



Jerrick Hernandez <jhernandez@guamopa.com>

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

R. Marsil Johnson <rmarsjohnson@bsjmlaw.com>

Tue, Jun 13, 2023 at 4:41 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>, Vince Duenas <vduenas@guamopa.com>, Thyra Bagana <tbagana@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, William Brennan <wbrennan@arriolafirm.com>, Isa Baza <ibbaza@bsjmlaw.com>, "Merlyna W. Smith" <mwsmith@bsjmlaw.com>

Dear Mr. Hernandez:

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

1. Interested Party Aircraft Service International, Inc. dba Menzies Aviation's Reply in Support of its Motion for Summary Judgment

Kindly acknowledge receipt via return e-mail. Thank you. Should you have any questions, please let us know.

Regards,

R. Marsil Johnson

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 **2023.06.13 - Interested Party Menzies Reply in Support of Motion for Summary Judgment OPA PA-23-002.pdf**
648K

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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-)	
16 Edison,)	MENZIES REPLY IN SUPPORT OF ITS
)	MOTION FOR SUMMARY
17 Appellant.)	JUDGMENT
)	
)	

18 Interested Party **AIRCRAFT SERVICE INTERNATIONAL, INC. DBA MENZIES AVIATION**
19 (“Menzies”), hereby submits its Reply in Support of its Motion for Summary Judgment in the
20 above-captioned procurement appeal filed by Appellant **JOHNDEL INTERNATIONAL, INC. dba**
21 **JMI-EDISON (“JMI”)**.

22 **ARGUMENT**

23 **A. Menzies does in fact hold a C-13 Contractors License**

24 Menzies does hold a C-13 Contractors License. The entire underlying basis of all the claims
25 that have been brought by JMI is JMI’s assertion that Menzies is not properly licensed. JMI claims
26 that a C-13 Contractors License is required to perform work pursuant to the RFP or the ERF. The
27 C-13 Contractors License certificates submitted with this reply are undeniable proof that Menzies
28

1 does in fact have a C-13 Contractors License and is therefore, even under the standard advocated
2 for by JMI, qualified to perform baggage handling work pursuant to the RFP or the ERFP.

3 The Motion for Summary Judgment inadvertently included only the certificate for
4 Menzies' RME Ignacio C. Urlanda. However, even looking only at Mr. Urlanda's RME certificate,
5 it is obvious that Menzies has a C-13 Contractor's License because there would be no reason for
6 Mr. Urlanda to be issued a C-13 license as the RME for Menzies if Menzies was not licensed.
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8 For the sake of clarity, here are copies of the C-13 Contractors Licenses for both Menzies
9 and Mr. Urlanda as the RME for Menzies:

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CONTRACTOR'S LICENSE

LOU LEON GUERRERO
Governor of Guam

JOSH TENORIO
Lt. Governor of Guam

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

Aircraft Service International, Inc. dba: Menzies Aviation

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

C13

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

Signature of RME
RME #

Signature of LICENSEE
License # CLB23-1829

GRT # 200500425
Issued: April 07, 2023

Certificate # C-0423-1449
Expires: June 30, 2023

BERNARD S. BENAVENTE
BOARD CHAIRMAN

CIRIACO C. SANCHEZ, Jr.
EXECUTIVE DIRECTOR

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CONTRACTOR'S LICENSE

LOU LEON GUERRERO
Governor of Guam

JOSH TENORIO
Lt. Governor of Guam

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

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

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

C13

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

Signature of RME
RME # CLB23-1830

Signature of LICENSEE
License #

GRT #
Issued: April 07, 2023

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


BERNARD S. BENAVENTE
BOARD CHAIRMAN




CIRIACO C. SANCHEZ, Jr.
EXECUTIVE DIRECTOR

Full page copies of these licenses are also attached to this brief as Menzies Exhibit "A" and Exhibit "B".

B. JMI's Assertion that the CLB Board instructed the CLB Executive Director to refuse licenses to anyone under certain circumstances is baseless and violates Guam's contractor law.

JMI claims, without providing any proof whatsoever, that the CLB Board limited the authority of the CLB Executive Director to issue licenses via written correspondence sent to the CLB Executive Director by the CLB Board Chairman. This entire argument has absolutely no basis in fact or law.

First, JMI provides absolutely no proof that any such internal memorandum was sent. In its "Omnibus Opposition", JMI provides no copy of the internal memorandum and no declaration

1 or affidavit executed by anyone with direct knowledge of the internal memorandum. JMI simply
2 makes this baseless assertion and then claims that Menzies C-13 Contractors' License, which was
3 undeniably issued by the CLB, was somehow issued improperly. This baseless assertion is
4 particularly rich coming from JMI, who the OPA determined in the first appeal had manufactured
5 an entire "Findings & Decisions" of the CLB specifically for the purpose of defrauding the OPA.
6 JMI's bald assertion should be entirely disregarded by the OPA because JMI has provided
7 absolutely no facts to support it.
8

9 Second, the Contractor's License Board cannot, without a change in Guam's Contractor
10 law change the process by which it issues licenses. Guam's contractor law provides that the CLB
11 must conduct an investigation and issue a license within 45 days of after the filing of a proper
12 application and the payment of required fees:

13 § 70115. Action on Application.

14 Within forty-five (45) days after the filing of a proper application for a license and
15 the payment of the required fees, the Contractors License Board *shall*:

16 (a) Conduct an investigation of the applicant and in such investigation may post
17 pertinent information, including, *but not limited to*, the name and address of the
18 applicant, and *if* the applicant is associated in any partnership, corporation *or* other
19 entity, the names, addresses and official capacities of associates; and

20 (b) Either issue a license to the applicant or else notify the applicant in writing
21 by registered mail of the Board's decision not to grant the license and specifically
22 notify applicant of the right to have a hearing within fifteen (15) days from the
23 receipt of the Board's decision. The hearing shall be conducted in accordance with
24 § 70117.

25 21 G.C.A. § 70155 (emphasis in original). Because this procedure is set forth by statute, the CLB
26 must follow it and may not deviate from it. If the CLB Chair sends an internal memorandum to
27 the CLB Executive Director ordering him not to act on an application within the deadlines required
28 by 21 G.C.A. § 70155, that order is unenforceable because it violates the statute.

 Furthermore, CLB Board approval is not required for a CLB license to be issued. Rather,
the CLB is required to issue a license upon receipt of a proper application a payment of the requisite

1 fees unless it informs the applicant in writing by registered mail that the Board has decided not to
2 grant a license. In that event, a hearing must be held within 15 days of said notice.

3 Menzies filed its application for a C-13 license on April 5, 2023. Today is June 13, 2023,
4 which is 69 days after Menzies filed its application. No notice that the CLB Board has made a
5 decision not to grant a license to Menzies has ever been issued and no hearing has ever been
6 conducted. The only other option available to the CLB is for it to issue a license.
7

8 The fact that a procedure set forth in statute takes precedence over a mere internal
9 memorandum issued by the CLB Board Chair is basic, black letter law. No administrative body
10 can violate its organic statute simply by adopting new policies by virtue of sending an internal
11 memorandum. Under Guam law, no such body can even amend its rules without following the
12 rulemaking guidelines set forth in the Administrative Adjudication Act, which require far more
13 than an internal memorandum, and there is no evidence that any attempt was even made by the
14 CLB Board to amend its rules in the way suggested by JMI.
15

16 Therefore, because JMI has provided no evidence at all to support its assertion that the
17 CLB's application process was somehow changed by a policy adopted by means of internal
18 memorandum from the CLB Board Chair to the CLB Executive Director and because no such
19 memorandum could ever legally modify the process for acting on contractors license applications
20 set forth in the CLB's governing statute at 21 G.C.A. § 70155, JMI's claims that Menzies' CLB
21 license has no legal foundation must be disregarded in their entirety and the OPA must issue a
22 finding that Menzies has a C-13 license.
23

24 **C. The Hearing Officer has the authority to address motions which may simplify
25 or aid in the expeditious disposition of a proceeding.**

26 The authority of a Hearing Officer to hear motions which may help settle, simplify, or fix
27 the issues in a proceeding or consider other matters which may aid in the expeditious disposition
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1 of a proceeding is rooted in Guam’s procurement regulations. It should not matter how those
2 motions are labeled, so long as they can accomplish the purpose set forth for this grant of authority
3 to the Hearing Officer. Guam’s procurement rules with respect to procurement appeals before the
4 Public Auditor are clear:

5 The Hearing Officer has the power, among others, to:

6 (a) Hold informal conferences to settle, simplify, or fix the issues in a proceeding,
7 or to consider other matters that may aid in the expeditious disposition of the
8 proceeding either by consent of the parties or upon such officer’s own motion

9 2 G.A.R. Div. 4 § 12109.

10 Moreover, motions for summary judgment do not only serve the sole purpose of disposing
11 of a matter in its entirety. Motions for summary judgment also serve as a useful tool for a trial
12 court to narrow issues for trial. *See Alvarado v. GC Dealer Servs. Inc.*, 511 F. Supp. 3d 321, 354
13 (E.D.N.Y. 2021) (“And insofar as summary judgment is known as a highly useful method of
14 narrowing the issues for trial, it follows that preparation of a response to a motion for summary
15 judgment is a particularly appropriate time for a non-movant party to decide whether to pursue or
16 abandon some claims or defenses.”).

17 To the extent that a motion, whether titled as a motion for summary judgment or otherwise,
18 seeks to limit or narrow the issues for trial and thus accomplish the purpose set forth in 2 G.A.R.
19 Div. 4 § 12109, then that motion is perfectly within the authority of the hearing officer to entertain.

20 **D. The CLB has not determined that Menzies violated Guam law by performing
21 work without an appropriate license, because Menzies appeal is pending.**

22 JMI’s claim that the CLB has determined Menzies violated Guam law is entirely false. No
23 hearing has ever been conducted and Menzies has never been afforded any opportunity to defend
24 itself or state its position in response to the Citation issued by the CLB. The Citation is merely the
25 beginning of the process set forth in Guam’s Contractors statute and the Administrative
26 Adjudication Act whereby a determination will ultimately be made. It is a mere accusation, not a
27

1 determination of fact or law. The accusation is, by its very definition, prejudicial. It should be
2 afforded no deference by the OPA in determining this appeal.

3 For JMI to claim that a determination has already been made by the CLB as to whether
4 Menzies violated Guam law either betrays the complete ignorance of JMI's counsel as to how
5 administrative law works or an intention by JMI and its counsel to continue to engage in
6 underhanded and deceitful methods to obtain a decision in their favor no matter what they feel
7 must be done and in complete disregard of their duty of candor to the tribunal.

9 **E. The Office of the Attorney General of Guam opinion must be ignored because**
10 **the Office of the Attorney General has no statutory authority to determine**
11 **questions relating to Guam contractors.**

12 The Office of the Attorney General of Guam has no statutory authority to determine
13 whether anyone has violated Guam's Contractor law. No statute governing the Office of the
14 Attorney General of Guam places that authority within that office. Moreover, the authority to
15 govern and regulate contractors licenses is specifically granted to the CLB by 21 G.C.A §
16 70103, which lists the "Power and Duties of Board", which include the duty and power to "(c)
17 [e]nforce this Chapter and rules and regulations adopted pursuant thereto" and to "(d) Suspend or
18 revoke any license for any cause prescribed by § 70116 or for any cause for suspension or
19 revocation prescribed by the rules and regulations, and refuse to grant any license for any cause
20 which would be grounds for revocation or suspension of a license." 5 G.C.A. § 70103 (c) and (d).

21 As such, the Office of the Attorney General's opinion letter should be afforded no
22 deference whatsoever by the OPA in determining this matter. Like the Citation issued by the CLB,
23 the Office of the Attorney General's letter is entirely prejudicial and should be afforded no
24 deference by the OPA in determining this appeal.

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CONCLUSION

Based on the foregoing facts and arguments, Menzies respectfully requests that the Office of the Public Auditor grant its motion and hold that Menzies does in fact have a C-13 Contractors License, that no final determination has been issued by the CLB that a C-13 license is required to perform work under the RFP, that GIAA properly utilized the emergency procurement process, and that the OPA lacks standing over this appeal because JMI's protest was untimely.

BLAIR STERLING JOHNSON & MARTINEZ
A PROFESSIONAL CORPORATION

BY: 

R. MARSIL JOHNSON
Attorneys for Party in Interest
Aircraft Service International, Inc.
dba Menzies Aviation

Exhibit “A”

2023

CONTRACTOR'S LICENSE

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RME #

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GRT # 200500425
Issued: April 07, 2023

Certificate # C-0423-1449
Expires: June 30, 2023



BERNARD S. BENAVENTE
BOARD CHAIRMAN



CIRIACO C. SANCHEZ, Jr.
EXECUTIVE DIRECTOR



Exhibit “B”

2023

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