



Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;

---

**OPA-PA-23-002 in re Appeal of Johndel International, Inc. dba JMI-Edison**

---

**William B Brennan** <wbrennan@arriolafirm.com>

Tue, Jun 13, 2023 at 5:50 PM

To: Jerrick Hernandez &lt;jhernandez@guamopa.com&gt;, Vince Duenas &lt;vduenas@guamopa.com&gt;, Thyrza Bagana &lt;tbagana@guamopa.com&gt;

Cc: "R. Marsil Johnson" &lt;rmarsjohnson@bsjmlaw.com&gt;, "Joshua D. Walsh" &lt;jdwalsh@rwtguam.com&gt;

Hafa Adai,

Please see the attached Reply re GIAA Motion to Dismiss (3 pages) for filing in the subject case .

Please let me know if you have trouble with the attachment. Apologies for the delay, our office lost power and internet in the afternoon which forced me to file this document from home.

Best,

*William Bucky Brennan, Esq.***ARRIOLA LAW FIRM**

259 Martyr Street, Suite 201

Calvo-Arriola Building

Hagåtña, Guam 96910

Tel: 671.477.9730/33

Fax: 671.477.9734

Email: [wbrennan@arriolafirm.com](mailto:wbrennan@arriolafirm.com)

This email message, including any attachments, is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, is sent by a law firm, and is intended only for the use of the recipient to whom it is addressed. The message, including any attachments, may contain information that is privileged, confidential, and exempt from disclosure. Any and all rights of privilege, confidentiality and non-disclosure are hereby expressly reserved and not waived. If you are not an intended recipient of this message, please advise the sender by reply email and delete this message and any attachments. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

**OPA-PA-23-002 Reply re Motion to Dismiss.pdf**

133K

**WILLIAM B. BRENNAN, ESQ.**  
**ARRIOLA LAW FIRM**  
259 MARTYR STREET, SUITE 201  
HAGÁTÑA, GUAM 96910  
TEL: (671) 477-9730/33  
FAX: (671) 477-9734  
[attorneys@arriolafirm.com](mailto:attorneys@arriolafirm.com)

Counsel for Appellee  
*Guam International Airport Authority*

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEAL**

**In the Appeal of**

APPEAL CASE NO.: OPA-PA-23-002  
GIAA 2021 Emergency Procurement

**Johndel International, Inc. dba. JMI-Edison,**

**REPLY RE GIAA MOTION TO  
DISMISS**

Appellant.

ARRIOLA LAW FIRM HAGÁTÑA, GUAM 96910

**COMES NOW**, the A.B. Won Pat Guam International Airport Authority (“GIAA”), through the undersigned counsel to Reply to Johndel International, Inc. dba JMI-Edison’s (“JMI”) Opposition to GIAA’s Motion to Dismiss this matter.

**JMI’s March 2023 Protest to GIAA was untimely and the OPA lacks Jurisdiction.**

JMI’s Opposition to GIAA’s protest is devoid of any explanation for why JMI can challenge GIAA’s use of an emergency procurement, extension of emergency procurement, or that Menzies was awarded a contract through such emergency procurement, despite JMI’s admission that these facts were known since December 28, 2021, at least. A timely protest, made within 14 days of when the protestor knew or should have known of the facts giving rise to the protest, is a jurisdictional requirement of an agency-level protest and subsequent appeal to the OPA. See Teleguam Holdings, LLC v. Guam, 2018 Guam 5 ¶¶ 20-21 (“Teleguam II”); see also, DFS Guam L.P., 2020, Guam 20 ¶¶ 77, 81-83.

JMI had fourteen (14) days to file a protest with GIAA from December 28, 2021. See 5 G.C.A. § 5425. On that day, a JMI representative emailed a copy of GIAA’s newspaper advertisement concerning the first extension of the contract reached via the October 2021 emergency procurement at issue. That ad stated:

GIAA’s procurement of Management and Infrastructure Support Services to GIAA’s Baggage Conveyance Systems (“services”) has been stayed by a protest and subsequent appeal to the office of the Public Auditor that remains pending. (OPA Case number PA-21-010).

On or about October 26, 2021, **GIAA certified and determined the existence of an emergency due to the imminent potential for interruption of services caused by the protest and pending appeal**, the resulting threat to public health, safety and welfare of passengers and users of the airport, and the daily operations of the airport due to such disruption.

On or about November 1, 2021, GIAA entered into a contract with Aircraft Services International Group, Inc. dba Menzies (“Menzies”), procured on an emergency basis in accordance with the Guam Procurement Law and implementing regulations. The contract provided for an initial term of 30 days, subject to extension as allowed by law. **GIAA has determined the need, and thus intends, to extend the contract with Menzies for a period beyond 90 days from the determination of need for emergency procurement.** The contract remains limited in scope and duration to meet the needs of the emergency.

PR at 0530; 0794-0795 (**emphasis added**). Therefore, as of December 28, 2021, JMI indisputably knew (1) GIAA used an emergency procurement, (2) that GIAA intended to extend the contract awarded through such procurement because of the stay on the underlying RFP remained in place, and (3) that the contract was entered into with Menzies.

These bases are the same bases JMI now offers in this appeal were revived by an opinion from the Office of the Attorney General in March of 2023, triggering a new 14 day period for their agency level procurement protest. The OAG opinion did not toll JMI’s 14 day filing deadline and JMI offers no authority to support such an absurd position. Because JMI’s protest was not made within 14 days

from December 28, 2021, the protest was untimely. Lacking a timely protest at the agency level, the OPA does not have jurisdiction to hear this appeal and the matter must be dismissed.

Dated: June 13, 2023.

Respectfully submitted,  
**ARRIOLA LAW FIRM**

By:   
\_\_\_\_\_  
WILLIAM B. BRENNAN