors License Board.

10 The Court first looks to the contracts the parties entered into to examine Plaintiff's scope
11 of work. Plaintiff entered into two contracts for the installation of materials and equipment on
12 Defendant's property. These included chillers, pumps, sprinklers, and other electrical
13 equipment to replace the old air conditioning system at the hotel. A Specialty Contractor is
14 defined under Guam Contractors Law as a contractor whose operations are the performance of
15 construction work requiring special skills and whose principal contracting business involves the
16 use of specialized building trades or crafts or licensing to meet safety standards. 21 G.C.A. §
17 70106(d). The Contractors License Board has over 60 Specialty Classifications in their rules
18 and regulations. Of particular interest is the Classification C-51:

19 C-51 Warm Air Heating, Ventilating & Air Conditioning
20 Contractor: A specialty contractor whose contracting business is
21 the execution of contracts requiring the ability to intelligently
22 fabricate and *install warm air heating and cooling systems,*
complete air conditioning systems, except those air conditioning
systems requiring refrigeration as an integral part of the system.

23 Contractors License Board Rules and Regulations 6.1(C)63. (Emphasis added.)

24 The contract and Plaintiff's own submissions clearly evidence that he contracted to
25 install an air conditioning system into the building. Plaintiff's scope of work seems to fall
26 under Classification C-51 definition as a specialty contractor of cooling systems. The fact that
27 Plaintiff wishes to describe himself as a consultant does not take away from the work actually
28 performed or contracted to do.

1 However, Plaintiff argues that he is exempt from the licensing requirements because the
2 installations were all "finished products, materials or articles or merchandise and [did] not
3 become a permanent fixed part of the structure" as contemplated in the following exemption
4 from the Contractor's licensing requirements:

5
6 A person who sells or installs any finished products, materials or
7 articles or merchandise which are not actually affixed to and
8 do not become a permanent fixed part of the structure, or to the
9 construction, alteration, repair, finish or repair of personal
10 property.

9 21 G.C.A. § 70101(c).

10 Plaintiff argues that because the installations can be removed without causing damage to
11 the property, they are not a "permanent fixed part of the structure" as defined in Exemption (c)
12 70101(c). Defendant does not disagree, but rather argues that because the air conditioning
13 system is not a permanent fixed part of the structure, Plaintiff does not have a right to a
14 Mechanic's Lien as a matter of law. See *infra*. Therefore the Court finds that Plaintiff is indeed
15 exempt from the Contractor's licensing requirements under 21 G.C.A. § 70101(c) and entitled to
16 maintain the lawsuit. As such, dismissal is inappropriate on summary judgment.

17 III. The Mechanic's Lien may not be expunged on Summary Judgment.

18 Defendant also asks that Plaintiff's Mechanic's Lien be expunged on summary
19 judgment. Plaintiff claims his right to a Mechanic's lien arises under the following:

20 All persons and association of persons, including corporations,
21 performing labor upon or bestowing skill or other necessary
22 services on, furnishing materials or leasing equipment to be used
23 or consumed in or for a work of improvement of real property,
24 except Public Works, shall have a lien upon such property as
security for the payment of the value of such labor, materials, skill
or equipment so furnished[.]

25 7 G.C.A. § 33101.

26 As discussed *supra*, Plaintiff also claims that the materials installed and labor performed
27 were not permanent fixtures. Defendant contends that the materials and work must be
28 "consumed into the project and become part of the project" in order for there to be a valid lien.

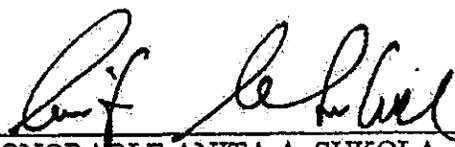
1 Defendant cites to a string of California cases to support his proposition. So, Defendant
2 concludes that Plaintiff cannot have a valid lien because there is nothing on the real property for
3 the Plaintiff's lien to attach. However, Guam's statute is written in the disjunctive "or" such
4 that if the work performed or material furnished are "to be used or consumed in or for a work of
5 improvement of real property" will give rise to a lien upon that real property. The Mechanic's
6 lien statute is § 33201 is similarly written in the disjunctive "or".

7 Therefore, Defendant's proposition that Plaintiff's installations must have been
8 permanent or consumed in the property is not supported by the statute. Therefore, expunging
9 the mechanic's lien on summary judgment is also inappropriate. Finally, there is no
10 inconsistency in Plaintiff falling under exemption § 70101(c) to the Contractors licensing
11 requirement and still maintaining a mechanic's lien.

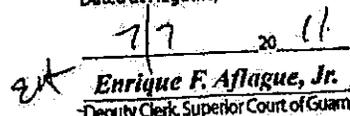
12 **CONCLUSION**

13 By a preponderance of the evidence and based on the foregoing reasons, the Court
14 DENIES Defendant's Motion for Summary Judgment.

15
16 SO ORDERED this 1 day of July, 2011.

17
18
19
20
21 
22 HONORABLE ANITA A. SUKOLA
23 Judge, Superior Court of Guam

24 I do hereby certify that the foregoing
25 is a full true and correct copy of the
26 original on file in the office of the
27 clerk of the Superior Court of Guam
28 Dated at Hagatna, Guam

29 
30 Enrique F. Aflague, Jr.
31 Deputy Clerk, Superior Court of Guam

81 Cal.App.2d 452
District Court of Appeal, First
District, Division 2, California.

COSTELLO
v.
CAMPBELL.

Civ. 13332.

Sept. 8, 1947.

Hearing Denied Nov. 6, 1947.

Synopsis

Appeal from Superior Court, Contra Costa County; Homer W. Patterson, Judge.

Action by John Costello, as trustee of the estate of Lee Gooch, bankrupt, substituted in the place and stead of Lee Gooch, doing business as Lee's Refrigeration Service, against W. F. Campbell, for the value of equipment and for work of installation of two cold storage plants on defendant's premises. From an adverse judgment, defendant appeals.

Judgment affirmed.

Attorneys and Law Firms

*315 *453 Sefton & Quattrin, of San Francisco, for appellant.

Shapiro & Rothschild, by August B. Rothschild, all of San Francisco, and Forrest H. Bailey, of Walnut Creek, for respondent.

Opinion

NOURSE, Presiding Justice.

Plaintiff sued for the value of equipment and for work of installation of two cold storage plants on defendant's premises to be used in the operation of a bakery and poultry ranch. Plaintiff was not a licensed contractor and the demand for services on such was waived. The trial court awarded plaintiff judgment for the full value of the equipment and labor for the equipment installed on premises and the labor for the permanent repair. Judgment therefor followed covering the

cost of installation and the value of the material on the basis of section 7045 of the Business and Professions Code. Such result is in substance obligatory upon the state or its officials or any municipal officers, agents or contractors when such are not specially privileged and do not become a permanent fixture on the premises.

Appellant asks the court to grant for a reversal of the judgment. It was error to hold that the plaintiff was within the exception of section 7045, and it was error to hold that the materials furnished were not from a bakery, poultry ranch or other operations of that kind. There is no sufficient testimony of error and the defendant in both instances has had justice made a permanent satisfaction and drew his findings in accord with the evidence which he heard and saw.

Appellant states two other matters which might present grounds for appeal. First, that the contract was indivisible, and that respondent should not recover for the installation of the finished products which were found not to be permanent fixtures. **316 But such recovery is specially authorized by section 7045. Any other construction of the section would make the entire statute 'an unwarranted shield for the avoidance of a just obligation.' Gatti v. Highland Park Builders, Inc., 27 Cal.2d 687, 690, 166 P.2d 265, 266.

Second, it is suggested that there might have been error in holding appellant indebted on an open book account. It does not appear how appellant has suffered any prejudice. The complaint was framed in three counts—on an open book account, indebitatus assumpsit, and on an account stated. *454 The second and third counts incorporated all of the first. The judgment was based upon the finding of an open book account and that defendant was indebted for 'the reasonable value of said materials furnished and labor performed.' There is no contention that the second count did not state a good cause of action. The finding on the reasonable value is sufficient to support the judgment and if there was any defect in the proof of an open book account, that portion of the finding may be treated as surplusage.

Judgment affirmed.

GOODELL and DOOLING, JJ., concur.

All Citations

81 Cal.App.2d 452, 184 P.2d 315

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120 Cal.App.2d 237
District Court of Appeal, First
District, Division 2, California.

E. A. DAVIS & CO., Inc.

v.

RICHARDS et al.

Civ. 15619.

Sept. 15, 1953.

Hearing Denied Nov. 12, 1953.

Synopsis

Suit for unpaid balance due on sale of installation of patented kitchen unit. The Superior Court, Santa Clara County, W. T. Belieu, J., rendered judgment for plaintiff, and defendants appealed. The District Court of Appeal, Division 2, held that evidence sustained finding that kitchen unit, consisting of cabinets, dishwasher and sink assembly with garbage disposal unit, did not become a permanent fixture and that installer thereof was not within exception to finding requiring contractors to be licensed, notwithstanding finding that unit and materials were installed and paid for by plaintiff and plumbing and electrical work and some painting and lathing of insulation in connection with installation of unit.

Affirmed.

Attorneys and Law Firms

**806 *238 Crist, Stafford & Peters, Elton F. Martin, Palo Alto, for appellants.

Clark L. Bradley, San Jose, for respondent.

Opinion

NOURSE, Presiding Justice.

Plaintiff sued for the unpaid balance due on a sale and installation of a patented kitchen unit consisting of sink, dishwasher and cabinets, with incidentals consisting of changes in electrical outlets, laying of linoleum, painting, etc. In a trial to the court a balance of \$1,536.72 was found due and judgment for plaintiff followed.

In their answer the defendants charged that some of the work was improperly and unskillfully performed. The trial court, on substantial evidence, found adversely to this defense and no point is made on that issue in the appeal.

The appellants appeal rests wholly on the claim that respondent failed to accept liability for completion of an allegedly large contract. In reply, the respondents attack the claim as a contract within the purview of sections 2700 of the Business and Professions Code, and, if subject to any provisions of that code, it was as a specialty contract controlled by sections 2070 and 2072.

There is no dispute in the case. They show that the kitchen unit consisted of seven fixed wall cabinets, the sink base cabinet, one dishwasher cabinet and assembly with garbage disposal. All these were premanufactured and was shipped to the floor and the sink, the sink and garbage disposal, the cabinets were premanufactured and a finished product, and that it was not usually placed there nor did it become a permanent fixed part of the structure. It is also found that the plumber-plumbing and electrical wiring was a part of the installation of the kitchen unit, and was necessary to their proper operation.

All these findings are supported by competent and substantial evidence. The finding that the cabinet did not become permanent because it was easily disposed of in the case as was held in *Carroll v. Campbell*, 310 Cal.App.2d 1212, 1213, 1214, 1215.

In support of its judgment the learned trial judge filed an opinion, which we adopt as our reasons for an affirmance of the judgment, and which reads as follows:

'Plaintiff's first cause of action alleges a book account for unpaid balance due from defendants of the sum of \$1,536.72; the second cause of action alleges a sale to defendants of kitchen fixtures and appliances of the reasonable value of \$3,036.72, upon which defendants have paid the sum of \$1,500.00, leaving a balance due plaintiff from the defendants of the sum of \$1,536.72.

'By the answer the defendants deny the allegations of plaintiff's complaint except they admit the payment to plaintiff of the sum of \$1,500.00 on account; they allege that the complaint does not state a cause of action; further, that plaintiff agreed to furnish defendants the materials and labor necessary to install certain kitchen units and other labor for installation, etc., for the overall sum of \$2,215.70; and in addition seek to recover the sum of \$688.00 damages

for faulty workmanship in the installation; and by cross-complaint seek to recover the sum of \$53.00 for plaintiff's negligence in scratching of defendants' kitchen floor and table and other minor items.

'It appears from the evidence in this case that plaintiff has established his cause of action against the defendants as prayed for by a preponderance of the credible evidence.

'Except for the special defenses herein referred to, there is no doubt but that the defendants are indebted to the plaintiff in the sum of \$1,536.72.

'In substance the defense to plaintiff's action herein is based on their contention that the plaintiff was obliged to have a contractor's license before it could contract to perform, or sue to collect for the sale and installation of certain prefabricated kitchen cabinets, and in addition some wallpaper and linoleum sold and installed by the plaintiff in the home of the defendants at the instance and request of the latter, for which they now refuse to pay after installation thereof.

'Defendants' contentions are based on Section 7025, 7026, 7028, and 7031, Division 3, Chapter 9, Article 2, of the Business and Professions Code of the State of California; which sections generally indicate the persons and entities which are required to have licenses in order to contract, and specify the penalties for those who contract without such licenses.

'On the other hand, the plaintiff contends the above cited sections of the Business and Professions Code relied on by the defendants are not applicable to the facts or issues herein involved, nor do they govern or control the established facts as disclosed by the evidence in this action.

'It is the plaintiff's contention herein that the evidence shows it was clearly within the exceptions and freed from the observance of the general provisions of the law pertaining to contractors generally.

'While as a general practice the Business and Professions Code requires a contractor to obtain a license to engage in building enterprises or suffer penalties provided in said laws, there are certain exemptions provided in said statutes.

'The sections of the Business and Professions Code above referred to and which it is believed govern this case are as follows:

This chapter does not apply to the sale or installation of any finished product, material, or article of merchandise, which are not generally considered to be and do not become a permanent fixture or improvement.

Chapter 9, Article 3, Section 7045 B. & P. Code.

'This section last cited was construed in Costello v. Campbell, 81 Cal. 1A [pp.]2d., 452 [184 P.2d 315]. It involved facts substantially the same as are disclosed in the present action, and the court held that under the exemptions provided for in Section 7045 of the Business and Professions Code the law permits an unlicensed contractor to recover for the sale and installation of finished products which do not become permanent fixtures to the realty.

The evidence in this case established the fact that the kitchen cabinets were prefabricated and finished products, the work proper was not generally considered to be and did not become a permanent fixture or improvement.

It would appear that when a minor plumbing and electric job was needed to be done in installing the electric dishwasher and garbage disposal units was a part of the installation of the finished kitchen cabinet units, it was necessary to employ a licensed plumber and electrician, and would not be within the exemption provisions of Section 7045 of the Business and Professions Code.

The evidence disclosed that in connection with the installation of the prefabricated kitchen cabinet in the home of the defendants, in order to make a complete job plaintiff subcontracted certain work and materials and supply of hardware. This work was entirely incidental to the installation of the kitchen cabinets, and was done in the kitchen to immediately adjacent thereto. Plaintiff was not a general contractor of the such work, but he acted as the contractor and installation of the kitchen cabinets, which he knew to be finished products, and in fact, he received the price for such work was performed by licensed installers, hired and paid for by the plaintiff, and in this instance such work was paid less than minimum dollars for each piece of work.

'Section 7048, Business and Professions Code.

'Since the plaintiff was a specialty contractor who, under the facts of this case, was not obliged to have a license but had the same status as a licensed contractor, he was authorized to contract with two or more crafts to do and perform incidental

**808 and supplemental work which it had undertaken to do as was done in this case.

Section 7059, Business and Professions Code.

It further appears from the evidence that the plaintiff did and performed all said work in installing said prefabricated kitchen cabinet in defendants' home in a good and workmanlike manner, and as agreed, as well as all incidental or supplemental work in connection therewith. It further appears from the evidence that defendants have failed to establish any defense, counter-claim, or cause of cross-complaint against the plaintiff herein.

It is the opinion of the court that plaintiff take judgment against the defendants as prayed for in this complaint, and for costs, and interest from September 27, 1950.

Judgment affirmed.

GOODELL and DOOLING, JJ., concur.

All Citations

120 Cal.App.2d 237, 260 P.2d 805

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97 Cal.App.3d 842.

Court of Appeal, Third District, California.

A. WALKER, Plaintiff and Respondent,
v.

Doyal THORNSBERRY, as an Individual
doing business as Thornsberry General
Engineering Contractor, Defendant and Appellant.

Civ. 17824.

Oct. 18, 1979.

Rehearing Denied Nov. 20, 1979.

Hearing Denied Dec. 20, 1979.

Synopsis

Assignee for collection of account receivable brought action against customer of manufacturer of metal prefabricated restrooms. The Superior Court, Yolo County, Warren K. Taylor, J., entered judgment in favor of the assignee, and the customer appealed.

The Court of Appeal, Evans, J. held that where manufacturer of metal prefabricated restrooms and assignee failed to require the manufacturer to undertake installation of concrete foundation, masonry plumbing, or installation of plumbing fixtures, toilet, wood roofing, and framing upon which to place prefabricated restrooms, and employees of the manufacturer merely assembled pieces and bolted restrooms to foundation, liability of the manufacturer was within purview of "fabricated product" exemption to contractor licensing law, and thus exempt from collection of account receivable was entitled in recovery of purchase price of the restrooms even though the manufacturer was not licensed as contractor.

Affirmed.

Reynoso, J., concurred in result and filed opinion.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

*843 **862 Hiram S. Dillin and David A. Short, Sacramento, for defendant and appellant.

Gary L. Sweet and Richard L. Enkelis, San Jose, for plaintiff and respondent.

Opinion

EVANS, Associate Justice.

Defendant Thornsberry appeals from an adverse \$9,447.96 judgment. We affirm.

Plaintiff is the assignee for collection of an account receivable of Super Secur Comfort Stations (Super Secur), a division of Aluminum Plumbing Fixture Corporation. Super Secur is a manufacturer of metal prefabricated *844 restrooms, one of which was sold to defendant, a general contractor, for installation at the Berenda Reservoir Launching Facilities. Super Secur, not licensed as a contractor, agreed to furnish, assemble, and install the unit upon a concrete foundation prepared by defendant or his subcontractors. The restroom came on the jobsite in prefabricated pieces consisting of steel columns, beams, girders, steel connections, metal siding and roof, all precut to size. Super Secur employees, assembled the component parts and attached the completed unit to the concrete foundation by means of bolts through a metal channel along the base of the wall.

**863 Defendant failed to pay Super Secur the purchase price of the product.

The only issue presented is whether plaintiff's structure (restroom plumbing) is exempt from recovery under the law and defendant's claim against plaintiff is barred because he did not complete concrete foundation, masonry plumbing, and Super Secur was not required to have contractor's license to make the prefabricated restrooms on the site prepared by the defendant and therefore defendant is barred from recovery.

"The licensing requirement of Business (and) Professions Code section 7031 was enacted to protect the public from risks attendant to contracting with incompetent or untrustworthy contractors. (Davis Co. v. Superior Court, 1 Cal.App.3d 156, 158, 81 Cal.Rptr. 453; Rushing v. Powell, 61 Cal.App.3d 597, 604-605, 130 Cal.Rptr. 110.) It reflects the significance the Legislature has placed on the deterrence of unlicensed persons from *845 engaging in the contracting business. The policy to be served outweighs any harshness which may be sustained by a party. (Lewis & Queen v. N. M. Ball Sons, 48 Cal.2d 141, 151, 308 P.2d 713.)" (Scientific Cages, Inc. v. Banks (1978) 81 Cal.App.3d 885, 887-888, 146 Cal.Rptr. 780, 781.) However, it has also been recognized that "... the penalties are harsh and there has been no tendency by the courts to overly liberalize the statute's (s 7031)

application." (Jackson v. Pancake (1968) 266 Cal.App.2d 307, 310, 72 Cal.Rptr. 111, 114.) ~~The contractors licensing law does not apply to the installation from its provisions. Section 7045 provides: "This chapter does not apply to any construction, alteration, repair, or preparation for moving of a mobilehome when such work is performed upon a site for the purpose of occupancy as a dwelling. (P) (2) The construction, installation, erection, repair, or preparation for moving of mobilehome accessory buildings or structures when such work is performed upon a site for the purpose of occupancy as a dwelling."~~

Section 7046 provides: "(a) Except as provided in subdivision (b) this chapter does not apply to any construction, alteration, improvement or repair of personal property. (P) (b) This chapter shall apply to: (P) (1) The construction, installation, alteration, repair, or preparation for moving of a mobilehome when such work is performed upon a site for the purpose of occupancy as a dwelling. (P) (2) The construction, installation, erection, repair, or preparation for moving of mobilehome accessory buildings ****864** or structures when such work is performed upon a site for the purpose of human habitation or occupancy."

Defendant argues the exemption of section 7045 is not applicable, and that the evolution of the exemption sections of the contractors licensing law regarding installation of carpet (s 7058) and on-site construction for the placement of mobilehomes or mobilehome accessory buildings (ss 7046, 7027) manifests a legislative intent to include within the license law installation of finished products when there is a substantial on-site contribution of work that is considered to be within the specialized building trade.

***846** We agree with the reasoning posed but arrive at the contrary conclusion that the exemption afforded by section 7045 does apply and affords an exemption to Super Secur. An examination of previous judicial discussion of the exempt sections and their predecessors discloses judicial support for our interpretation.

In Los Angeles Scenic Studios v. Television (1936) 17 Cal.App.2d 356, 61 P.2d 1192, plaintiff sued upon a contract to construct an exhibit for an exposition. Since appeal was on the judgment roll alone, the nature of the exhibit was unclear. However, defendants contended recovery was barred by plaintiff's failure to allege and prove it was a licensed contractor. The Contractors License Law at that time did not apply to: "(g) Any work or operation connected with the sale or installation of any finished product, material, or article of merchandise, which is not fabricated into and does not become a permanent fixed part of the structure; (P) (h) Any construction, alteration, improvement or repair of personal property except as limited by subdivision (g) of this section." (Stats.1933, ch. 573, s 2, p. 1484.)

The court observed that "(i)t would appear from the act in general that it was intended to apply to contractors who engage in work upon structures or projects which are or are to become a part of the real property upon or in connection with which the work is done. The portions of section 2 above quoted specifically exempt from the provisions of the act any construction or repair work upon personal property which is not fabricated into and does not become a permanent fixed part of the structure.

"... Whether this exhibit took the form of a building or was an exhibit of another nature, we are not required to assume that it was fabricated into and became a permanent fixed part of the Electric Products building, in which it was located. It is common knowledge that many exhibits in such exposition buildings are not affixed to the premises in such a way as to become a part of the real property. Such an exhibit could well take the form of a small movable building, and the fact that it is called a 'building' would not be conclusive in determining whether or not it was fabricated into and had become a permanent part of the structure within which it was located. . . . If the exhibit in question was not of such a nature that it became a fixed part of the structure in which it was located, the complaint stated a cause of action" (Id., at pp. 358-359, 61 P.2d at p. 1194.)

***847** Prior to amendment in 1961, section 7045 read "This chapter does not apply to the sale or installation of any finished products, materials or articles of merchandise, which are not actually fabricated into and do not become a permanent fixed part of the structure." (Stats.1939, ch. 37, p. 385.) In Costello v. Campbell (1947) 81 Cal.App.2d 452, 184 P.2d 315, the court determined that installation of cold storage plants used in the operation of a hatchery and poultry ranch

why the majority labored to fit the present set of facts into the statutory exemption.

The availability of a quantum meruit theory of recovery provides a more reasonable approach to the problem. In appropriate cases the court could take into account the enrichment bestowed by the unlicensed contractor without riddling the licensing statute. The unlicensed contractor would continue to be unable to enforce the contract which undoubtedly offered him greater compensation than a quantum meruit recovery offers.

In sum, the present all-or-nothing approach will continue to lead to efforts to avoid the statute in order to reach just results. This can only result in the nonuniform application of the law and provide little judicial guidance. Another look at equitable theories, including quantum meruit, is due.

Hearing denied; Manuel, J., dissenting.

All Citations

97 Cal.App.3d 842, 158 Cal.Rptr. 862

Footnotes

1 Unless otherwise noted, all references are to the Business and Professions Code.

Section 7031 provides: "No person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract, except that such prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029."

Section 7026 provides: "The term contractor for the purposes of this chapter is synonymous with the term 'builder' and, within the meaning of this chapter, a contractor is any person, who undertakes to or offers to undertake to or purports to have the capacity to undertake to or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, or the cleaning of grounds or structures in connection therewith, and whether or not the performance of work herein described involves the addition to or fabrication into any structure, project, development or improvement herein described of any material or article of merchandise. The term contractor includes subcontractor and specialty contractor."

1 The legislative scheme may also be an effort to give added competitive advantage to the more politically organized licensed contractors.

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EXHIBIT “D”

RFP-005-FY21

should be communicated in writing to the Single Point of Contact within the time frame allocated for the submission of questions. Offerors should act promptly and allow sufficient time for a reply to reach them in the form of an amendment to the RFP, which will be forwarded to all prospective Offerors and its receipt by the Offeror should be acknowledged in the proposal.

10. WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn on written request received from Offeror(s) prior to the submission deadline. Negligence on the part of the Offeror in preparing the proposal confers no right for the withdrawal of the proposal after it has been submitted.

11. METHOD OF AWARD

GIAA reserves the right to waive any informalities or irregularities in proposals received when such waiver is in the best interest of GIAA. GIAA shall have the right to award, amend, or reject proposals in whole or in part. It is the policy of GIAA to award proposals to Offerors duly authorized and licensed to conduct business in Guam.

12. PAYMENT

Payment shall be made using a method mutually agreed upon by GIAA and the successful Offeror.

13. TAXES

Specific information on taxes may be obtained from the Director of the Department of Revenue and Taxation. The awardee will be responsible for payment of all applicable taxes.

14. LICENSING

Offerors are cautioned that GIAA will not consider for award any proposal submitted by a Offeror who has not complied with the Guam Licensing Law. Offerors shall, at their own expense, procure all permits, certificates and licenses and shall give all notices and necessary reports required by law for the execution of the work. Specific information on licenses may be obtained from the Director of the Department of Revenue and Taxation.

15. AFFIDAVITS AND ASSURANCES

Each Offeror is required to submit the affidavits and assurances attached relating to the following matters. Failure to include said affidavits and assurances shall render a proposal non-responsive.

ANTONIO B. WON PAT INTERNATIONAL AIRPORT AUTHORITY, GUAM

RFP NO. RFP-005-FY21

**MANAGEMENT & INFRASTRUCTURE SUPPORT SERVICES
TO GIAA'S BAGGAGE CONVEYANCE SYSTEMS**

BASIC INFORMATION

1. Services Required

In accordance with the Guam Procurement Laws and Regulations, the Antonio B. Won Pat International Airport Authority, Guam ("GIAA"), a public corporation and autonomous instrumentality of the Government of Guam, is soliciting proposals from qualified professional firms and/or individuals to develop, implement, and provide management and infrastructure support services to GIAA's baggage conveyance systems.

2. Description of the Work Involved

The Preliminary Scope of Services, which describes the work to be accomplished, is contained herein as Attachment 1. Upon final selection of the best qualified Offeror, the Preliminary Scope of Services may be modified and refined during contract negotiations.

3. Time and Duration of the Work Involved

It is anticipated that the selected Contractor(s) will commence providing services as soon as practicable. The term of the agreement shall be for three (3) years with two (2) one (1)-year options to extend at the sole discretion of GIAA, not to exceed a total of five (5) years and subject to the availability of funding. GIAA is not obligated to renew the agreement and does not have to give reasons if GIAA elects not to renew.

4. Type of Contract

A professional services agreement will be consummated between the awardee and GIAA in the form of Attachment 2. Offerors must show evidence of their license authorizing the Offeror to provide the solicited services in Guam at the time of contract signing. Time is of the essence in performing these services. Inordinate delays, as determined by GIAA, in obtaining its Guam license by the time of contract signing may result in the selected Offeror being determined non-responsive. The Executive Manager or designee may then enter into negotiations with the next most qualified Offeror.

The agreement will provide that the contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds therefor. The agreement further provides that, in the event that funds are not available