



Jerrick Hernandez <jhernandez@guamopa.com>

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

Merlyna W. Smith <mwsmith@bsjmlaw.com>

Tue, Jun 6, 2023 at 4:30 PM

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

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Dear Mr. Hernandez:

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

1. **Menzies Opposition to the JMI Motion for Appointment of Alternate Administrative Hearing Officer or in the Alternative an Order Directing the Superior Court to Hear this Matter; and**
2. **Interested Party Aircraft Service Joinder to GIAA Motion to Dismiss.**

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

Regards,

Merlyna Weilbacher Smith

Secretary to R. Marsil Johnson

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3 attachments

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 **314-Interested Party Menzies Opposition to Motion For Appointment of Alternate Administrative Hearing Officer OPA PA-23-002.pdf**
260K

 **315-INTERPRESTED PARTY JOINDEDR TO GIAA MOTION TO DISMISS OPA PA-23-002.pdf**
181K

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11 *dba Menzies Aviation*

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

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

18 Interested Party **AIRCRAFT SERVICE INTERNATIONAL, INC. DBA MENZIES AVIATION**
19 (“Menzies”), hereby submits its Joinder to the Guam International Airport Authority (“GIAA”)
20 Motion to Dismiss for lack of subject matter jurisdiction in the above-captioned Office of Public
21 Accountability (“OPA”) procurement appeal.

22 Both Menzies and GIAA have argued in their respective Motions to Dismiss that the instant
23 appeal filed by Johndel International, Inc. dba JMI-Edison (“JMI”) should be dismissed as
24 untimely and due to a lack of subject matter jurisdiction. Under Guam law, JMI should have
25 submitted its protest within fourteen days after it knew or should have known of the facts giving
26 rise thereto. 5 G.C.A. § 5425(a). Further, statutory timeliness requirements for filing procurement
27 protests are jurisdictional in nature. *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., Guam,*
28 2020 Guam 20, ¶ 77. “Therefore, a protest filed more than 14 days after the disappointed offeror

1 or bidder had notice of the grounds for the protest is **barred as untimely.**” *DFS Guam L.P.*, 2020
2 Guam 20, ¶ 87 (emphasis added). “This is true ‘even if...the protestant did not subjectively
3 understand or appreciate the ground for protest.’” *Id.*; see also *Teleguam Holdings LLC v.*
4 *Territory of Guam*, 2018 Guam 5, ¶¶ 21-22 (holding that the Superior Court does not have
5 jurisdiction to hear procurement-related complaints that are not appealed to the Public Auditor or
6 Superior Court within the required timeframe); see also *Rivera v. Guerrero*, 4 N.M.I. 79 at *3
7 (1993) (“[Appellant’s] untimely protest bars not only further administrative consideration, but also
8 judicial review.”).


9
10 Based on the clear case law from Guam indicating that untimely protests are barred, JMI’s
11 instant protest appeal should be dismissed. As explained in each Motion to Dismiss filed by
12 Menzies and GIAA on May 19, 2023, JMI was aware of the facts giving rise to its protest since
13 December 20, 2021. This is evidenced by the December 2021 email sent from JMI representative
14 Ed Ilao to the Guam Contractor’s License Board investigator Marcus Finona, attaching the Guam
15 Daily Post announcement that GIAA continued to contract with what Mr. Ilao alleged to be an
16 “improperly licensed entity (Menzies)”. See Notice of Appeal, Ex. C. JMI has had knowledge of
17 the fact that Menzies continues to provide emergency baggage handling services to GIAA since
18 that date, *but failed to raise any protest until more than one year later.* JMI further claims that an
19 Office of Attorney General opinion dated March 14, 2023 raises new grounds for a protest – but it
20 does not. The OAG opinion raises no new facts which would give rise to a protest under the
21 emergency procurement. In fact, the letter does nothing more than offer a legal opinion about what
22 JMI was already aware of and had in fact communicated with the Contractor’s License Board
23 about in Mr. Ilao’s December 2021 email to Mr. Finona. JMI’s blatant and desperate attempts to
24 evade the procurement code’s timeliness requirements are not well taken and fly in the face of the
25 plain reading of 5 G.C.A. § 5425(a).
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CONCLUSION

For the reasons stated above, Menzies respectfully joins the GIAA Motion to Dismiss and requests that the OPA dismiss the instant protest appeal and enter any other relief it may deem appropriate.

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