



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

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

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

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

23 This motion is brought pursuant to 2 G.A.R. Div. 4 § 12109, which grants an OPA hearing
24 officer the authority to consider matters that “may aid in the expeditious disposition of the
25 proceeding either by consent of the parties or upon such officer's own motion” 2 G.A.R. Div. 4 §
26 12109(a). In addition, a hearing officer may “[r]ule on motions, and other procedural items on
27 matters pending before such officer.” 2 G.A.R. Div. 4 § 12109(d). Lastly, the Public Auditor has
28

1 the right to raise the issue of his jurisdiction over a matter sua sponte should he so choose. 2 G.A.R.
2 Div. 4 § 12104(c)(9).

3 **BACKGROUND**

4 The basis of this dispute began with the award of RFP-005-FY21 (the “RFP”) to Menzies
5 as the highest ranked offeror. *See* OPA-PA-21-010 Notice of Appeal (Oct. 8, 2021). After the OPA
6 dismissed the first appeal filed by Johndel International, Inc. dba JMI-Edison (“JMI”) in OPA-PA-
7 21-010, JMI sought judicial review of the dismissal in CV0095-22, which is pending before the
8 Superior Court.
9

10 Given the automatic stay resulting from JMI’s initial protest and appeal, GIAA determined
11 that the absence of a provider to manage and maintain the baggage handling system at GIAA posed
12 a public emergency. *See* OPA-PA-23-002 Notice of Appeal (Apr. 10, 2023), Ex. D. GIAA
13 documented the emergency through a Determination of Need for Emergency Procurement and
14 Certificate of Emergency dated October 27, 2021. *Id.* Following the emergency procurement
15 solicitation (“ERFP”), Menzies was awarded the GIAA baggage handling services contract and
16 entered into Agreement No. GIAA-S22-002 with GIAA on November 1, 2021. As JMI is well
17 aware, Menzies has continued to provide emergency services under the ERFP since that time.
18

19 Nevertheless, JMI claims that the basis of its current protest lies in the fact that on March
20 15, 2023, GIAA issued notice of a public hearing to extend its emergency contract with Menzies,
21 and that one day prior, on March 14, 2023, the Office of the Attorney General (“OAG”) issued an
22 opinion letter to the Contractor’s License Board (“CLB”) which opined on the CLB’s
23 investigation. *See* OPA-PA-23-002 Notice of Appeal, Ex. A, at 11. Using these documents as a
24 basis for its protest, JMI then filed the instant protest with GIAA on March 21, 2023. JMI’s second
25 protest was denied by GIAA on March 27, 2023, and JMI now appeals that decision to the OPA.
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ARGUMENT

The jurisdiction of the Public Auditor is limited to matters that are **properly** submitted for his review. 5 G.C.A. § 5703(a). For this appeal to be properly before the Public Auditor, JMI needed to submit its protest within fourteen days after it knew **or should have known** of the facts giving rise thereto. 5 G.C.A. § 5425(a). “Protests filed after the 14 day period shall not be considered.” *DFS Guam L.P. v. A.B. Won Pat Int’l Airport Auth., Guam*, 2020 Guam 20, ¶ 77 (quoting 2 GAR Div. 4 § 9101(c)(1)). Because “the timeframes set forth in the Procurement Code are jurisdictional in nature...the failure to abide by these timeframes will deprive [a court] of jurisdiction.” *Id.* As shown below, JMI failed to meet the timeliness requirement under the statute, and as such, the Public Auditor lacks jurisdiction to hear this appeal. Thus, JMI’s appeal should be dismissed.

The instant protest is untimely because JMI was aware of the facts giving rise to its protest over one year before it complained to GIAA. This is demonstrated by the fact that on December 20, 2021, JMI President Ed Ilao wrote an email to CLB investigator Marcus Finona stating, “GIAA is continuing to contract with an improperly licensed entity (Menzie’s)...” *See* OPA-PA-23-002 Notice of Appeal, Ex C (email from Ed Ilao to Marcus Finona). JMI further demonstrated this knowledge in its February 10, 2022 Verified Complaint in CV0095-22, which alleges that “Menzie’s is performing for GIAA under an ‘emergency’ contract without appropriate licensing.” *Id.* (Verified Complaint at ¶ 41).

Thus, JMI knew that Menzie’s lacked a C-13 license and that GIAA contracted with Menzie’s to perform work under the ERFPP since at least December of 2021. Yet, JMI did not protest the emergency procurement to Menzie’s until over fourteen (14) months later, on March 21, 2023. This is far beyond the fourteen (14) day statutory deadline.

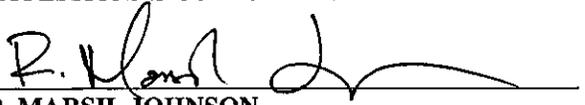
1 JMI's claim that the facts giving rise to its second protest only became known to it when
2 GIAA published its notice of its intent to extend the emergency contract with Menzies on March
3 15, 2023 belies common sense. JMI clearly demonstrated knowledge of these facts as far back as
4 December 20, 2021 and February 10, 2022. Further, it is proper to infer that JMI, which is actively
5 engaged in litigation adverse to GIAA and Menzies concerning the RFP, **should have known** that
6 Menzies continued to perform services for GIAA under the emergency contract, as it had known
7 since 2021. Failing to find this protest untimely would leave the door open for JMI to continue
8 filing protests far beyond the time limits contemplated by 5 G.C.A. § 5425(a).

10 Additionally, the March 14, 2023 letter from the OAG to the CLB does not change the fact
11 that JMI knew that Menzies did not have a C-13 license back in December 2021 and February
12 2022, or that the CLB has yet to make a final determination on whether any license is required.
13 The March 2023 OAG letter is nothing more than an opinion and it does not create a new basis for
14 an appeal. Thus, JMI's post-award protest is untimely and should be dismissed.

16 **CONCLUSION**

17 For the above-stated reasons, Menzies respectfully requests that the Public Auditor dismiss
18 JMI's appeal for lack of subject matter jurisdiction.

19 **BLAIR STERLING JOHNSON & MARTINEZ**
20 **A PROFESSIONAL CORPORATION**

21 BY: 
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