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FAX

To:	Mr. John M. Quinata Executive Manager Guam International Airport Authority P.O. Box 8770 Tamuning, Guam 96931 Phone: (671) 646-0300 Fax: (671) 646-8823 Email: john.quinata@guamaiport.net	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	12 (including cover page)
CC:	Mr. Joshua D. Walsh, Esq. Attorney for Appellant JMI-Edison Razano Walsh & Torres, P.C. 139 Murraray Blvd. Hagåtña, Guam 96910 Phone: (671) 989-3009 Email: jdwalsh@rwtguam.com	Date:	October 11, 2021
		Phone: Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-21-010 Notice of Receipt of Appeal

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910
Phone: (671) 475-0390 / FAX: (671) 472-7951

October 11, 2021

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

VIA FACSIMILE: (671) 646-8823

Re: Notice of Receipt of Appeal – OPA-PA-21-010

Dear Mr. Quinata,

Please be advised that Johndel International, Inc. dba. JMI-Edison (hereinafter referred to as “JMI”) filed an appeal with the Office of Public Accountability (OPA) on October 8, 2021, regarding the Guam International Airport Authority’s (GIAA) response to JMI’s protest of the procurement award for RFP-005-FY21, Management & Infrastructure Support Services to GIAA’s Baggage Conveyance Systems. OPA has assigned this appeal case number OPA-PA-21-010.

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

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

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Monday, October 18, 2021**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Monday, October 25, 2021**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to JMI. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA

respectfully asks that GIAA provide one original and one electronic file of the said record, which will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Nine Pages of the Notice of Appeal – OPA-PA-21-010

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

RAZZANO WALSH & TORRES, P.C.

JOSHUA D. WALSH
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Counsel for Appellant JMI-Edison

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

PART I.

In the Appeal of

Johndel International, Inc. dba. JMI-
Edison,

Appellant.

DOCKET NO. OPA-PA-_____

NOTICE OF APPEAL

PART II: APPELLANT INFORMATION

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

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

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

PART III: APPEAL INFORMATION

- A. Purchasing Agency: Guam International Airport Authority ("GIAA")
- B. Solicitation Number: GIAA RFP 005-FY21 – Management & Infrastructure Support Services to GIAA's Baggage Conveyance Systems.
- C. The Decision being appealed was provided to the Appellant on September 30, 2021, The Decision was made by the Executive Manager, John M. Quinata.
- D. This Appeal is made from the Denial of Procurement Protest on Award provided to JMI on September 30, 2021.
- E. The name of the only competing offeror known to Appellant is: Aircraft Service International, Inc, doing business as "Menzies Aviation."

PART IV: STATEMENT OF GROUNDS FOR APPEAL

A. THE GROUNDS FOR APPEAL

1. Relevant Procedural and Factual History

GIAA issued the Request for Proposals (“RFP”) GIAA RFP 005-FY21 on July 20, 2021.¹ On August 18, 2021, two offerors, JMI and Aircraft Service International, Inc, doing business as “Menzie’s Aviation,” (“Menzie’s”) submitted proposals in response to the request. GIAA informed JMI on August 30, 2021, that it was not selected for an award under the RFP.² GIAA did not inform JMI of the identity of the intended awardee. On August 31, 2021, JMI instructed its counsel to seek, in conformance with 5 G.C.A. §§10101, *et seq.*, the procurement record for the RFP as well as the proposals submitted by all offerors to the RFP.³ No timely response to the Sunshine Act request was provided by GIAA. Given the delay in the Sunshine Act response, JMI had moved ahead and made a formal inquiry to the Guam Contractor’s Licensing Board seeking information regarding Menzie’s licensing status and ability to perform the work detailed by the RFP — information that would be contained in the record of procurement.⁴ More than two weeks after the initial information request — on September 17, 2021 — GIAA provided counsel for JMI its response to JMI’s sunshine act request. The response did not include the proposal, or parts of the

¹ The original Request for Proposals, and subsequent amendments, are attached to this Notice of Appeal as **Attachment A**.

² The August 30, 2021, notice to JMI is attached to this Notice of Appeal as **Attachment B**.

³ The Sunshine Act request is attached to this Notice of Appeal as **Attachment C**.

⁴ JMI’s correspondence to the Contractor’s Licensing Board regarding Menzie’s license status is attached to the Notice of Appeal as **Attachment D**.

proposal, submitted by Menzies.⁵ On September 17, 2021, personnel from the CLB informed JMI that neither Menzies, nor its parent, entity were licensed by the CLB.⁶ As a result of learning that Menzies was not licensed to do the job that GIAA had intended to award to Menzies under the RFP, JMI protested the issue on September 21, 2021.⁷ JMI's protest also illuminated the failings of GIAA's procurement record; GIAA needed to create the record in response to JMI's sunshine act request, and the created record was deficient in what was made part of it. On September 30, 2021, the Agency denied the protest.⁸ This appeal to the OPA followed.

2. Timeliness of Protest and Appeal.

GCA 5 §5425(a) requires that Protests must be made within 14 days of the issues leading to the protest being known by the Protester (JMI in this case). The issues documented by JMI in this protest became known to JMI on September 17, 2021, when the Guam Contractor's Licensing Board informed JMI that Menzies was not licensed. JMI raised its protest to GIAA on September 21, 2021 — four days after learning of the key grounds for the protest. This Appeal comes eight days after GIAA issued its protest decision to JMI — well within the fifteen day protest appeal period set by 5 GCA § 5425(e). Therefore, both JMI's agency level protest and subsequent

⁵ GIAA's September 17, 2021, sunshine act response cover letter is attached to this Notice of Appeal as **Attachment E**.

⁶ CLB correspondence informing JMI that Neither Menzies nor its parent entity held valid CLB licenses is attached to this Notice of appeal as **Attachment F**.

⁷ JMI's protest letter is attached to this Notice of Appeal as **Attachment G**.

⁸ The GIAA Protest Denial of September 30, 2021, is attached to this Notice of Appeal as **Attachment H**.

appeal to the OPA meet the timeliness standards required by applicable law and regulation.

3. Basis for Protest and Appeal

- a. Menzies is non-responsive to the RFP, and unable to legally perform the work it has bid on. These facts render Menzies both a non-responsive and non-responsible offeror.**

The CLB has confirmed that Menzies is unable to operate as a contractor on Guam, since that entity does not have a proper contractor's license. On Guam, a "contractor" is defined as "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." 21 G.C.A. § 70100(b). 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 RFP explicitly informs offerors that only properly licensed offerors will be considered for award. GIAA 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.") GIAA's intended award to

Menzies violates the plain terms of the RFP, since Menzies is not properly licensed to do the work, it has offered to do under the RFP. *See*, RFP, Preliminary Scope of Services, §3 (explaining that a successful offeror “must show evidence that it is licensed to conduct business on Guam.”)⁹

Menzies’s lack of appropriate contractor licensing renders it non-responsive to the RFP. More, since Menzies does not have “the capability in all respects to perform fully the contract requirements, *and* the integrity and reliability which will assure good faith performance,” Menzies is a non-responsible offeror. 5 GCA § 5201(f). Menzies’ non-responsibility is further demonstrated by its inability to meet the requirement of the Draft Agreement an awardee would need to execute, that “Contractor shall be required to comply with all Federal and Guam laws and ordinances applicable to the work.” RFP Draft Agreement, Art. 11. Operating as a contractor without a contractor’s license is a violation of law applicable to the work, and Menzies’s attempt to obtain such work was improper, and should have been rejected by GIAA.

b. GIAA’s Procurement Record was not kept in accordance with the law.

On August 31, 2021, counsel for JMI requested that GIAA provide the procurement record kept for the RFP. The Response from GIAA was untimely under Guam’s Sunshine Reform Act of 1999. It was not provided until September 17, 2021, and followed GIAA’s admission transmitted to JMI on September 9, 2021, that GIAA

⁹ JMI understands that Menzies may have a business license providing for work in aviation support services. Such a license does not obviate the legal requirement that Menzies have a valid license to conduct the contracting work it has bid on.

would need additional time since there were “500 pages of documents” to review and that GIAA could not “admit the existence of public records/documents in response to [JMI’s] request.”¹⁰

Guam law mandates that “each procurement officer **shall maintain** a complete record of each procurement.” 5 GCA § 5249 (emphasis added); *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5, ¶ 22. The law does not provide an exhaustive list of what a complete record contains, but instead provides a non-exhaustive list of items that “the record **shall include**.” 5 GCA §5249. (emphasis added)¹¹ Put another way, GIAA was required by Guam’s procurement laws to maintain a procurement record during the RFP process, and not create one in response to a Freedom of Information/Sunshine Act request sent pursuant to 5 G.C.A. §§10101, *et seq.* The procurement record is a single record that must be kept current and contemporaneously with the ongoing procurement. GIAA’s inability to promptly provide that record to JMI for at least two weeks, and refusal to acknowledge that

¹⁰ GIAA’s correspondence of September 9, 2021, is attached to this Notice of Appeal as **Attachment I**. GIAA’s claim of the need to review 500 pages of documents is belied by its eventual submission to JMI of a procurement record that contained just 252 pages.

¹¹ The non-exhaustive list explains the record should include: “(a) the date, time, subject matter and names of participants at any meeting including government employees that is in any way related to a particular procurement; (b) a log of all communications between government employees and any member of the public, potential bidder vendor or manufacturer which is in any way related to the procurement; (c) sound recordings of all pre-bid conferences; negotiations arising from a request for proposals and discussions with vendors concerning small purchase procurement; (d) brochures and submittals of potential vendors, manufacturers or contractors, and all drafts, signed and dated by the draftsman, and other papers or materials used in the development of specifications; and (e) the requesting agency’s determination of need.”

the record existed at the time of the JMI Sunshine Act request, demonstrates that the record was not kept as mandated by law, and instead created after the fact. More, the record provided to JMI remains incomplete and does not contain many of the documents required to be kept in accordance with 5 GCA §5249.

B. RULING REQUESTED

JMI respectfully requests that the Office of Public Accountability Order the following:

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

C. SUPPORTING EXHIBITS, EVIDENCE OR DOCUMENTS

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

- (1) The original Request for Proposals, and subsequent amendments, is attached as **Attachment A**.
- (2) The August 30, 2021, Notice to JMI is attached as **Attachment B**.
- (3) The Sunshine Act request is attached as **Attachment C**.
- (4) JMI's correspondence to the Contractor's Licensing Board regarding

Menzies's license status is attached as **Attachment D**.


- (5) GIAA's September 17, 2021, sunshine act response cover letter, is attached as **Attachment E**.
- (6) CLB correspondence informing JMI that Neither Menzies nor its parent entity held valid CLB licenses is attached as **Attachment F**.
- (7) JMI's protest letter is attached as **Attachment G**.
- (8) The GIAA Protest Denial of September 30, 2021, is attached to this Notice of Appeal as **Attachment H**.
- (9) GIAA's correspondence of September 9, 2021, is attached to this Notice of Appeal as **Attachment I**.

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

The undersigned does hereby confirm that to the best of his knowledge, no case or action concerning the subject of this Appeal has been commenced in court. The undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

Respectfully submitted this 8th day of October, 2021.

RAZZANO WALSH & TORRES, P.C.

By: 

JOSHUA D. WALSH
JOSEPH C. RAZZANO
Attorneys for Appellant
JMI-Edison



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-21-010 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Mon, Oct 11, 2021 at 1:03 PM

To: john.quinata@guamairport.net

Cc: "Henry M. Cruz" <hcruz@guamairport.net>, "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Joseph C. Razzano" <jrazzano@rwtguam.com>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-21-010. This email will serve as an official notice in lieu of a transmittal via Fax.

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

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA

Auditor

Office of Public Accountability – Guam

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