



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

---

**In the Appeal of Johndel International, Inc. dba. JMI-Edison**

---

**Claire Pollard** <cpollard@rwtguam.com>

Mon, Apr 10, 2023 at 11:04 AM

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

Cc: "Joshua D. Walsh" &lt;jdwalsh@rwtguam.com&gt;, "Joseph C. Razzano" &lt;jrazzano@rwtguam.com&gt;, "Tabitha H. Madarang" &lt;tmadarang@rwtguam.com&gt;

Dear Mr. Hernandez:

Please see the attached **Notice of Appeal** for e-filing in the above-referenced matter. Should you have any questions or concerns, please feel free to contact our office. Thank you.

--

Regards,  
*Claire Pollard*

**RAZZANO WALSH & TORRES, P.C.**

139 Murray Blvd. Ste. 100

Hagatna, Guam 96910

(T): 671-989-3009

(F): 671-989-8750

<http://rwtguam.com>**4.10.23 Notice of Appeal.pdf**

3241K

**RAZZANO WALSH & TORRES, P.C.**

JOSHUA D. WALSH

JOSEPH C. RAZZANO

SUITE 100, 139 MURRAY BLVD.

HAGÁTÑA, GUAM 96910

TELEPHONE: (671) 989-3009

FACSIMILE: (671) 989-8750

*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.**

**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_ila@jmgiam.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: Emergency Procurement of 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 March 27, 2023, 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 March 27, 2023.
- 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 remains before the Superior Court of Guam on a procurement appeal raised by JMI regarding Request for Proposals (“RFP”) GIAA RFP 005-FY21. That appeal seeks judicial review of the dismissal, with prejudice, of the prior procurement appeal brought by JMI challenging the award of the RFP to Menzies Aviation (“Menzies”) — an entity that was neither responsive to the RFP nor responsible to perform the work contemplated. 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 (the “ERFP”).

On March 16, 2023, the Guam Contractors Licensing Board 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....”<sup>1</sup> It has become clear that Menzies cannot continue to perform the work contemplated by the RFP, or its subsequent emergency iterations, for the airport. Because of this, and the fact that GIAA’s use of emergency procurement power for more than 500 days directly contradicts the procurement code, JMI initiated an Agency level protest.<sup>2</sup> On March 27, 2023, the Agency denied the protest.<sup>3</sup> 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 March 15, 2023, when GIAA published notice about initiating another emergency procurement period with Menzies. JMI’s other protest ground became known the Office of the Attorney general issued its conclusions regarding Menzies’s illegal performance. JMI raised its protest to GIAA on March 21, 2023. This Appeal comes within fifteen days after GIAA issued its protest decision to JMI, and is within the fifteen day protest appeal period set by 5 GCA § 5425(e). Therefore, both JMI’s agency level protest and subsequent appeal to the OPA meet the timeliness standards required by applicable law and regulation.

//

---

<sup>1</sup> The Attorney General Opinion released by the CLB is attached to this Notice of Appeal as **Attachment A**.

<sup>2</sup> JMI’s protest letter is attached to this Notice of Appeal as **Attachment B**.

<sup>3</sup> The GIAA Protest Denial of March 27, 2023, is attached to this Notice of Appeal as **Attachment C**.

### **3. Basis for Protest and Appeal**

#### **a. 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. 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 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). To obtain such work was improper, and should have been rejected by GIAA.

#### **b. 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. There has been one emergency declaration issued with regard to

this procurement, and that was issued on October 27, 2021.<sup>4</sup> More than 500 days have elapsed since that “emergency,” straining the plain meaning of language beyond normal bounds.

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).

It is now clear that the government has not undertaken the steps necessary to trigger the emergency procurement regulations for this new period of performance more than 500 days after the original emergency performance period. 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. That has not occurred here. Instead, GIAA has taken no 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, even as Menzies continues to operate illegally.

**B. RULING REQUESTED**

JMI respectfully requests that the Office of Public Accountability Order the

---

<sup>4</sup> The Original Package of the Emergency Declaration of Need and Certification of Emergency are attached to this Notice of Appeal as **Attachment D**.

following:

- (1) That GIAA must disqualify Menzies from eligibility for Award under the ERFPP, as Menzies's does not have a valid contractor's license and as such, it cannot perform the work of the ERFPP;
- (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 the emergency procurement under 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 Attorney General Opinion released by the CLB is attached as **Attachment A**.
- (2) JMI's protest letter is attached as **Attachment B**.
- (3) The GIAA Protest Denial of March 27, 2023, is attached as **Attachment C**.
- (4) The Original Package of the Emergency Declaration of Need and Certification of Emergency are attached as **Attachment D**.

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

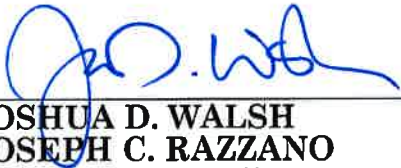
The undersigned does hereby confirm that to the best of his knowledge, no case or action concerning the Emergency procurement that is subject of this Appeal has



been commenced in court. The protest appeal of GIAA RFP 005-FY21 is currently before the Superior Court of Guam in the case styled as *Johndel International, Inc. dba JMI-Edison v. Office of Public Accountability, Guam International Airport Authority, Aircraft Services International Inc. dba Menzies Aviation*, CV0095-22 (Superior Court of Guam). 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 10<sup>th</sup> day of April, 2023.

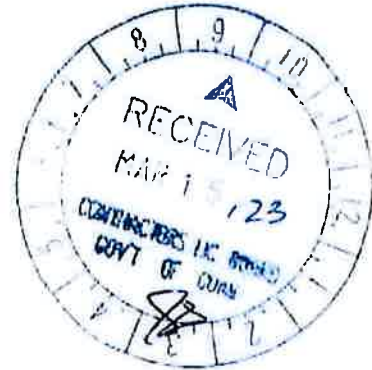
**RAZZANO WALSH & TORRES, P.C.**

By:   
\_\_\_\_\_  
**JOSHUA D. WALSH**  
**JOSEPH C. RAZZANO**  
*Attorneys for Appellant*  
*JMI-Edison*

# **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.<sup>1</sup> Previously, however, between June 29, 2009 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.<sup>2</sup> Two offerors responded to the RFP: (1) Menzies; and (2) Johndel International *dba* JMI-Edison.

---

<sup>1</sup> 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**

590 S. Marine Corps Drive · ITC Bldg., Ste. 901 · Tamuning, Guam 96913 · USA  
671-475-3324 · 671-475-4703 (fax) · [publicservice@oagguam.org](mailto:publicservice@oagguam.org) · [www.oagguam.org](http://www.oagguam.org)  
**"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,<sup>3</sup> 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.<sup>4</sup> On the same day, JMI also filed a written complaint with the CLB reporting Menzies' alleged unlicensed activities.<sup>5</sup>

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

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.<sup>8</sup>

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

---

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

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

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

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

<sup>6</sup> OPA-PA-21-010, NOTICE OF APPEAL at Exhibit H.

<sup>7</sup> OPA-PA-21-010, NOTICE OF APPEAL.

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

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

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

### Questions Presented By Jmi To The Clb & 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."<sup>11</sup> By legislative mandate, the purpose of the Rules and Regulations "is the protection of the general public."<sup>12</sup>

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.<sup>13</sup> With the exception of

---

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

<sup>12</sup> 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).

<sup>13</sup> 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,<sup>14</sup> all contractors are required to obtain and maintain a license appropriate to the classification of work being performed.<sup>15</sup>

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."<sup>16</sup>

## 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.<sup>17</sup> To this end, the CLB has adopted a **Standard Operating Procedure (SOP)**.<sup>18</sup>

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.

---

<sup>14</sup> 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).").

<sup>15</sup> 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).

<sup>16</sup> *Supra*, CV0095-22 DECISION & ORDER at 7; see also 21 GCA § 70109.

<sup>17</sup> 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).

<sup>18</sup> [http://clb.guam.gov/wp-content/uploads/2018/05/CLB-Standard-Operating-Procedures\\_February-2019.pdf](http://clb.guam.gov/wp-content/uploads/2018/05/CLB-Standard-Operating-Procedures_February-2019.pdf)



## **CONTRACTORS LICENSE BOARD**

*Institun Malisensiyen Kontratista*  
542 North Marine Corp Drive A. Tamuning, Guam 96911  
649-2211, 649-9676, 647-2965 649-2211(Fax) Website: www.clb.guam.gov



**LOURDEX A. LEON GUERRERO**  
GOVERNOR

**CECIL "Buddy" L. ORSINI**  
EXECUTIVE DIRECTOR

**JOSHUA F. TENORIO**  
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 jobsite 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.<sup>19</sup>

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":

---

<sup>19</sup> 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.

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 Manufactures 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.<sup>20</sup>

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.

---

<sup>20</sup> 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

# **ATTACHMENT B**

# 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

MAR 21 2023  
3:45 PM  
TIME: \_\_\_\_\_  
RECD BY: \_\_\_\_\_

### ***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 "Menzie's Aviation" ("Menzie's") submitted proposals in response to the request. JMI brought a procurement protest and asserted that the selection of Menzie's for possible award violated procurement law, because Menzie's 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 Menzie's 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.

Pan American Building 139 Murray Blvd Suite 100 • Hagåtña, Guam 96910  
(T): 671-989-3009 (F): 671-989-8750

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...”<sup>1</sup> 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.<sup>2</sup> 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

---

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

<sup>2</sup> 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.”)



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

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  
Guam International Airport Authority  
Page 5  
March 21, 2023

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.<sup>1</sup> Previously, however, between June 29, 2009 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.<sup>2</sup> Two offerors responded to the RFP: (1) Menzies; and (2) Johndel International *dba* JMI-Edison.

---

<sup>1</sup> 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**

590 S. Marine Corps Drive · ITC Bldg., Ste. 901 · Tamuning, Guam 96913 · USA  
671-475-3324 · 671-475-4703 (fax) · [publicservice@oagguam.org](mailto:publicservice@oagguam.org) · [www.oagguam.org](http://www.oagguam.org)  
**"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,<sup>2</sup> 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.<sup>4</sup> On the same day, JMI also filed a written complaint with the CLB reporting Menzies' alleged unlicensed activities.<sup>5</sup>

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

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.<sup>8</sup>

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

---

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

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

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

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

<sup>6</sup> OPA-PA-21-010, NOTICE OF APPEAL at Exhibit H.

<sup>7</sup> OPA-PA-21-010, NOTICE OF APPEAL.

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

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

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

### Questions Presented By Jmi To The Clb & 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."<sup>11</sup> By legislative mandate, the purpose of the Rules and Regulations "is the protection of the general public."<sup>12</sup>

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.<sup>13</sup> With the exception of

---

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

<sup>12</sup> 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).

<sup>13</sup> 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,<sup>14</sup> all contractors are required to obtain and maintain a license appropriate to the classification of work being performed.<sup>15</sup>

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."<sup>16</sup>

## 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.<sup>17</sup> To this end, the CLB has adopted a **Standard Operating Procedure (SOP)**.<sup>18</sup>

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.

---

<sup>14</sup> 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).").

<sup>15</sup> 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 specially 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).

<sup>16</sup> *Supra*, CV0095-22 DECISION & ORDER at 7; *see also* 21 GCA § 70109.

<sup>17</sup> 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).

<sup>18</sup> <http://clb.guam.gov/wp-content/uploads/2018/05/CLB-Standard-Operating-Procedures-February-2019.pdf>





## CONTRACTORS LICENSE BOARD

*Inetinn Mallenslayan Kontratista*  
342 North Marine Corp Drive A, Tamuning, Guam 96911  
649-2211, 649-9676, 647-2965 649-2211(Fax) Website: www.clb.guam.gov



LOURDEN A. LEON GUERRERO  
GOVERNOR

CECIL "Buddy" L. ORANI  
EXECUTIVE DIRECTOR

JOSHUA F. TENORIO  
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 jobsite 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.<sup>19</sup>

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":

---

<sup>19</sup> 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.**

- 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 Manufactures 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.<sup>20</sup>

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.

---

<sup>20</sup> 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

# **ATTACHMENT C**





Email: [official@guamairport.net](mailto:official@guamairport.net)

March 27, 2023

Mr. Joseph C. Razzano, Esq.  
Pan American Bldg.  
139 Murray Blvd. Ste. 100  
Hagatna, Guam 96910

RE: Procurement Protest (dated March 21, 2023), RFP005-FY21

*Hafa Adai* Mr. Razzano,

The A.B. Won Pat Guam International Airport Authority ("GIAA") is in receipt of your letter styled as a "procurement protest" and dated March 21, 2023.<sup>1</sup> Your letter references RFP-005-FY21. That procurement remains stayed pursuant to Johndel International, Inc.'s ("JMI") previous protest dated September 21, 2021 and subsequent appeals to the Office of Public Accountability and the Superior Court of Guam, the latter of which remains pending.

Your letter of protest makes several misstatements about GIAA's procurement of certain services from Aircraft Services International, Inc. ("Menzies") through an emergency procurement. First, GIAA did not give notice of a Board Meeting for March 22, 2023. GIAA gave notice of a Public Hearing pursuant to 5 G.C.A. § 5215 to receive public comment on GIAA's intent to extend the agreement with Menzies from April 2023.

Second, GIAA maintains its position that the Guam Contractor's License Board ("GCLB") is empowered to enforce contractor related laws and regulations. Nothing in your letter suggests that the Contractor's License Board has made any finding related to Menzies provision of services at GIAA. GIAA has not otherwise received any formal correspondence from the GCLB regarding such finding.

In response to the specific "grounds of protest" in your letter, GIAA responds as follows.

JMI's protest is untimely. All the purported bases of your protest were known or should have been known by both you and JMI for more than fourteen days preceding your March 21, 2023 letter. In correspondence with the GCLB on December 20, 2021, Mr. Ed Ilaos sends a copy of a newspaper advertisement of GIAA's intent to extend the contract with Menzies reached using the emergency procurement you now protest, beyond the first ninety-day period of the contract. See Ex. A. Mr. Ilaos's correspondence with the GCLB was related to his GCLB complaint and initial protest from September 2021, alleging that Menzies lacked certain licenses, including a C-13 license, issued by the GCLB to perform the work you allege Menzies is performing under an emergency contract. On November 22, 2021, Mr. Ilaos sent to the GCLB a draft letter, asking the GCLB to find specifically that Menzies lacked a C-13 license. Ex. C. Additionally, in JMI's Verified Complaint signed by a member of your firm and verified by a JMI representative, at Paragraph 41 filed in the Superior Court of Guam in SP0095-22 on February 10, 2022,

<sup>1</sup> The March 21, 2023 Letter also included a request for documents under the Sunshine Reform Act of 1999. GIAA Shall respond to that request under separate cover.



AMERICAN ASSOCIATION  
OF AIRPORT EXECUTIVES



AIRPORT COUNCIL  
INTERNATIONAL

NASAO  
National Association of State Aviation Officials



THE INTERNATIONAL AIR CARGO ASSOCIATION

JMI pleaded that Menzies was providing services to GIAA under an emergency contract. Ex. B. Therefore, JMI's and your protest dated March 21, 2023 was clearly brought more than 14 days from when JMI and you knew or should have known of Menzies provision of services to GIAA pursuant to the October 2021 emergency procurement, despite your allegations that Menzies is unlicensed to do so.


GIAA has complied with the requirements laid out in Guam law to conduct an emergency procurement. The provider of services solicited through that emergency procurement was competitively selected, on an emergency basis, in compliance with Guam law. The extension of the contract has also occurred in full compliance with the Guam procurement law and implementing regulations. The contract remains limited in scope and duration to the emergency certified by *I Maga'hågan Guåhan*. JMI's and your allegations otherwise are speculative and baseless. For example, you make reference to a "record" on page 3 of your protest, but on page 4 you ask for some of the very documents you allege may be missing from the "record" and which may support your purported protest. This makes clear you have not reviewed the "record" related to the emergency procurement and your protest is shooting in the dark.

The remedy you request is also not in line with the Guam procurement law and implementing regulations. A stay of RFP-005-FY21 remains in place due to JMI's protest dated September 21, 2021 and subsequent appeals, one of which remains pending in the Superior Court. GIAA cannot unilaterally take any action related to the procurement stayed by such appeal, initiated as a result of the OPA's dismissal of JMI's appeal from GIAA's denial of JMI's September 2021 agency protest. GIAA similarly cannot "turn over" the contract for the services to JMI under the procurement law, on an emergency basis or otherwise.

You are also incorrect that your March 2023 "procurement protest" is pre-award. The contract awarded after utilizing the emergency procurement method of source selection was entered into in November 2021. That contract has been subsequently extended as allowed by law. Therefore, no automatic stay will be imposed as 5 G.C.A. Section 5425(g) is not applicable. The protest was neither timely, nor pre award, as you allege.

Based on the foregoing, yours and JMI-Edison's protest dated March 21, 2023, is hereby denied in its entirety. Pursuant to 5 G.C.A. Section 5425, JMI-Edison is hereby informed of the right to appeal this decision to the Office of Public Accountability, and the right to judicial review. Nothing herein is construed as a waiver of any such right, remedy, claim for relief or defense available to GIAA. The same are hereby reserved.

Respectfully,

  
John M. Samata  
Executive Manager

**Attachments:**

Exhibit A

Exhibit B

Exhibit C



Cecil Orsini <cecil.orsini@clb.guam.gov>

**FW: GIAA Announcement on today's Guam Daily Post**

1 message

Ed R. Ilao <edilao@jmiguam.com>  
To: Buddy Orsini <cecil.orsini@clb.guam.gov>

Tue, Dec 28, 2021 at 9:30 AM

Buddy,

In lieu of your "Findings & Decision" in regards to the Menzies case, as well as, GIAA continuing to contract with them, wouldn't a "Cease & Desist" order be the next step? I'm very sorry for hounding you on this...I just want this case over and done with.

Best regards,

ED ILAO, P.E.  
JMI-EDISON

Cell #: (671)688-7601  
eMail: ed\_ilao@jmiguam.com

On 12/22/21, 10:44 AM, "Ed R. Ilao" <edilao@jmiguam.com> wrote:

Nida, please see attached.

On 12/20/21, 8:59 AM, "Ed R. Ilao" <edilao@jmiguam.com> wrote:

Marcus,

Please see attached announcement on page 17 of today's Guam Daily Post. GIAA is continuing to contract with an improperly licensed entity (Menzies), even to this date.

Best regards,

ED ILAO, P.E.  
JMI-EDISON

Cell #: (671)688-7601  
eMail: ed\_ilao@jmiguam.com

3639\_001.pdf  
209K

**EXHIBIT A**

U.N. bodies estimate that millions of Afghans could face hunger over the winter without urgent help, but aid has been hampered by international unwillingness to engage directly with the Taliban, in part because of concern over rights for women and political inclusion.

A.S. WON PAT INTERNATIONAL  
AIRPORT GUAM



**NOTICE OF PUBLIC HEARING  
INTENT TO EXTEND  
EMERGENCY CONTRACT**

Wednesday, December 22, 2021 at 9:30 AM In Terminal Conference Rooms 1 & 2 and by Videoconference and Live Streamed via GIAA website: [www.guamairport.com](http://www.guamairport.com) or <https://www.guamairport.com/corporate/about-our-airport/management/airport-public-hearing>

**AGENDA**

1. Call to Order and Attendance
2. Public Comments
3. Adjournment

GIAA's procurement of Management & Infrastructure Support Services to GIAA's Baggage Conveyance System ("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 the 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.

Parking is available in the Public Parking Lot.

Call the GIAA Procurement Office at 671-642-5147 for special accommodations.

This ad is paid for by GIAA.

Sign up for multiple subscriptions to



**QUARTERLY \$0**  
**\$20 PER MO. (6**

includes print and digital

Purchase 4 or more subscriptions

to receive a special discount

**Business owners: Give the**

best price on all your subscriptions when you

**No cancellations for existing accounts to receive  
existing account agreement expires to avoid c**



Cecil Orsini <cecil.orsini@clb.guam.gov>

**FW: GIAA Announcement on today's Guam Daily Post**

1 message

Ed R. Ilao <edilao@jmiguam.com>  
To: Buddy Orsini <cecil.orsini@clb.guam.gov>

Tue, Dec 28, 2021 at 9:30 AM

Buddy,

In lieu of your "Findings & Decision" in regards to the Menzies case, as well as, GIAA continuing to contract with them, wouldn't a "Cease & Desist" order be the next step? I'm very sorry for hounding you on this...I just want this case over and done with.

Best regards,

ED ILAO, P.E.  
JMI-EDISON

Cell #: (671)888-7601  
eMail: ed\_ilao@jmiguam.com

On 12/22/21, 10:44 AM, "Ed R. Ilao" <edilao@jmiguam.com> wrote:

Nida, please see attached.

On 12/20/21, 8:59 AM, "Ed R. Ilao" <edilao@jmiguam.com> wrote:

Marcus,

Please see attached announcement on page 17 of today's Guam Daily Post. GIAA is continuing to contract with an improperly licensed entity (Menzies), even to this date.

Best regards,

ED ILAO, P.E.  
JMI-EDISON

Cell #: (671)888-7601  
eMail: ed\_ilao@jmiguam.com

3639\_001.pdf  
209K

U.N. bodies estimate that millions of Afghans could face hunger over the winter without urgent help, but aid has been hampered by international unwillingness to engage directly with the Taliban, in part because of concern over rights for women and political inclusion.

A.S. WOMEN INTERNATIONAL  
AIRPORT GUAM



**NOTICE OF PUBLIC HEARING  
INTENT TO EXTEND  
EMERGENCY CONTRACT**

Wednesday, December 22, 2021 at 9:30 AM in Terminal Conference Rooms 1 & 2 and by Videoconference and Live Streamed via GIAA website: [www.guamairport.com](http://www.guamairport.com) or

<https://www.guamairport.com/corporate/about-our-airport/management/airport-public-hearing>

**AGENDA**

1. Call to Order and Attendance
2. Public Comments
3. Adjournment

GIAA's procurement of Management & Infrastructure Support Services to GIAA's Baggage Conveyance System ("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 the 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.

Parking is available in the Public Parking Lot.

Call the GIAA Procurement Office at 671-642-5747 for special accommodations.

This ad is paid for by GIAA.

Sign up for multiple subscriptions to go



**QUARTERLY SUBSCRIPTIONS**  
**\$20 PER MO. for**

includes print delivery

For more information visit [www.guamairport.com](http://www.guamairport.com)

**Business owners: Give the gift**

of a quarterly subscription to go

**No cancellations for existing accounts to receive existing account agreement expires to avoid any**

Additionally, this administrative decision complied in all respects with Guam Law. That decision was provided to the OPA on December 23, 2021.

35. During the continued Motion hearing, the OPA proceeded with hearing arguments on the Motions, and continued the hearing so as to allow the parties to determine what next steps, if any, were to occur before the CLB.

36. Menzies, through a Sunshine Act Response, obtained the correspondence between the CLB and Mr. Iiao regarding the agency decision that was issued, and presented that correspondence to the OPA as indicative of an improper attempt to "create" evidence.

37. Menzies brought no action before either the CLB or a court of competent jurisdiction attacking the veracity of the CLB December 22, 2021, Findings & Decision.

38. The Public Auditor orally ruled on January 27, 2022, that JMI's protest would be dismissed as a sanction for JMI's assistance in the creation of the CLB December 22, 2021, Findings & Decision. No evidence was taken regarding those findings, and no opportunity for briefing the propriety of the sanction was provided.

39. A written Decision and Order was issued by the OPA on February 4, 2022. A true and correct copy of the Decision & Order is attached to this complaint as Exhibit 1.

40. This appeal to the Superior Court of Guam followed.

41. Currently, Menzies is performing for GIAA under an "emergency" contract without appropriate licensing. This performance is occurring despite the fact

that GIAA counsel has informed the OPA that the issue of contractor responsibility had not yet been addressed by GIAA.

**V. CLAIMS FOR RELIEF**

**CLAIM ONE:**

**THE PUBLIC AUDITOR'S FINDING THAT JMI'S PROTEST SHOULD BE DISMISSED AS A SANCTION IS ARBITRARY, CAPRICIOUS, CLEARLY ERRONEOUS, OR CONTRARY TO LAW.**

42. JMI realleges and incorporates by reference the allegations made in paragraphs 1 through 41 above as if fully set forth herein.

43. The OPA sanction of dismissal was improper, in that it was arbitrary, capricious, clearly erroneous, and contrary to law by being issued without notice and a meaningful opportunity for JMI to respond to the sanction.

44. The sanction of dismissal was improper since it was imposed without prior notice to all parties and without an opportunity for the party against whom sanctions would be imposed to be heard.

45. The OPA, in issuing its sanction, incorrectly and impulsively mischaracterized prior testimony from CLB personnel in other OPA matters, and mistakenly recounted that CLB Investigator Nida Bailey had acknowledged that it is the CLB Board which is to decide issues related to the existence or nonexistence of a contractor license, or the statutory need for such a license, and that she had confirmed that no Board meeting had taken place regarding the issues.

46. The OPA, in issuing its sanction, also incorrectly determined that the concurrence of four members of the CLB Board is necessary "for the validity of any of its actions."



---

**Cecil Orsini** <cecl.orsini@clb.guam.gov>  
To: "Ed R. Ilao" <ed\_ilao@jmgiam.com>

Thu, Nov 18, 2021 at 9:06 AM

Hi Ed, CLB is waiting for there written response from thlar attorney.  
(Quoted text hidden)

---  
Regards,

**Cecil "Buddy" L. Orsini**  
Executive Director  
Contractors License Board  
542 North Marine Corps Drive  
Tamuning, Guam 98913  
Tel: (671) 649-2215 Fax: (671) 649-2210  
Email address: cecl.orsini@clb.guam.gov

---

**Ed R. Ilao** <ed\_ilao@jmgiam.com>  
To: Cecil Orsini <cecl.orsini@clb.guam.gov>

Mon, Nov 22, 2021 at 2:00 PM

Buddy,

Would it be possible to get a letter from CLB like the attached letter?

I sincerely believe you have all the documents in your possession to be able to write this letter, without waiting for response from Menzie's attorney.

It will really help our case before the Office of Public Accountability if we were to receive this letter as soon as possible.

(Quoted text hidden)

---

 **CLB Draft Letter.docx**  
17K

EXHIBIT C

---



## **CONTRACTORS LICENSE BOARD**

*Inetnon Malisensiayen Kontratista*  
542 North Marine Corp Drive A. - Tamuning, Guam 96913  
(Tel) 649-2211/ 646-7626; (Fax) 649-221



**LOURDES A. LEON GUERRERO**  
Maga'hága

**JOSHUA F. TENORIO**  
Sigundo Maga'láhi

**CECIL "BUDDY" ORSINI**  
Direktol Eksekutibu

**Date:** November 01, 2021

**To:** Teresa Sakazaki – G4S Security Systems (Guam) Inc.  
J & G Commercial Plaza, Bldg. B Suite 101  
130 East Marine Corps Drive Hagatna, Guam 96910

**Subject:** Case # 2021-09-03  
Findings & Decisions

Dear Ms. Teresa Sakazaki,

The Contractors License Board (CLB) would like to inform you on our findings and decision in regards to your consumer complaint dated September 20, 2021

Your COMPLAINT alleges the following:

1. Indoor and Outdoor Wireless Local Area Network (WLAN) Infrastructure Installation Project.
2. G4S contacted Guam Contractors License Board office on September 15, 2021 and inquired if TFT's has a license and there are none. Also G4S verified on our website "2022 License Information as of April 9, 2021 - Active and Inactive lists" to see if this company held a Contractor License on Guam. They could not find them or any of their listed partners - NxTech LLC. Systems, Aruba Networks, Erate hardware and software support vendors.

### **Findings:**

1. Upon investigation, we confirmed that Technologies for Tomorrow Inc. does not hold a contractors license on Guam.
2. Contractors License Board Investigation Unit verified with Guam Revenue & Tax office that Technologies for Tomorrow Inc. are license as retail for the sale of computer hardware & software (Only on special orders/No storage).

**Decision:**

1. 21 GCA Real Property CH. 70 Contractors § 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).
2. Contractors License board will find TFT's in violation of this public law 21 GCA § 70108(a) without obtaining a contractor license C68 Communications/Telecommunications: (Contractors installs, services, repairs and maintains all types of communications. These systems include, but are not limited to telephone systems, sound systems, cable television systems, closed-circuit video systems, satellite dish antennas, computer repair, computer networking and data systems. Including the associated cabling, wiring, or fiber optics.
3. Your Complaint is open.

Should you have any questions, please feel free to contact our office.

Sincerely,



Cecil "Buddy" Orsini  
Executive Director

Cc: Technologies for Tomorrow Inc.  
GDOE  
CLB Board Members

**Date:**

**To:** Ed Iiao, JMI- Edison

**Subject:** Case \_\_\_\_\_ **Findings & Decisions**

Dear Mr. Iiao,

The Contractors License Board (CLB) would like to inform you on our findings and decision so far in regards to your complaint dated September 15, 2021.

Your COMPLAINT alleges the following:

1. Menzies Aviation, Aircraft Service International, Inc. (Menzies), or Aircraft Services International Group (ASIG) are operating as commercial prime contractors for the Guam International Airport Authority (GIAA) without an appropriate contractor's license.
2. That Menzies or ASIG have been operating for at least 6 years, and are seeking to work for 5 more years on the Operations, Maintenance & Repair of Baggage Conveyance Systems for GIAA.
3. That the scope of work for Operations, Maintenance & Repair of Baggage Conveyance Systems for GIAA requires CLB licensing.

**Findings:**

1. Upon investigation, we confirmed that Menzies does not hold a valid contractors license on Guam. We also confirmed that ASIG does not hold a valid contractors license on Guam
2. CLB reviewed the scope of work for the GIAA you provided for the work on Operations, Maintenance & Repair of Baggage Conveyance Systems for GIAA. That scope of work for GIAA RFP 005-FY21 would require the contractor hired by GIAA to maintain valid licenses from the CLB.

**Decision:**

1. 21 GCA Real Property CH. 70 Contractors § 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).
2. Contractors License board will find Menzies or ASIG in violation of this public law 21 GCA § 70108(a) without obtaining specialty contractor license categories C-13 and C-15.
3. Your Complaint is open.

Should you have any questions, please feel free to contact our office.

Sincerely,

# **ATTACHMENT D**



Email: [official@guamairport.net](mailto:official@guamairport.net)

### CERTIFICATE OF EMERGENCY

The undersigned, John M. Quinata, the Executive Manager of the A.B. Won Pat International Airport Authority, Guam ("GIAA"), hereby states as follows:

WHEREAS, the undersigned is the duly appointed Executive Manager of GIAA as defined by 12 G.C.A. § 1207 and the undersigned does therefore have full charge and control of the operations and maintenance of the airport controlled by GIAA;

WHEREAS, GIAA is the only civilian airport on Guam and GIAA maintains 24 hours a day, seven day a week operations to accommodate civilian air travel in and out of Guam;

WHEREAS, GIAA requires Management & Infrastructure Support Services to GIAA's Baggage Conveyance Systems (the "services");

WHEREAS, a contractor currently provides such Services and thereby handles the management, supervision, labor and materials, supplies, equipment, and carries out certain repair work for components of GIAA's baggage conveyance systems to ensure uninterrupted services to the Airlines, Transportation Security Administration (TSA) and the travelling public who utilize GIAA's facilities to travel in and out of Guam;

WHEREAS, the continuation of the services and thereby the continued operation of GIAA's baggage conveyance systems are necessary and critical to the safe and efficient movement of persons and goods through GIAA;

WHEREAS, the contract for such firm to provide such Services expires on October 31, 2021;

WHEREAS, on or about July 20, 2021, GIAA issued Request for Proposal Number ("RFP") RFP-005-FY21 to enter into a new contract for the Services;

WHEREAS the procurement resulted in a protest by one of two proposers who submitted a proposal;

Whereas GIAA immediately imposed a stay on the procurement pursuant to 5 G.C.A. § 5425;

WHEREAS, the protesting offeror appealed to the Office of Public Accountability on October 8, 2021, and as of the date of this writing a stay remains in effect;

WHEREAS, the stay of the procurement will not allow GIAA to move forward with the procurement of the services sought by RFP 005-FY21 until such time as the appeal (and the underlying) protest are resolved finally;

WHEREAS, therefore the Services will be interrupted on November 1, 2021 unless GIAA secures another offeror to provide such Services;



WHEREAS, due to the security and training requirements required to offer the Services, the labor and material required to be mobilized, the procurement source selection methods in Guam law normally available to procure such services will not allow for GIAA to secure an alternative offeror before November 1, 2021, and thus only an emergency procurement will accomplish such procurement of Services in the limited time period available to GIAA;

NOW THEREFORE, in light of the foregoing, the undersigned does hereby declare and certify that:

1. The imminent, actual interruption to GIAA's Management & Infrastructure Support Services to GIAA's Baggage Conveyance Systems constitutes an emergency as defined by 5 G.C.A. § 5030(x) in that the circumstances and conditions described hereinabove pose an imminent threat to the health, safety and welfare of the public should interruption to such Services occur;
2. This certification is further based on the true and correct copy of the Determination of Need for Emergency Procurement required by 5 G.C.A. § 5215(b), which was executed by the undersigned on October 27, 2021, and which is expressly incorporated herein in its entirety by this reference, and which is further appended hereto as Exhibit A. The undersigned does hereby affirm, as stated in such determination, that the contents of the same are true, correct and complete to the best, informed knowledge and good faith belief of the undersigned;
3. That based on the undersigned's authority under Guam law, and the foregoing certification of an emergency and the Determination of Need for Emergency Procurement, the undersigned hereby authorizes the use of the emergency procurement-related provisions of Guam law at 5 G.C.A. Section 5215 and 2 GARR Div. 4 Section 3113, to procure Management & Infrastructure Support Services to GIAA's Baggage Conveyance Systems on an emergency basis to avoid the imminent and actual interruption to such Services.
4. Upon execution of this Certificate and prior to any award made pursuant to the emergency procurement authorized and determined necessary hereunder, the undersigned will cause certified copies hereof to be submitted to the *I Maga'hågan Gudhan* and Speaker of the Legislature. No such award shall be made until the approval of *I Maga'hågan Gudhan* is evidenced by her endorsement hereto, in the space provided below.
5. That the emergency procurement determined necessary and authorized hereunder shall not be used and are not being used to avoid the provisions of 5 G.C.A. Chapter 5 or 2 GARR Division 4.

The undersigned hereby certifies and declares under penalty of perjury that the foregoing is true and correct.

Executed this 27<sup>th</sup> day of October, 2021 at 0830 (time) at Hagåtña, Guam.

  
\_\_\_\_\_  
JOHN M. QUINATA  
Executive Manager

A.B. Won Pat International Airport Authority, Guam

Upon review of the foregoing and pursuant to the authority granted by 5 G.C.A. Section 5215 (b)(3) and 2 GARR Div. 4 Section 3113, in my capacity as *I Maga'hågan Gudhan* and by my signature below, I do hereby authorize the emergency procurement determined necessary by the Executive Manager of the A.B. Won Pat International Airport Authority, Guam hereinabove and I further approve the Certificate of Emergency hereinabove stated.

Executed this 27<sup>th</sup> day of October, 2021 at 3:15 pm (time) at Hagåtña, Guam.

  
**HONORABLE LOURDES A. LEON GUERRERO**  
*Maga'hågan Gudhan*  
Governor of Guam





Email: [official@guamairport.net](mailto:official@guamairport.net)

**DETERMINATION OF NEED  
FOR  
EMERGENCY PROCUREMENT**

**AGENCY:** A.B. Won Pat International Airport Authority, Guam (GIAA)

**ANTICIPATED CONTRACT:** GIAA-S15-002

**Re:** Management & Infrastructure Support Services to GIAA's Baggage Conveyance Systems

**Authority:** 5 G.C.A. Section 5215(c)

**FINDINGS**

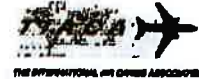
Pursuant to the Guam Procurement Law and the Regulations promulgated thereunder, specifically 5 GCA § Section 5215 and 2 GARR Division 4 Section 3113, the following determination of need is made by the Executive Manager with regard to the above-referenced services required by the A.B. Won Pat International Airport Authority, Guam ("GIAA").

GIAA is the only civilian airport on Guam. GIAA operates and maintains the airport 24 hours a day, seven days a week to accommodate civilian air travel in and out of Guam. GIAA currently contracts with a firm who provides Management & Infrastructure Support Services to GIAA's Baggage Conveyance Systems (the "Services"). The current contractor provides management, supervision, labor and materials, supplies, equipment, and carries out certain repair work for GIAA's baggage conveyance systems to ensure uninterrupted services to the Airlines, Transportation Security Administration (TSA) and the travelling public who utilize GIAA's facilities and who travel in and out of Guam. However, the contract for such firm to provide such services expires on October 31, 2021.

On or about July 20, 2021, GIAA issued Request for Proposal Number ("RFP") RFP-005-FY21 for the procurement of the Services. GIAA received two proposals in response to the RFP. On August 26, 2021, during a public meeting of GIAA's Board of Directors, GIAA publicly announced the highest ranked offeror. GIAA then commenced negotiations with such firm to determine the price of such services.

On September 21, 2021 a lower ranked offeror submitted a protest of the procurement. GIAA immediately imposed a stay on the procurement pursuant to 5 G.C.A. § 5425. On September 30, 2021, GIAA denied the protest in its entirety. The offeror then appealed GIAA's decision to the Office of Public Accountability on October 8, 2021.

Therefore, GIAA has an immediate need to contract for the services to avoid interruption to its baggage conveyance systems and, by direct extension, GIAA's operations and facilities.



**NEED FOR EMERGENCY PROCUREMENT.** An emergency procurement is necessary to prevent disruption of the operation and management of the Airport's outbound/inbound baggage handling system that would cause a threat to public health, safety and welfare of passengers. It will also prevent disruption of services to the Airlines and avoid interruption and interference with the daily operations of Guam's only commercial airport. These systems move the travelling public's and other baggage throughout the airport, including to security screening points for all outbound travel.

Pursuant to Title 12 GCA, GIAA is responsible for the operations, maintenance and repair of the Airport, to include the Airport's Baggage Handling System. As a result of this mandate, GIAA is also required to operate and maintain the outbound/inbound baggage handling system in a manner that ensures the safe, reliable and uninterrupted service to all airlines, as required by the Federal Transportation Security Administration, and as needed by air passengers using GIAA facilities.

After a review of the firms who conduct business with and at the airport, and the Services sought by this procurement, GIAA has determined that due to the scope of services and security requirements of GIAA under local and federal law, the other source selection methods of procurement will result in an interruption of critical services needed for the airport to function and will not allow GIAA to contract with a provider by November 1, 2021. Additionally, an interruption to GIAA's baggage conveyance services and by extension the baggage conveyance systems, will affect the ability to efficiently screen outbound cargo and baggage items as required for security and potentially other purposes in accordance with federal and local requirements. The Services GIAA seeks requires training and familiarization with GIAA's systems, as well as security background checks for employees that will be assigned to provide such Services. This training and familiarity, and the required security processes cannot be accomplished in the time it would take from the date of this determination to the end of the current firm's contract on October 31, 2021.

Therefore, based on the foregoing, the undersigned does hereby determine that, due to the need for the critical and continued operation of GIAA's baggage conveyance systems, and the imminent expiration of the current contract to provide such management and infrastructure Services, an emergency exists, as an interruption to these services poses an imminent threat to the public welfare and safety of GIAA patrons, users, tenants, employees, federal partners, and the public. The undersigned also determines that the need for such services without delay warrants an emergency procurement to procure the required Services as no other procurement method of source selection would allow for GIAA to procure the Services by the expiration of the contract to provide such Services. Based on such determinations, the undersigned does hereby authorize the use of the emergency procurement-related provisions of the Guam procurement law and regulations, to procure the Services and avoid an interruption to such Services while the stay related to RFP 005-FY21 remains in effect.

The undersigned does hereby affirm, as required by 5 G.C.A. Section 5215(c)(5) that the emergency procurement of the Services determined to be necessary herein, in the face of the emergency posed by the imminent interruption of such Services, is not being used, and will not be used, directly or indirectly, to avoid other methods of source selection or the purposes and policies of 5 G.C.A. Chapter 5.

Finally, the undersigned does hereby affirm that this determination shall be copied and appended to the Certificate of Emergency required by 5 G.C.A. Section 5215(b), and further that this determination shall be attached to and made a part of the contract entered into as a result of the emergency procurement determined necessary hereunder, and further that this determination shall be made a part of the procurement record for the services procured by the emergency procurement determined necessary hereunder.

The undersigned hereby declares under penalty of perjury that the foregoing is true and correct.

Executed this 27<sup>th</sup> day of October, 2021, at 0950 (time) at Hagåtña, Guam.

  
\_\_\_\_\_  
**JOHN M. QUINATA**  
Executive Manager  
A.B. Won Pat International Airport Authority, Guam