



Jerrick Hernandez <jhernandez@guamopa.com>

**In the Appeal of Johndel International, Inc. dba JMI-Edison, OPA-PA-21-010**

**Merlyna W. Smith** <mwsmith@bsjmlaw.com>

Mon, Jan 24, 2022 at 1:38 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

Cc: "Joshua D. Walsh" <jdwalsh@rwtguam.com>, "Joseph C. Razzano" <jrazzano@rwtguam.com>, William Brennan <wbrennan@arriolafirm.com>, "R. Marsil Johnson" <rmarsjohnson@bsjmlaw.com>

Dear Mr. Hernandez:

Attached herewith please find **Interested Party Aircraft Service International, Inc. dba Menzies Aviation's Response to Supplemental Authority (with Exhibits A and B)** for e-filing in the above-referenced matter.

Should you have any questions or concerns, please let us know. Kindly confirm receipt via return e-mail.

Thank you.

Regards,

Merlyna Weilbacher Smith

Secretary to R. Marsil Johnson, Esq.



BLAIR STERLING JOHNSON &

**MARTINEZ**

A Professional Corporation

[238 Archbishop F.C. Flores Street](#)

[Suite 1008 DNA Building](#)

Hagåtña, Guam 96910-5205

Telephone: (671) 477-7857

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### 3 attachments

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**RESPONSE TO SUPPLEMENTAL AUTHORITY, OPA-PA-21-010.pdf**

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**REPONSE TO SUPPLEMENTAL AUTHORITY EXHIBITS A AND B.pdf**

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1 **RICHARD L. JOHNSON**  
2 **R. MARSIL JOHNSON**  
3 BLAIR STERLING JOHNSON & MARTINEZ  
4 A Professional Corporation  
5 238 Archbishop Flores St. Ste. 1008  
6 Hagåtña, Guam 96910-5205  
7 Telephone: (671) 477-7857  
8 Facsimile: (671) 472-4290

9 *Attorneys for Party in Interest*  
10 *Aircraft Service International, Inc.*  
11 *dba Menzies Aviation*

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

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14 <b>In the Appeal of</b>	)	<b>Docket No. OPA-PA-21-010</b>
	)	
15 <b>Johndel International, Inc. dba. JMI-</b>	)	<b>INTERESTED PARTY</b>
16 <b>Edison,</b>	)	<b>AIRCRAFT SERVICE</b>
	)	<b>INTERNATIONAL, INC. DBA</b>
17 <b>Appellant.</b>	)	<b>MENZIES AVIATION'S</b>
	)	<b>RESPONSE TO SUPPLEMENTAL</b>
	)	<b>AUTHORITY</b>

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18 Interested Party **AIRCRAFT SERVICE INTERNATIONAL, INC. DBA MENZIES AVIATION**  
19 (“Menzies”), hereby submits the following Response to Supplemental Authority in response to the  
20 December 22, 2021 “Findings & Decisions” of the Contractor’s License Board (“CLB”),  
21 submitted by **JOHNDEL INTERNATIONAL, INC. DBA. JMI-EDISON** (“JMI”) on December 23, 2021.

22 Menzies submitted a Sunshine Reform Act Request to the CLB on January 6, 2022, seeking  
23 the following:

- 24 1. All accusations served on Aircraft International Service, Inc. dba Menzies Aviation  
25 (“Menzies”) in CLB Case No. 2021-09-04.
- 26 2. All documents showing that any and all accusations served on Menzies in CLB  
27 Case No. 2021-09-04 were served personally, by registered mail, or by leaving a  
28 copy of the accusation at Menzie’s place of residence or business with someone of  
suitable age.
3. All notices of hearing served on Menzies in CLB Case No. 2021-09-04.

- 1 4. All documents showing that any and all notices of hearing served on Menzies in
- 2 CLB Case No. 2021-09-04 were served personally on Menzies or by registered
- 3 mail.
- 4 5. All documents related to any CLB hearing during which the Findings & Decisions
- 5 issued in CLB Case No. 2021-09-04 were discussed.
- 6 6. All documents related to any CLB meeting during which the Findings & Decisions
- 7 issued in CLB Case No. 2021-09-04 were discussed.
- 8 7. All communications with Mr. Ed Ilaio concerning CLB Case No. 2021-09-04.

9 *See* Exhibit “A” Sunshine Reform Act Request to CLB (dated January 6, 2022).

10 The CLB responded to the request on January 18, 2022. The response was late, because  
11 the CLB’s “office was closed for a week due to the pandemic.” *See* Exhibit “B” Sunshine Reform  
12 Act Response from CLB (dated January 18, 2022). Exhibit “B” was not originally Bates Stamped  
13 but has been Bates Stamped CLB-001 to CLB-104 for purposes of this Response to make each  
14 page easier to reference.

15 **A. ED ILAIO AND CECIL “BUDDY” ORSINI APPEAR TO HAVE CREATED EVIDENCE IN AND**  
16 **TO ATTEMPT TO SWAY THE OUTCOME OF THIS PROCUREMENT APPEAL IN JMI’S**  
17 **FAVOR**

18 In response to the Sunshine Reform Act request, the CLB provided communications  
19 between Ed Ilaio (owner of JMI) and members of the CLB’s staff.<sup>1</sup>

20 A December 22, 2021 email from Mr. Ilaio to Mr. Orsini’s Private Secretary, GERALYNN  
21 TENNESSEN STANLEY, includes a forwarded message from Mr. Ilaio to Mr. Orsini, dated December  
22 13, 2021. Mr. Orsini’s email to Mr. Ilaio shows that Mr. Ilaio sent a draft “Findings & Decisions”  
23 to Mr. Orsini, whom Mr. Ilaio referred to as his “Bro”. Mr. Ilaio informed Mr. Orsini of the last  
24 business day documents could be filed before the December 27, 2021 OPA hearing. Mr. Ilaio  
25 wrote:

26 We will be having a motion hearing before the OPA on December 27th. Last day  
27 to file documents is on Dec 23<sup>rd</sup>. **Would it be possible for CLB Investigations**  
28 **Section to be able to sign at least the attached sample letter by Dec 22nd? This**  
**will really help our case.** I’m sorry for following up too much. Happy holidays!”

---

<sup>1</sup> Notably, no emails from Cecil Orsini’s email account were produced by the CLB in response to the Sunshine Reform Act request even though emails from other CLB staff email accounts show that emails were sent to Mr. Orsini by Mr. Ilaio.

1 See Exhibit "B", page CLB-002 (emphasis added). Here is a screenshot of the forwarded email:

----- Original message -----  
 From: "Ed R. Ilao" <ed\_ilao@miguam.com>  
 Date: 12/13/21 2:59 PM (GMT+10:00)  
 To: Cecil Orsini <cecil.orsini@clb.guam.gov>  
 Subject: Re: JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)

Bro,

We will be having a motion hearing before the OPA on Dec 27th. Last day to file documents is on Dec 23<sup>rd</sup>. Would it be possible for CLB Investigations Section to be able to sign at least the attached sample letter by Dec 22nd? This will really help our case.

<https://mail.google.com/mail/u/0/?ik=c21443d42&view=pt&search=all&permmsgid=msg-f%3A171980228752856237&siml=msg-f%3A17198022876...> 1/2

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12/22, 10:56 AM Guam Contractors License Board Mail - JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)

I'm sorry for following up too much...

Happy holidays!

Best regards,

ED ILAO, P.E.  
**JMI-EDISON**

[Quoted text hidden]  
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16 See Exhibit "B", page CLB-002.

17 At 10:01 a.m. on December 22, 2021, Mr. Ilao sent an email to Ms. Stanley, stating that  
18 "[a]s per Mr. Orsini's instructions, please see the attached draft letter." Here is a screenshot of  
19 that email:

**JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)**

---

Ed R. Ilao <ed\_ilao@miguam.com> Wed, Dec 22, 2021 at 10:01 AM  
 To: "Geraldyn.stanley@clb.guam.gov" <Geraldyn.stanley@clb.guam.gov>  
 Cc: Buddy Orsini <cecil.orsini@clb.guam.gov>, Nida Bailey <nida.bailey@clb.guam.gov>

Geraldyn,

As per Mr. Orsini's instructions, please see the attached draft letter.

Best regards,

ED ILAO, P.E.  
**JMI-EDISON**

---

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


1 See Exhibit "B", page CLB-002. The attached Word file was named "CLB Draft LetterF.docx".

2 See Exhibit "B", page CLB-003.

3 At 10:36 a.m., Ms. Stanley sent an email to Mr. Ilao, with the December 22, 2021 "Findings  
4 & Decisions" attached in a PDF filed named "Finding & Decision – cs#2021-09-04.pdf". It was  
5 signed by Mr. Orsini, as Executive Director of the CLB. The draft letter sent to Ms. Stanley by  
6 Mr. Ilao contains the exact language found in the CLB's December 22, 2021 "Findings &  
7 Decisions", word for word. See the below comparison of the "Findings" and "Decisions" sections  
8 of the two documents. A screenshot of the Word file named "CLB Draft LetterF.docx" is on the  
9 left and a screenshot of the CLB's December 22, 2021 "Findings & Decisions" is on the right:

11 **Findings:**  
12 1. Upon investigation, we confirmed that Menzies does not hold a valid contractors license on Guam. We also  
13 confirmed that ASIG does not hold a valid contractors license on Guam.  
14 2. CLB reviewed the scope of work for the GIAA you provided for the work on Operations, Maintenance &  
15 Repair of Baggage Conveyance Systems for GIAA. That scope of work for GIAA RFP 005-FY21 would  
16 require the contractor hired by GIAA to maintain valid licenses from the CLB.  
**Decision:**  
17 1. 21 GCA Real Property CH. 70 Contractors § 70108. (a) No person within the purview of this Chapter shall  
18 act, or assume to act, or advertise, as a general engineering contractor, a general building contractor or a  
19 specialty contractor without a license previously obtained under and in compliance with this Chapter and the  
20 rules and regulations of the Contractors License Board (CLB).  
21 2. Contractors License board will find Menzies or ASIG in violation of this Public Law 21 GCA § 70108(a)  
22 without obtaining specialty contractor license categories C-13, C-15, C-25 and C-68.  
23 3. Your Complaint is open.  
24 Should you have any questions, please feel free to contact our office.  
25 Sincerely,

26 "CLB Draft LetterF.docx"

27 **Findings:**  
28 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. Contractory 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 Electrical Contractor.  
3. Your Complaint is open.  
Should you have any questions, please feel free to contact our office.  
Sincerely,  
  
Cecil "Buddy" L. Orsini  
Executive Director

CLB's December 22, 2021 "Findings & Decisions"

29 See Exhibit "B", page CLB-004 and CLB-006 to CLB-007.

30 At 11:00 a.m., Mr. Ilao responded to Ms. Stanley's email to say: "Thank you very much to  
31 all of you! **This will help our protest appeal at the OPA a lot. Merry Christmas to everyone!**"

32 See Exhibit "B", page CLB-008 (emphasis added). Here is a screenshot of the email:

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**Re: JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)**  
1 mss63ggs

---

Ed R. Ilae <ed\_ilae@jmiguam.com> Wed, Dec 22, 2021 at 11:00 AM  
To: Geraldynn Turmasson Starley <geraldynn.starley@clb.guam.gov>  
Cc: Buddy Orsini <cecil.orsini@clb.guam.gov>, Nida Bailey <nida.bailey@clb.guam.gov>, "Marcus G. Finona" <marcus.finona@clb.guam.gov>

All,

Thank you very much to all of you! This will help our protest appeal at the OPA a lot.

Merry Christmas to everyone!

Best regards,

ED ILAEO, P.E.  
**JMI-EDISON**

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

In short, it appears that Mr. Ilae convinced his “Bro”, the Executive Director of the CLB, to help him create evidence, the “Findings & Conclusions”, with the intent to use that evidence to sway the outcome of this procurement appeal. This evidence was then submitted by JMI’s attorneys to the OPA as “Supplemental Authority” on December 23, which as Mr. Ilae described in his email to Mr. Orsini, was the last day to file documents before the OPA’s December 27 hearing.

Mr. Ilae then attended the December 27, 2021 OPA hearing via Zoom and did not inform the Public Auditor that he had drafted the language of the “Findings & Decisions” or that he had asked Mr. Orsini to have that language issued as though it were findings and decisions of the CLB.

At the January 6, 2022 continued hearing, Mr. Ilae again was present via Zoom and listened as attorneys for JMI, GIAA, and Menzies argued the value of the December 22, 2021 “Findings & Decisions” as evidence. Mr. Ilae never raised his voice or directed his attorney to inform the Public Auditor that he had helped to create the document or that he had asked Mr. Orsini to have that language issued as though it were findings and decisions of the CLB.

To date, Mr. Ilae has never sought to inform the Public Auditor that he drafted the language of the December 22, 2021 “Findings & Decisions”, to clarify how the document was created or

1 that he asked Mr. Orsini to have that language issued as though it were findings and decisions of  
2 the CLB.

3 **B. NO DUE PROCESS AFFORDED TO MENZIES BY THE CLB IN ISSUING ITS DECEMBER 22,**  
4 **2021 “FINDINGS & DECISIONS”**

5 Requests number 1 through 6 were made to determine whether the CLB followed any due  
6 process in issuing its December 22, 2021 “Findings & Decisions”. In response, the CLB provided  
7 no documents in response to requests number 1 through 6. Therefore, the CLB appears to have no  
8 accusations served on Menzies, no notices of hearing served on Menzies, no documents related to  
9 any CLB hearing held in Case No. 2021-09-04, and no documents related to any hearing that was  
10 ever held.

11 In sum, the CLB appears to have followed no semblance of due process required by the  
12 Gaum Administrative Adjudication Act.

13 **CONCLUSION**

14 Menzies respectfully requests that the Public Auditor disregard the CLB’s December 22,  
15 2021 “Findings & Decisions” and not consider the document in issuing any decision or order in  
16 this procurement appeal. Furthermore, Menzies asks that the Public Auditor order whatever  
17 sanctions would be appropriate against JMI and take any other appropriate action should it  
18 determine that Mr. Ilaio created evidence and offered that created evidence to the OPA for the  
19 purpose of misleading the Public Auditor in this Procurement Appeal.  
20

21 **DATED** this 24<sup>th</sup> day of January, 2022.

22  
23 **BLAIR STERLING JOHNSON & MARTINEZ**  
24 **A PROFESSIONAL CORPORATION**

25 BY:   
26 **R. MARSIL JOHNSON**  
27 *Attorneys for Party in Interest*  
28 *Aircraft Service International, Inc.*  
*dba Menzies Aviation*

U68\1367-01\G:\PLD\RMJ\279-RESPONSE TO SUPPLEMENTAL  
AUTHORITY RE MENZIES AVIATION OPA PA-21-010.DOCX



# Exhibit “A”

January 6, 2022

**VIA E-MAIL**

Cecil "Buddy" L. Orsini  
Executive Director  
Contractor's License Board  
542 North Marine Corp. Drive A  
Tamuning, Guam 96911  
cecil.orsini@clb.guam.gov

Carmelita Santos  
Administrative Assistant  
Contractor's License Board  
carmelita.santos@clb.guam.gov

**RE: REQUEST FOR PUBLIC RECORDS PURSUANT TO SUNSHINE  
REFORM ACT OF 1999 5 G.C.A. § 10101 *et. seq.***

Dear Mr. Orsini:

Pursuant to the Sunshine Reform Act of 1999 5 G.C.A. § 10101 *et seq.*, we hereby request copies of the following:

1. All accusations served on Aircraft International Service, Inc. dba Menzies Aviation ("Menzies") in CLB Case No. 2021-09-04.
2. All documents showing that any and all accusations served on Menzies in CLB Case No. 2021-09-04 were served personally, by registered mail, or by leaving a copy of the accusation at Menzie's place of residence or business with someone of suitable age.
3. All notices of hearing served on Menzies in CLB Case No. 2021-09-04.
4. All documents showing that any and all notices of hearing served on Menzies in CLB Case No. 2021-09-04 were served personally on Menzies or by registered mail.
5. All documents related to any CLB hearing during which the Findings & Decisions issued in CLB Case No. 2021-09-04 were discussed.
6. All documents related to any CLB meeting during which the Findings & Decisions issued in CLB Case No. 2021-09-04 were discussed.

7. All communications with Mr. Ed Ilaio concerning CLB Case No. 2021-09-04.

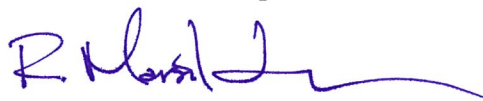
This electronic mail request for public records must be treated the same as a paper or oral request for records. The same deadlines apply to this request as do to paper and oral requests. *See* 5 G.C.A. § 10104(a).

Please provide the response electronically.

Should you have any questions or concerns, please do not hesitate to contact the undersigned.

Very truly yours,

BLAIR STERLING JOHNSON & MARTINEZ  
A Professional Corporation



R. MARSIL JOHNSON

cc: Assistant Attorney General Thomas P. Keeler (tkeeler@oagguam.org)  
CLB Investigator Marcus Finona (via email – marcus.finona@clb.guam.gov)

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G:\LTR\RMJ\178-C ORSINI - CLB RE AIRCRAFT  
INTERNATIONAL SERVICE, INC. DOCX

# Exhibit “B”



# CONTRACTORS LICENSE BOARD

*Inetnon Malisensiayen Kontratista*

542 North Marine Corps Drive A. – Tamuning, Guam 96913  
(671) 649-2211, (671) 649-9676, (671) 649-2210 (Fax)  
Website: [www.clb.guam.gov](http://www.clb.guam.gov)



LOURDES A. LEON GUERRERO  
Maga'håga

CECIL "BUDDY" L. ORSINI  
Direktot Eksekatibu

JOSHUA F. TENORIO  
Sigundo Maga'låhi

**DATE:** January 18, 2022

**TO:** Via Hand Delivery and Email – [rmarsjohnson@bsjmlaw.com](mailto:rmarsjohnson@bsjmlaw.com)  
R. Marsil Johnson, Esq.  
238 AB Flores St., Ste. 1008  
Hagatna, Guam 96910-5205

**RE:** **REQUEST FOR PUBLIC RECORDS PURSUANT TO SUNSHINE REFORM ACT OF 1999 5 G.C.A. § 10101 et. Seq.**

Hafa Adai Attorney Johnson,

This serves to respond to your FOIA Request dated January 6, 2020 in which you requested that the Contractor's License Board produce a variety of items concerning Aircraft International Service, Inc. dba Menzies Aviation ("Menzies") in CLB Case No. 2021-09-04. I apologize for the delay in responding however as our legal counsel informed you our office was closed for a week due to the pandemic. Enclosed are the CLB documents responsive to your seven (7) requests for information.

Please contact Geralynn T. Stanley at (671) 647-2965 if you have any questions concerning this matter.

Sincerely,

  
Cecil "Buddy" L. Orsini  
Executive Director

Cc: Thomas P. Keeler, Assistant Attorney General (*via email only*)

**CLB-001**



Nida Bailey <nida.bailey@clb.guam.gov>

---

**JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)**

---

Ed R. Ilao <ed\_ilao@jmiguam.com>

Wed, Dec 22, 2021 at 10:01 AM

To: "Geraldyn.stanley@clb.guam.gov" <Geraldyn.stanley@clb.guam.gov>

Cc: Buddy Orsini <cecil.orsini@clb.guam.gov>, Nida Bailey <nida.bailey@clb.guam.gov>

Geralyn,

As per Mr. Orsini's instructions, please see the attached draft letter.

Best regards,

ED ILAO, P.E.

**JMI-EDISON**

-----  
Cell #: (671)688-7601

eMail: ed\_ilao@jmiguam.com

----- Original message -----

From: "Ed R. Ilao" <ed\_ilao@jmiguam.com>

Date: 12/13/21 2:59 PM (GMT+10:00)

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

Subject: Re: JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)

Bro,

We will be having a motion hearing before the OPA on Dec 27th. Last day to file documents is on Dec 23<sup>rd</sup>. Would it be possible for CLB Investigations Section to be able to sign at least the attached sample letter by Dec 22nd? This will really help our case.

I'm sorry for following up too much...

Happy holidays!

Best regards,

ED ILAO, P.E.

**JMI-EDISON**

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 **CLB Draft LetterF.docx**  
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Date:

To: Ed Ilaio, JMI- Edison

Subject: **Case No: 2021-09-04: Findings & Decisions**

Dear Mr. Ilaio,

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, C-15, C-25 and C-68.
3. Your Complaint is open.

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

Sincerely,

**CLB-004**





Nida Bailey &lt;nida.bailey@clb.guam.gov&gt;

---

**JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)**

---

Geralynn Tennesen Stanley &lt;geralynn.stanley@clb.guam.gov&gt;

Wed, Dec 22, 2021 at 10:36 AM

To: "Ed R. Ilao" &lt;ed\_ilao@jmiguam.com&gt;

Cc: Buddy Orsini &lt;cecil.orsini@clb.guam.gov&gt;, Nida Bailey &lt;nida.bailey@clb.guam.gov&gt;, "Marcus G. Finona" &lt;marcus.finona@clb.guam.gov&gt;

Good Morning Mr. Ilao,

Attached is the Finding & Decision document. Please review. If you have any questions please feel free to contact me or Mr. Orsini.

Kind Regards,  
Geralynn Tennesen Stanley  
Private Secretary  
Contractors License Board

542 North Marine Corps Drive  
Tamuning, Guam 96913  
Tel: (671) 647-2965 Fax: (671) 649-2210

\*CONFIDENTIALITY NOTICE: This email and any files transmitted with it may be legally privileged and confidential and is intended solely for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any review, dissemination or copying of this email, or taking any action in reliance on the contents of this information is strictly prohibited. If you received this transmission in error, please notify us immediately by e-mail or telephone to arrange for the return of this email and any files to us or to verify it has been deleted from your system.

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 **Finding & Decision - cs#2021-09-04.pdf**  
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# CONTRACTORS LICENSE BOARD

*Inetnon Malisensiyen Kontratista*

542 North Marine Corps Drive A. - Tamuning, Guam 96913  
(671) 649-2211, (671) 649-9676, (671) 649-2210 (Fax)  
Website: www.clb.guam.gov



LOURDES A. LEON GUERRERO  
Maga'hága

CECIL "BUDDY" L. ORSINI  
Direktor Eksekutibu

JOSHUA F. TENORIO  
Sigundo Maga'hága

---

Date: 12/22/2021  
To: Ed Ilao, JMI- Edison  
From: Cecil "Buddy" L. Orsini  
Subject: Case No: 2021-09-04: Findings & Decisions

Dear Mr. Ilao,

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).

CLB-006

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 Electrical Contractor.
3. Your Complaint is open.

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

Sincerely,



Cecil "Buddy" L. Orsini  
Executive Director

cc: Bernard Benavente; CLB Vice-Chairman  
ASIG/Menzies



Marcus G. Finona &lt;marcus.finona@clb.guam.gov&gt;

---

**Re: JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)**

1 message

Ed R. Ilao &lt;ed\_ilao@jmiguam.com&gt;

Wed, Dec 22, 2021 at 11:00 AM

To: Geralynn Tennesen Stanley &lt;geralynn.stanley@clb.guam.gov&gt;

Cc: Buddy Orsini &lt;cecil.orsini@clb.guam.gov&gt;, Nida Bailey &lt;nida.bailey@clb.guam.gov&gt;, "Marcus G. Finona" &lt;marcus.finona@clb.guam.gov&gt;

All,

Thank you very much to all of you! This will help our protest appeal at the OPA a lot.

Merry Christmas to everyone!

Best regards,

ED ILAO, P.E.

**JMI-EDISON**-----  
Cell #: (671)688-7601

eMail: ed\_ilao@jmiguam.com

---

**From:** Geralynn Tennesen Stanley <geralynn.stanley@clb.guam.gov>**Date:** Wednesday, December 22, 2021 at 10:39 AM**To:** "Ed R. Ilao" <ed\_ilao@jmiguam.com>**Cc:** Buddy Orsini <cecil.orsini@clb.guam.gov>, Nida Bailey <nida.bailey@clb.guam.gov>, "Marcus G. Finona" <marcus.finona@clb.guam.gov>**Subject:** Re: FW: JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)

Good Morning Mr. Ilao,

Attached is the Finding & Decision document. Please review. If you have any questions please feel free to contact me or Mr. Orsini.

Kind Regards,

Geralynn Tennessen Stanley  
Private Secretary  
Contractors License Board

542 North Marine Corps Drive  
Tamuning, Guam 96913  
Tel: (671) 647-2965 Fax: (671) 649-2210

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On Wed, Dec 22, 2021 at 10:01 AM Ed R. Ilao <ed\_ilao@jmiguam.com> wrote:

Geralyn,

As per Mr. Orsini's instructions, please see the attached draft letter.

Best regards,

ED ILAO, P.E.

**JMI-EDISON**

-----  
Cell #: (671)688-7601

eMail: ed\_ilao@jmiguam.com

----- Original message -----

From: "Ed R. Ilao" <ed\_ilao@jmiguam.com>

Date: 12/13/21 2:59 PM (GMT+10:00)

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

Subject: Re: JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)

Bro,

We will be having a motion hearing before the OPA on Dec 27th. Last day to file documents is on Dec 23<sup>rd</sup>. Would it be possible for CLB Investigations Section to be able to sign at least the attached sample letter by Dec 22nd? This will really help our case.

I'm sorry for following up too much...

Happy holidays!

Best regards,

ED ILAO, P.E.

**JMI-EDISON**

---

Cell #: (671)688-7601

eMail: ed\_ilao@jmiguam.com

---

**From:** "Marcus G. Finona" <marcus.finona@clb.guam.gov>  
**Date:** Thursday, December 9, 2021 at 1:16 PM  
**To:** "Ed R. Ilao" <ed\_ilao@jmiguam.com>  
**Cc:** Nida Bailey <nida.bailey@clb.guam.gov>, Cecil Orsini <cecil.orsini@clb.guam.gov>  
**Subject:** Re: JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)

Hafa Adai Mr. Ilao,

Thank you for your email. I have received the response from your Attorney, Razzano Walsh & Torres, P.C., and I will get back to you as soon as we are done reviewing the documents. Should I have any questions or concerns, I will most certainly contact you. Thanks again.

On Thu, Dec 9, 2021 at 8:39 AM Ed R. Ilao <ed\_ilao@jmiguam.com> wrote:

Marcus,

Please see attached response to Menzies letter. I thought my lawyers would be better suited to provide a response to the Menzies letter. I believe my lawyers already sent this to you yesterday also.

To really get a grasp on the size of the Baggage Handling System which costs GIAA \$31M to complete, I suggest that you take a tour of the facility, if you haven't already done so.

Thank you, and should you need anything else, please don't hesitate to contact me.

Best regards,

ED ILAO, P.E.

President

**JMI-EDISON**

-----  
Cell #: (671)688-7601

eMail: ed\_ilao@jmiguam.com

--  
Si Yu'us Ma'ase,

Error! Filename not specified.Error! Filename not specified.Error! Filename not specified.

Marcus G. Finona

**Investigator**

Guam Contractors License Board *Inetnon Malisensiayen Kontratista*

542 North Marine Corp Drive A. – Tamuning, Guam 96911

(671) 649-2219

marcus.finona@clb.guam.gov





Marcus G. Finona &lt;marcus.finona@clb.guam.gov&gt;

---

**Response From Attorney R. Marsil Johnson (CLB - Case# 2021-09-04)**

3 messages

**Marcus G. Finona** <marcus.finona@clb.guam.gov>

Mon, Nov 29, 2021 at 2:46 PM

To: "Ed R. Ilao" &lt;ed\_ilao@jmiguam.com&gt;, Cecil Orsini &lt;cecil.orsini@clb.guam.gov&gt;, Nida Bailey &lt;nida.bailey@clb.guam.gov&gt;

Hafa Adai Mr. Ilao,

This is an update to your complaint against Menzies Aviation/ ASIG (Case#2021-09-04). Attached to the email is a copy of the NTA and the response from the Attorney R. Marsil Johnson. Can you please review Mr. Johnson's response, and answer the pending questions or concerns he has regarding your complaint?

--

Si Yu'us Ma'ase,


**Marcus G. Finona****Investigator**Guam Contractors License Board *Inetnon Malisensiyen Kontratista*

542 North Marine Corp Drive A. – Tamuning, Guam 96911

(671) 649-2219

marcus.finona@clb.guam.gov

---

**2 attachments** **Menzies ASIG - Response (M. Johnson, Attorney).PDF**  
132K **Menzies ASIG - NTA**  
46K

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**Ed R. Ilao** <ed\_ilao@jmiguam.com>

Wed, Dec 1, 2021 at 9:52 AM

To: "Marcus G. Finona" &lt;marcus.finona@clb.guam.gov&gt;, Cecil Orsini &lt;cecil.orsini@clb.guam.gov&gt;, Nida Bailey &lt;nida.bailey@clb.guam.gov&gt;

Marcus,

Thank you for this information.

We will provide a response by Friday.

Best regards,

ED ILAO, P.E.

**JMI-EDISON**

---

Cell #: (671)688-7601

eMail: ed\_ilao@jmiguam.com

---

**From:** "Marcus G. Finona" <marcus.finona@clb.guam.gov>  
**Date:** Monday, November 29, 2021 at 2:48 PM  
**To:** "Ed R. Ilao" <ed\_ilao@jmiguam.com>, Cecil Orsini <cecil.orsini@clb.guam.gov>, Nida Bailey <nida.bailey@clb.guam.gov>  
**Subject:** Response From Attorney R. Marsil Johnson (CLB - Case# 2021-09-04)

Hafa Adai Mr. Ilao,

This is an update to your complaint against Menzies Aviation/ ASIG (Case#2021-09-04). Attached to the email is a copy of the NTA and the response from the Attorney R. Marsil Johnson. Can you please review Mr. Johnson's response, and answer the pending questions or concerns he has regarding your complaint?

--

Si Yu'us Ma'ase,

**Error! Filename not specified.Error! Filename not specified.Error! Filename not specified.**

[Quoted text hidden]

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**Marcus G. Finona** <marcus.finona@clb.guam.gov>  
To: "Ed R. Ilao" <ed\_ilao@jmiguam.com>

Wed, Dec 1, 2021 at 10:43 AM

Ed,

Ok sir, not a problem. Just note that the quicker you respond, the quicker we get to a resolution. Thanks again for responding. If you have any questions or concerns, please feel free to contact me.

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

November 19, 2021

**VIA E-MAIL**

marcus.finona@clb.guam.gov

Marcus G. Finona  
Investigator  
Contractor's License Board  
542 North Marine Corp. Drive A  
Tamuning, Guam 96911

**RE: WRITTEN STATEMENT FOLLOWING NOTICE TO APPEAR  
CASE# 2021-09-04  
ED ILAO V. AIRCRAFT SERVICE INTERNATIONAL GROUP (ASIG)  
DBA MENZIES AVIATION**

Dear Mr. Finona:

Thank you for meeting with us on November 16, 2021 with respect to the Contractor's License Board ("CLB") Complaint filed by Ed Ilao. At the meeting we mentioned that we would also provide a written statement in response to Mr. Ilao's allegations. Menzies written statement follows:

**A. MR. ILAO'S COMPLAINT DOES NOT SPECIFY WHAT LICENSE HE BELIEVES  
MENZIES SHOULD HOLD**

The accusations in Mr. Ilao's Complaint are vague at best. Nowhere in his complaint does he specify what type of CLB license Menzies should hold. This form of complaint is unfair to Menzies who must try to guess what type of license Mr. Ilao claims Menzies is required to hold. JMI has also failed to identify the type of license it believes Menzies must hold throughout the course of its procurement protest related to the 2021 RFP. This failure, combined with the fact that JMI's argument appears to change with each new document filed with respect to its procurement protest underscores the fact that JMI itself does not seem to understand Guam Contractors law.

In its September 21, 2021 procurement protest letter, JMI stated that "the RFP requires a Specialty Contractor License with the Guam Contractors License Board." As noted below, there is no "Specialty Subcontractor" subclassification that applies to the work to be performed subject to the 2015 RFP or the 2021 RFP and neither RFP includes a specialty contractor license in its requirements.

In JMI's October 8, 2021 Notice of Appeal from GIAA's denial of its procurement protest, JMI's argument is even more vague than the argument it presented in its original protest letter. JMI no longer argues that the RFP requires a specialty license. Instead, JMI simply stated the definition of a "contractor" under 21 G.C.A. § 70100(b) and concluded, without any argument or explanation, that the work included in the 2021 RFP requires a contractors license.

In its November 1, 2021 Comments on Agency report, JMI again fails to identify what CLB license Menzies should hold in order to provide services under the 2021 RFP. JMI states only that GIAA describes the work as "infrastructure support services" requiring "technical expertise and guidance" and then quotes the definition of a "contractor" under 21 G.C.A. § 70100(b), before concluding, again without argument or explanation, that a company performing "infrastructure support services" or providing "technical expertise and guidance" must have a CLB license. JMI made this argument even though the phrases "infrastructure support services" and "technical expertise and guidance" don't appear anywhere in the Guam Contractors law or regulations.

Mr. Ilaio and JMI have failed, at every opportunity provided to them, to provide a cogent explanation as to what type of CLB license Menzies must hold or how the Guam Contractors law applies to Menzies or the RFPs. The CLB cannot and should not take Mr. Ilaio's complaint seriously until Mr. Ilaio and his company themselves start to do so by providing an actual explanation as to how the statute applies to these circumstances and what type of license they claim Menzies is required to hold.

**B. CLB SPECIALTY LICENSES ARE FOR ENTITIES THAT PERFORM CONSTRUCTION WORK ONLY AND NEITHER THE 2015 RFP NOR THE 2021 RFP INVOLVE CONSTRUCTION WORK**

The Guam Contractors Law defines a "Specialty Contractor" as "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." 21 G.C.A. § 70106(d) (emphasis added). This rule is a "conjunctive" rule, because the requirements for a "Specialty Contractor" are joined with an "and." This means that to be a specialty contractor, a contractor must meet all qualifications defined under 21 G.C.A. § 70106(d). This means the company or individual must have operations that are the performance of construction work requiring special skill **and** its principal contracting business must involve the use of specialized building trades and crafts. If one of those factors is not met, then a company or individual cannot be considered a "Specialty Contractor" and thus need not have a "Specialty Contractor" license.

Menzies does not offer or perform construction work. Further, the 2015 RFP and the 2021 RFP do not involve construction services. They only involve the operation, maintenance, troubleshooting, and repair of the inbound and outbound baggage handling systems. None of these activities have anything to do with construction of the airport structure in any way whatsoever.

Therefore, because Menzies does not offer or perform construction work it cannot be considered a “Specialty Contractor” as the term is defined in the Guam Contractor Law. Furthermore, because the 2015 RFP and the 2021 RFP do not involve construction work, a “Specialty Contractor” license is not required for a party that performs work under either RFP.

**C. NO SPECIALTY LICENSE SUBCLASSIFICATION EXISTS FOR BAGGAGE CONVEYANCE SYSTEM SERVICES**

Even if the work done by Menzies or the work specified in each RFP qualified under the definition of a “Specialty Contractor”, no specialty license subclassification exists for baggage conveyor system services. The CLB Rules and Regulations contain 68 separate specialty license subclassifications and 48 temporary classifications. None of these subclassifications and temporary classifications refer to baggage conveyance system services and none of these subclassifications and temporary classifications encompass an area of work under which baggage conveyor systems operation would fall.

For example, the C-15 specialty license is for Electronic System Contractors, if one were to read the title alone, could address a baggage conveyor system, which runs on electricity:

C-15 Electronic System Contractor: A specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently install, maintain, repair and service electronic equipment and electronic controls **for public address, intercommunication, master antenna and music distribution systems**. Electronic controls include those controls in conjunction with other specialty contracting work.

25 G.A.R. § 12106(a)(4)(C-15) (emphasis added). However, the language emphasized above makes it clear that the only systems the C-15 subclassification is meant to encompass are “public address, intercommunication, master antenna and music distribution systems.” Baggage conveyance system services have nothing to do with the public address or music distribution. Therefore, this category does not apply.

The only other subclassification that could arguably include this type of work is C-25, which addresses Institutional and Commercial Equipment Contractors:

C-25 Institutional and Commercial Equipment Contractor: An Institutional and Commercial Equipment Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to **install** laboratory equipment, food services equipment, folding and sliding partitions, stationary metal partitions and such other equipment and materials as are by custom and usage accepted in the construction industry as institutional and commercial equipment work. Excluded is the work done by classification C-13 Electrical and C-37 Plumbing Contractors.

25 G.A.R. § 12106(a)(4)(C-25) (emphasis added). However, this subclassification is limited to contracts requiring the ability to **install** institutional and commercial equipment. Therefore, even if a baggage conveyance system is “institutional and commercial equipment”, a contractor license under this subclassification would only be required if the company or individual involved is engaged in **installation** work, not operation or repair work.

The limitation of subclassification C-25 to installation work only is not a superficial or meaningless distinction. Had the CLB intended to include operation or repair in the subclassification, it could have done so as it did under other subclassifications. For example, maintenance, repair and service work of electronic systems is included in subclassification C-15, which is quoted above. Subclassification C-19 (Fire and Burglar Alarm Contractor) also includes installation, maintenance, and repair work. As a matter of statutory construction, courts are unwilling to read words into one section of a statute or administrative rule, especially where other sections of the same law have included such language. This principal of statutory construction is called “expressio unius est exclusio alterius”, which is a Latin phrase meaning “express mention of one thing excludes all others.” *People v. Gomia*, 2017 Guam 13, ¶ 11 (“The legislature’s inclusion of homicide, *and only homicide*, as the type of offense for which a minor under the age of sixteen may be tried in an adult criminal proceeding leads us to conclude that the legislature intentionally excluded all other types of offenses.”). Courts reason that it is not the role of the courts to stretch the law to fit circumstances for which the law does not expressly provide. Only the legislature has the authority to change the law. *Id.* at ¶ 13 (“This court is constrained by that language. It is not within the province of the courts to stretch the law to apply to circumstances clearly not provided for by the legislature; to the contrary, decisions of whether to extend the law to cover circumstances such as this lie solely within the authority of the legislature.”).

The baggage conveyance system at GIAA was custom built by its manufacturer: Siemens Postal, Parcel, & Airport Logistics LLL. As a result, there is no need for the party awarded the contract under the 2021 RFP to install a baggage conveyance system. In fact, the 2021 RFP specifically calls for the bidders to contract with Siemens to provide consultation and technical assistance:

#### XII. CONTRACT WITH MANUFACTURER (SIEMENS)

The Contractor should have a contract with the manufacturer, Siemens, for the operation, maintenance, troubleshooting and repair works for both Inbound and Outbound Baggage Handling System. The annual fee for Consultation and Technical assistance by Siemens should be included in the cost proposal of the Offeror.

(2021 RFP, Preliminary Scope of Services, Page 7 of 8).

The 2015 RFP and the 2021 RFP do not call for any installation work at all. The word “install” does not appear in the 2015 RFP. The word “install” only appears once in the 2021 RFP in a reference to the company who installed the FM 200 fire suppression system, stating that “Although it is now considered a misconception that it depletes the level of oxygen in the room where it is discharged, for safety reasons, the fire protection company that installed it wants the occupants to vacate the room.” (2021 RFP Attachment No. 3: Baggage Conveyance System Fire Protection System Safety Plan (w/ Drawings)). The RFP only involves the operation, maintenance, troubleshooting, and repair of both the inbound and outbound baggage handling systems. No installation is included in the scope of work for the RFP. Therefore, the C-25 Specialty Subcontractor Subclassification, if it applies to baggage installation systems at all, does not apply to any work on baggage conveyance systems other than installation.

Ironically, JMI’s Procurement Protest letter supports this argument. In its letter, JMI states that “JMI Edison, as a sub-contractor to Siemens, provided comprehensive electrical and mechanical installation and repair works for that same system, which was completed in June 2017.” (See JMI Procurement Protest Letter). By its own admission, JMI performed installation and repair work on the GIAA baggage conveyance system. If JMI was contracted to perform installation work, then clearly Menzies was not performing installation work.

**D. THE 2021 RFP DOES NOT IDENTIFY THE NEED FOR A SPECIFIC LICENSE**

The 2021 RFP does not explicitly require any specific type of license issued by the CLB. It does require that the bidders be licensed to do business in Guam and maintain any licenses required to perform services under the contract, but it does not specify any particular specialty license that proposers must hold.

Past RFP’s issued by the GIAA, when they require specialized licenses, have included specialized licensing requirements. For example, GIAA issued RFP-004-FY20 in 2020, seeking “Architectural Engineering and Surveying Services.” That RFP specifically required that offerors be licensed with the Guam Board of Professional Engineers, Architects, and Land Surveyors (the “PEALS Board”):

**6. LICENSING**

Offerors must be licensed to conduct business in Guam at the time of submission of their proposals. Offers are required to submit with their proposals a copy of their current Certificate of Authorization (“COA”) issued by the Guam Board of Professional Engineers, Architects, and Land Surveyors (“PEALS Board”) for each discipline for which it is offering services.

(RFP-004-FY20, Basic Information, Page 2 of 5).



GIAA's decision not to include a CLB license requirement in the 2015 RFP or the 2021 RFP indicate that GIAA itself does not believe that a CLB license is required to perform under each RFP.

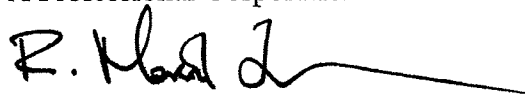
**E. MENZIES EMPLOYS A MASTER ELECTRICIAN, WHO HOLDS A CLB CONTRACTOR'S LICENSE**

Menzies employee Reynaldo T. Retiro is a master electrician and holds a master electrician license issued by the CLB. His certificate number is ME-0720-0036 and his license expires on June 30, 2022. To the extent that any work under the RFP would require the use of someone who holds an electrician specialty contractor license, Mr. Retiro is certainly qualified to perform those services. However, as noted above, since Menzies itself is not in the business of performing construction work and since neither RFP involves construction work, Menzies itself does not need to obtain a specialty contractor license.

Menzies respectfully requests that the CLB find that there is no factual or legal basis for Mr. Iao's complaint and dismiss it.

Very truly yours,

BLAIR STERLING JOHNSON & MARTINEZ  
A Professional Corporation



R. MARSIL JOHNSON

U68\1367-01  
173-FINONA RE WRITTEN STATEMENT -  
MENZIES AVIATION



Marcus G. Finona &lt;marcus.finona@clb.guam.gov&gt;

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

1 message

**Ed R. Ilao** <edilao@jmiguam.com>

Mon, Dec 20, 2021 at 8:59 AM

To: "Marcus G. Finona" &lt;marcus.finona@clb.guam.gov&gt;, Nida Bailey &lt;nida.bailey@clb.guam.gov&gt;, Cecil Orsini &lt;cecil.orsini@clb.guam.gov&gt;

Cc: "Joshua D. Walsh" &lt;jdwalsh@rwtguam.com&gt;, "Joseph C. Razzano" &lt;jrazzano@rwtguam.com&gt;, "John R. Ilao" &lt;johnilao@jmiguam.com&gt;


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

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 **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. WOLF 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 3, 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.

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Marcus G. Finona &lt;marcus.finona@clb.guam.gov&gt;

---

**OPA Appeal of Johndel International, Inc. dba JMI-Edison; OPA-PA-21-010**

2 messages

Ed R. Ilaio &lt;ed\_ilaio@jmiguam.com&gt;

Mon, Dec 6, 2021 at 9:22 AM

To: "Marcus G. Finona" &lt;marcus.finona@clb.guam.gov&gt;, Nida Bailey &lt;nida.bailey@clb.guam.gov&gt;, Cecil Orsini &lt;cecil.orsini@clb.guam.gov&gt;

Marcus,

We were unable to reply last week due to the deadline we had with the OPA to respond to motions by GIAA and Menzie's. Attached are our responses to GIAA and Menzie's for your good reading. Our response to the Menzie's claims will follow the same arguments.

We will however send you a separate letter in response to the Menzie's letter to the CLB by tomorrow.

Thanks &amp; regards,

ED ILAO, P.E.


**JMI-EDISON**-----  
Cell #: (671)688-7601

eMail: ed\_ilaio@jmiguam.com

Google

**3 attachments** **12.3.21 JMI Opposition to GIAA's Motion to Dismiss.pdf**  
544K

 **12.3.21 JMI Omnibus Opposition to Menzies Motions.pdf**  
1140K

 **Building Law Regs (29GAR Section 1315).pdf**  
117K

---

**Marcus G. Finona** <marcus.finona@clb.guam.gov>  
To: "Ed R. Ilao" <ed\_ilao@jmiguam.com>

Mon, Dec 6, 2021 at 3:02 PM

Okay. Thank you for your response. I will be looking forward to your response. Thanks again.

[Quoted text hidden]

--

Si Yu'us Ma'ase,

**Marcus G. Finona**

**Investigator**

Guam Contractors License Board *Inetnon Malisensiayen Kontratista*

542 North Marine Corp Drive A. – Tamuning, Guam 96911

(671) 649-2219

marcus.finona@clb.guam.gov



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

JOSHUA D. WALSH  
JOSEPH C. RAZZANO  
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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Appeal of

Johndel International, Inc. dba. JMI-Edison,

Appellant.

**DOCKET NO. OPA-PA-21-010**

**OPPOSITION TO GUAM  
INTERNATIONAL AIRPORT  
AUTHORITY'S MOTION TO DISMISS**

**I. INTRODUCTION**

On October 8, 2021, Johndel International, Inc. dba. JMI-Edison (“JMI” or “Appellant”) appealed the decision of the Guam International Airport Authority (“GIAA”) denying JMI’s agency level protest of GIAA RFP 005-FY21 issued on September 30, 2021 (the “RFP”). The RFP was seeking contractors to provide management and infrastructure support services to GIAA’s Baggage Conveyance Systems. JMI had protested the intended award to Aircraft Service International, Inc, doing business as “Menzies Aviation,” (“Menzies”), since that entity was selected to perform work falling under Guam’s Contractor licensing laws despite not having any licensing from the Guam Contractors Licensing Board (“CLB”).

On November 24, 2021, GIAA filed a motion seeking to dismiss the appeal because of an alleged lack of jurisdiction of the Office of Public Accountability (“OPA”) to review the merits of JMI’s claim, a renewed allegation that JMI was untimely in making its protest, and GIAA’s view regarding the propriety of the procurement record kept in this case. This opposition is submitted to address the failings of GIAA’s motion.

## **II. OPPOSITION TO MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

### **A. THIS IS A PROCUREMENT APPEAL, AND THE OPA HAS SUBJECT MATTER JURISDICTIONS OVER SUCH APPEALS.**

GIAA contends that this matter must be dismissed since this “[t]he Public Auditor is not explicitly or implicitly granted any authority to adjudicate whether a business is operating without a license issued by the Guam Contractors License Board.” Motion 1, 2. Instead, GIAA claims that the question of whether or not Menzies is a responsive offeror is best left to the Contractors License Board, since “The GCLB is empowered to ‘investigate, classify and qualify applicants for contractor’s licenses, and investigate for compliance with the rules and regulations of the Board and the provisions’ of the [contractor’s Licensing -related Chapter of the Guam Code.]” Motion 1, 2, *citing* 21 G.C.A. §70109 (emphasis omitted). Even though this matter is before the OPA on an appeal from an agency protest denial, GIAA argues that the matter must be dismissed “for lack of subject matter jurisdiction.” Motion, 5. This position ignores the fundamental jurisdictional ambit of the OPA to review appeals over agency protest decisions, 5 G.C.A. § 5425(e), and ignores the key tenets of procurement law that require only responsible and



responsive offerors to receive awards from the Government. *See, e.g.*, 2 GAR § 3109(n)(1); *See also*, 2 GAR § 3116 (b)(4). (mandating that "Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible.")

To be certain, JMI is appealing an agency decision on a procurement protest. GIAA called JMI's protest untimely, and also denied JMI's protest on the grounds that a contractor's license was not required for completing the GIAA job. As the RFP did not specify that a contractor's license was required, Menzies' proposal, in GIAA's view, "satisfied the requirements of the RFP." *See*, Denial of Procurement Protest, September 30, 2021, attached to the JMI Notice of Appeal as Exhibit H. GIAA ignored the fundamental requirement under procurement law that only responsible and responsive offerors receive awards under procurement law, and in now urging dismissal based upon a "lack of subject matter jurisdiction," ignores the very clear statutory role the OPA has in the appellate review of the responsibility and responsiveness of offerors.

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 G.C.A. § 5201(F). Since it cannot show a license that the scope of work of the RFP requires, Menzies is also non-responsive. Despite these procurement related challenges tied to a bidder's responsiveness and responsibility, GIAA claims that the Office of Public Accountability ("OPA") is without jurisdiction to proceed over this matter. GIAA is

simply wrong about the lack of jurisdiction, and wrong in claiming some “exclusive” role for the CLB that would cut off the OPA’s jurisdiction to perform such review.

**B. GUAM’S CLB STATUTES DO NOT PREVENT THE OPA FROM *DE NOVO* REVIEW OF WHETHER OR NOT GIAA’S BID PROCESS AND AWARD SELECTION OF MENZIES COMPLIED WITH LAW AND THE TERMS OF ITS OWN PROCUREMENT.**

Guam’s Contractor licensing laws make it clear that Menzies — the offeror slated for award in this procurement — would be a “contractor” under the law that requires a contractors license if Menzies "undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project development or improvement or do any part thereof, including the erection of scaffolding or other structure of works in connection therewith for another person for a fee." 21 G.C.A. § 70100(b). Contractors working on Guam may not do so, or even present themselves as being able to do so, "without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractor’s License Board (CLB)." 21 G.C.A. § 70108(a).

More, Menzies, like any contractor seeking to handle or otherwise repair electrical systems<sup>1</sup>, has been mandated since 1973 to be either “a licensed Electrical Contractor or licensed General Contractor with registered Electrical Engineer or

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<sup>1</sup> Page 4 of the RFP contains the preliminary scope of services being procured, and mandates that the successful contractor will need “extensive knowledge to mechanical aspects” and should have electricians with “sufficient experience in power, controls, and PLC software.” Page 7 of the RFP confirms the need of the contractor to both operate and maintain electrical equipment including high voltage motor control panels, electric motors, and sensors.

licensed Master Electrician.” 29 GAR §1315. The procurement record kept by GIAA shows that Menzies is neither.<sup>2</sup>

GIAA argues that since contractor licensing is provided by the CLB, any review of the Menzies’s non-responsiveness or non-responsibility tied to its lack of an appropriate contractors license can only be done under the auspices of the CLB itself. GIAA urges, without authority, for the OPA to read an exclusive jurisdictional limit into a statute where none exists. GIAA is wrong. While Guam’s CLB statutes do provide for a complaint mechanism to address violations, the CLB is not some exclusive bar preventing review by the OPA of an agency’s intended award to a contractor. The CLB’s investigation statute reveals no exclusive or mandatory forum requirement, and explains that “The Contractors License Board **may** investigate, classify and qualify applicants for contractor’s licenses, and investigate for compliance with the rules and regulations of the Board and the provisions of this Chapter.” 21 G.C.A. § 70109. (emphasis added). Here, the Guam legislature has declined to do what GIAA urges, *i.e.*, create a statutory requirement that only the CLB can touch on issues related to a contractor’s licensing, even if those issues directly implicate procurement law. This is not the law. *See, e.g. Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 378 (2012) (explaining, in the context of

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<sup>2</sup> The Menzies proposal has been withheld from JMI review by GIAA. Menzies has submitted a Motion for Summary Judgment in these proceedings where Menzies avers that “if licenses were required” Menzies can perform the work since it has a single employee who is “master electrician.” Motion 2, 1. This is not enough, as the law requires a conjunctive — “a licensed General Contractor **with** registered Electrical Engineer or licensed Master Electrician.” 29 GAR §1315. (emphasis added).

federal and state court subject matter jurisdiction, the presumption of concurrent jurisdiction unless a specific statute clearly divests jurisdiction from one body in favor of another).

Rather than prevent the OPA from reviewing the question of Menzies's responsiveness *vis a vis* its lack of a contractor's license, a review of Guam law demonstrates the OPA's broad jurisdictional scope. The Supreme Court of Guam has illuminated that broad jurisdiction of the Public Auditor's office, and clarified that the Guam's legislature has given the "OPA the power to determine whether a bid award is in accordance with the terms and conditions of a bid solicitation." *Data Mgmt. Res., LLC v. Off. of Pub. Accountability*, 2013 Guam 27 (Guam Nov. 22, 2013). More, this is in keeping with the broad sweep of authority given to the public auditor. The public auditor is tasked with sitting in appeal over agency protest decisions. 5 G.C.A. § 5425(e). Part of the duties of the public auditor include the mandate to "determine whether a decision on the protest of method of selection, solicitation or award of a contract, or entitlement to costs is in accordance with the statutes, regulations, and the terms and conditions of the solicitation." 5 G.C.A. § 12112; 2 G.A.R. Div. 4 § 12112. Since JMI has here protested the ability of Menzies to be responsive to a bid that specifies that all Guam licensing laws must be followed, and the scope of work implicates a contractor license, the OPA's review of such an issue is necessary.

Here, JMI protested both the responsiveness and the responsibility of Menzies in offering to do work that, if done without a contractor's license, would be

in violation of law. This is key, because the bid specifications from GIAA made clear that GIAA “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, §11. GIAA ignored reviewing that matter, or Menzies’s compliance with law, and denied the protest. The full appellate review of that protest, and the grounds for denial, are properly within the ambit of the OPA. Determining if GIAA’s selection of Menzies, despite Menzies’s failure to meet the requirement of the solicitation to comply with all laws — laws that include proper CLB licensing — is properly before the OPA.

The OPA’s other powers also militate toward allowing the review that JMI seeks here. The Public Auditor has the power to promote the integrity of the procurement process and the purposes of Guam’s procurement laws. *See* 5 G.C.A. § 5703 (“The Public Auditor’s jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 G.C.A. Chapter 5.”). The Public Auditor has the power to review and determine “any matter properly submitted” to him, 5 G.C.A. § 5703, and reviews *de novo* denials of protests in connection with the solicitation or award or award of a contract. *See* 5 G.C.A. § 5425(e). Further, in the regime of procurement, the OPA holds powers akin to a court, since Guam law allows procurement matters brought before a court to be, without limitation, remanded to the OPA. *See* 2 G.A.R. § 12103(b). Simply put, the OPA has been presented with a procurement appeal of an agency denial of a bid protest. Such an appellate review is the proper province of the OPA, even if the merits of that review

— Menzies’s need for licensing — touch upon the non-exclusive investigative powers of another government agency. The “subject matter jurisdiction” limits articulated by GIAA simply do not exist.

**C. THE OPA HAS PREVIOUSLY ENGAGED WITH THE ISSUE OF APPROPRIATE CLB LICENSING, AND RECENTLY DENIED A MOTION TO DISMISS BASED UPON THE SAME GROUNDS GIAA RAISES HERE.**

The failure to comply with the licensing law was ignored by GIAA, as was any review by GIAA of how that failure to comply with law rendered Menzies a non-responsible offeror. GIAA, in urging the dismissal based upon a lack of subject matter jurisdiction, relies upon OPA precedent declining to weigh in on the tariff structure of services overseen by the Guam Public Utilities Commissions or wage rate determinations that could be investigated by the Department of Labor. Motion, 4. GIAA makes these claims, but ignores direct OPA precedent where the OPA has reviewed the matter of appropriate CLB licensing in the context of a procurement. In *In the Appeal of Pacific Data Systems Inc.* (2015), the OPA moved forward with an analysis of whether the awardee “had a contractor's license material to the procurement” based upon evidence presented at the merits hearing on the matter. *In the Appeal of Pacific Data Systems Inc.*, OPA -PA 15-012, Decision, (January 13, 2016), pg. 7. The OPA did not, as GIAA urges here, punt the matter over to the CLB.

Recently, the OPA was presented with a motion to dismiss filed by the Guam Department of Education in *In G4S Security Systems (Guam), Inc. vs. Department of Education*, OPA-PA-21-007. DOE, like GIAA here, sought dismissal based upon

the belief that CLB licensing matters were exclusively within the purview of the CLB, and the OPA had no jurisdiction to proceed over the matter. The OPA disagreed, and denied the Motion to Dismiss so as to proceed to the merits of the appeal. Hearing recording, *G4S Security Systems (Guam), Inc. vs. Department of Education*, Case Number: OPA-PA-21-007 [https://www.opaguam.org/sites/default/files/opa-pa-21-007\\_motion\\_hearing\\_-\\_november\\_17\\_2021.m4a](https://www.opaguam.org/sites/default/files/opa-pa-21-007_motion_hearing_-_november_17_2021.m4a). The same result must occur here, and the matter should proceed to a review of the merits of JMI's protest.

**D. JMI'S PROTEST WAS TIMELY.**

GIAA also seeks dismissal of JMI's appeal since, in the view of GIAA, JMI needed to advance its procurement protest earlier than it did. GIAA, in making this argument, ignores the fact that JMI brought its protest within 14 days of learning of the facts that gave rise to aggrievement, *i.e.*, within 14 days of learning from the CLB that Menzies did not have any licensing from the CLB. *See*, CLB Correspondence to JMI, attached as Attachment F to JMI's Notice of Appeal.<sup>3</sup> Because JMI could not review the Menzies' proposal despite requesting it from GIAA upon learning of Menzies's selection on August 26, 2021, JMI was compelled to approach the Contractor's Licensing Board directly after learning that GIAA had selected Menzies for award. JMI learned on September 17, 2021, from the Guam

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<sup>3</sup> JMI made efforts to determine the licensing status of Menzies earlier by seeking records from GIAA directly the day after the Notice of Award, but GIAA withheld disclosure of those documents. To this date, GIAA refuses to provide JMI with any procurement record that would illuminate what licensing, if any, Menzies has that would allow it to perform the work contemplated by the RFP. *See*, GIAA Agency Statement, 7; Motion 6-7.

Contractor's Licensing Board that Menzies was not licensed. *See*, CLB Correspondence to JMI, attached as Attachment F to JMI's Notice of Appeal. JMI raised its protest to GIAA on September 21, 2021 — four days after learning of the key grounds for the protest. Procurement Protest, Attached as Attachment G to JMI's Notice of Appeal. JMI's OPA Appeal came eight days after GIAA issued its protest decision to JMI — well within the fifteen-day protest appeal period set by 5 GCA § 5425(e). Protest Decision, Attached as Attachment H to JMI's Notice of Appeal; Notice of Appeal, October 8, 2021. Therefore, both JMI's agency level protest and subsequent appeal to the OPA meet the timeliness standards required by applicable law and regulation. This appeal must proceed to its merits.

**E. GIAA'S DENIALS ABOUT THE CREATION OF A STILL OPAQUE PROCUREMENT RECORD ARE DUE NO DEFERENCE.**

Rather than seek an adjudication on the merits of JMI's allegations *vis a vis* the procurement record, GIAA instead simply seeks dismissal of JMI's appeal based upon the fact that GIAA "denies any and all of JMI's allegations...." Motion, 6. GIAA's Motion provides no standard or law that would allow for such a summary dismissal. This is because no such standard exists. To the contrary, when presented with a Motion to Dismiss, "the court must take as true all factual allegations underlying or contained in the claims under attack." *Sablan v. A.B. Won Pat Int'l Airport Auth.*, Guam, No. CIV. 10-00013, 2010 WL 5148202, at \*1 (D. Guam Dec. 9, 2010).

The fact remains that GIAA waited over a week — longer than the four days allowed by the Guam Sunshine Reform Act — to respond to JMI's initial Sunshine



Act request seeking to obtain the procurement record and information regarding Menzies's licensure status. See, Attachment I to JMI's Notice of Appeal. The reason GIAA gave for the need of the extension was the fact that GIAA had "to examine over 500 pages of documents in anticipation of responding to your request." GIAA also declared "COVID-19" to be another reason for delay.

While an extension of time to gather varied documents is allowed by law, Guam law mandates that "each procurement officer **shall maintain a complete record** of each procurement." 5 GCA § 5249 (emphasis added); *Teleguam Holdings LLC v. Territory of Guam*, 2018 Guam 5, ¶ 22. Put another way, GIAA was required by Guam's procurement laws to **maintain a procurement record** during the RFP process, and not create one from 500 loose pages in response to a Freedom of Information/Sunshine Act request sent pursuant to 5 G.C.A. §§10101, *et seq.* The procurement record is a single record that must be kept current and contemporaneously with the ongoing procurement. GIAA's inability to promptly provide that record to JMI for at least two weeks, and refusal to acknowledge that the record existed at the time of the JMI Sunshine Act request, demonstrates that the record was not kept as mandated by law, and instead created after the fact. GIAA's Motion illuminates its shifting reasons for the delay in the production of the record. GIAA's motion retroactively seeks to provide further justifications for the


delay in making the record, including GIAA's averment that the record request was sent "in the midst of ongoing negotiations." Motion, 6.<sup>4</sup>

### III. CONCLUSION

GIAA urges the OPA to dismiss JMI's appeal based upon its belief that reviewing whether or not Menzies can legally perform is somehow beyond the reach of the OPA, and that even if reviewable, a JMI's case should be dismissed based upon the factual denials of GIAA. The OPA should reject GIAA's invitation, and move this matter forward to an analysis of the merits of the JMI's protest.

Submitted this 3<sup>rd</sup> day of December, 2021.

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

By:   
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**JOSHUA D. WALSH**  
**JOSEPH C. RAZZANO**  
*Counsel for Appellant JMI-Edison*

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<sup>4</sup> Being in the "midst of negotiations" is not a statutory reason for delay in record production allowed by Guam's Sunshine Reform Act. The two articulated exemptions allowing for an untimely response are : "(1) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or (2) the need to search for, collect and appropriately examine more than ten (10) separate and distinct records which are demanded in a single request, or records that in total, are contained in five hundred (500) or more pages, or contain about two hundred fifty thousand (250,000) words, whichever is more." Neither would apply to the production of a single procurement record.

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

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**IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Appeal of

Johndel International, Inc. dba. JMI-Edison,

Appellant.

**DOCKET NO. OPA-PA-21-010**

**OMNIBUS OPPOSITION TO:**

- 1) INTERESTED PARTY AIRCRAFT SERVICE, INC. DBA MENZIES AVIATION'S MOTION TO DISMISS**
- 2) INTERESTED PARTY AIRCRAFT SERVICE, INC. DBA MENZIES AVIATION'S MOTION TO DISMISS MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

On October 8, 2021, Johndel International, Inc. dba. JMI-Edison (“JMI” or “Appellant”) appealed the decision of the Guam International Airport Authority (“GIAA”) denying JMI’s agency level protest of GIAA RFP 005-FY21 issued on September 30, 2021 (the “RFP”). The RFP was seeking contractors to provide management and infrastructure support services to GIAA’s Baggage Conveyance Systems. JMI had protested the intended award to Aircraft Service International, Inc, doing business as “Menzies Aviation,” (“Menzies”), since that entity was

selected to perform work falling under Guam’s Contractor licensing laws despite not having any licensing from the Guam Contractors Licensing Board (“CLB”).

On November 24, 2021, Menzies filed separate motions seeking to both (1) dismiss the appeal because of an alleged lack of jurisdiction of the Office of Public Accountability (“OPA”) to review the merits of JMI’s claim (“Motion 1”), and (2) seeking Summary Judgment the merits of whether or not an award to Menzies was appropriate under Guam’s procurement law (“Motion 2”). This omnibus opposition is submitted to address the failings of Menzies’ arguments in its motions.

## **II. OPPOSITION TO MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

### **A. THIS IS PROCUREMENT APPEAL, AND THE OPA HAS SUBJECT MATTER JURISDICTIONS OVER SUCH APPEALS.**

Menzies contends that this matter must be dismissed since this “[t]he Public Auditor is not explicitly or implicitly granted any authority to adjudicate whether a business is operating without a license issued by the Guam Contractors License Board.” Motion 1, 2. Instead, Menzies claims that the question of whether or not Menzies is a responsive offeror is best left to the Contractors License Board, since “The CLB alone is authorized by statute to ‘investigate, classify and qualify applicants for contractor’s licenses, and investigate for compliance with the rules and regulations of the Board and the provisions’ of the Guam Contractors law.” Motion 1, 2, *citing* 21 G.C.A. §70109. Even though this matter is before the OPA on an appeal from an agency protest denial, Menzies argues that the matter must be dismissed “for lack of subject matter jurisdiction.” Motion 1, 3. This position ignores the fundamental jurisdictional ambit of the OPA to review appeals over agency

protest decisions, 5 G.C.A. § 5425(e), and ignores the key tenets of procurement law that require only responsible and responsive offerors to receive awards from the Government. *See, e.g.,* 2 GAR § 3109(n)(1); *See also,* 2 GAR § 3116 (b)(4). (mandating that "Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible.")

To be certain, JMI is appealing an agency decision on a procurement protest. GIAA called JMI's protest untimely, and also denied JMI's protest on the grounds that a contractor's license was not required for completing the GIAA job. As the RFP did not specify that a contractor's license was required, Menzies' proposal, in GIAA's view, "satisfied the requirements of the RFP." *See, Denial of Procurement Protest, September 30, 2021, attached to the JMI Notice of Appeal as Exhibit H.* GIAA ignored the fundamental requirement under procurement law that only responsible and responsive offerors receive awards under procurement law, and Menzies, in urging dismissal based upon a "lack of subject matter jurisdiction," ignores the very clear statutory role the OPA has in the appellate review of the responsibility and responsiveness of offerors.

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 G.C.A. § 5201(F). Since it cannot show a license that the scope of work of the RFP requires, Menzies is also non-responsive. Despite these procurement related challenges tied to a bidder's responsiveness and responsibility, Menzies claims that the OPA is without

jurisdiction to proceed over this matter. Menzies is simply wrong about the lack of jurisdiction, and wrong in claiming some “exclusive” role for the CLB that would cut off the OPA’s jurisdiction to perform such review.

**B. GUAM’S CLB STATUTES DO NOT PREVENT THE OPA FROM *DE NOVO* REVIEW OF WHETHER OR NOT GIAA’S BID PROCESS AND AWARD SELECTION OF MENZIES COMPLIED WITH LAW AND THE TERMS OF ITS OWN PROCUREMENT.**

Guam’s Contractor licensing laws make it clear that Menzies — the offeror slated for award in this procurement — would be a “contractor” under the law that requires a contractors license if Menzies "undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project development or improvement or do any part thereof, including the erection of scaffolding or other structure of works in connection therewith for another person for a fee." 21 G.C.A. § 70100(b). Contractors working on Guam may not do so, or even present themselves as being able to do so, "without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractor’s License Board (CLB)." 21 G.C.A. § 70108(a).

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More, Menzies, like any contractor seeking to handle or otherwise repair electrical systems<sup>1</sup>, has been mandated since 1973 to be either “a licensed Electrical Contractor or licensed General Contractor with registered Electrical Engineer or licensed Master Electrician.” 29 GAR §1315. The procurement record kept by GIAA shows that Menzies is neither.<sup>2</sup>

Menzies argues that since contractor licensing is provided by the CLB, any review of the Menzies’s non-responsiveness or non-responsibility tied to its lack of an appropriate contractors license can only be done under the auspices of the CLB itself. Menzies urges, without authority, for the OPA to read an exclusive jurisdictional limit into a statute where none exists. Menzies is wrong. While Guam’s CLB statutes do provide for a complaint mechanism to address violations, the CLB is not some exclusive bar preventing review by the OPA of an agency’s intended award to a contractor. The CLB’s investigation statute reveals no exclusive or mandatory forum requirement, and explains that “The Contractors License Board **may** investigate, classify and qualify applicants for contractor’s licenses, and investigate for compliance with the rules and regulations of the Board and the

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<sup>2</sup> The Menzies proposal has been withheld from JMI review by GIAA. Menzies has submitted a Motion for Summary Judgment where Menzies avers that “if licenses were required” Menzies can perform the work since it has a single employee who is a “master electrician.” Motion 2, 1. This is not enough, as the law requires a conjunctive — “a licensed General Contractor **with** registered Electrical Engineer or licensed Master Electrician.” 29 GAR §1315. (emphasis added).

provisions of this Chapter.” 21 G.C.A. § 70109. (emphasis added). Here, the Guam legislature has declined to do what Menzies urges, *i.e.*, create a statutory requirement that only the CLB can touch on issues related to a contractor’s licensing, even if those issues directly implicate procurement law. This is not the law. *See, e.g. Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 378 (2012) (explaining, in the context of federal and state court subject matter jurisdiction, the presumption of concurrent jurisdiction unless a specific statute clearly divests jurisdiction from one body in favor of another).

Rather than prevent the OPA from reviewing the question of Menzies’s responsiveness *vis a vis* its lack of a contractor’s license, a review of Guam law demonstrates the OPA’s broad jurisdictional scope. The Supreme Court of Guam has illuminated that broad jurisdiction of the Public Auditor’s office, and clarified that the Guam’s legislature has given the “OPA the power to determine whether a bid award is in accordance with the terms and conditions of a bid solicitation.” *Data Mgmt. Res., LLC v. Off. of Pub. Accountability*, 2013 Guam 27 (Guam Nov. 22, 2013). More, this is in keeping with the broad sweep of authority given to the public auditor. The public auditor is tasked with sitting in appeal over agency protest decisions. 5 G.C.A. § 5425(e). Part of the duties of the public auditor include the mandate to “determine whether a decision on the protest of method of selection, solicitation or award of a contract, or entitlement to costs is in accordance with the statutes, regulations, and the terms and conditions of the solicitation.” 5 G.C.A. § 12112; 2 G.A.R. Div. 4 § 12112. Since JMI has here protested the ability of Menzies



to be responsive to a bid that specifies that all Guam licensing laws must be followed, and the scope of work implicates a contractor license, the OPA's review of such an issue is necessary.

Here, JMI protested both the responsiveness and the responsibility of Menzies in offering to do work that, if done without a contractor's license, would be in violation of law. This is key, because the bid specifications from GIAA made clear that GIAA "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, §11. GIAA ignored reviewing that matter, or Menzies's compliance with law, and denied the protest. The full appellate review of that protest, and the grounds for denial, are properly within the ambit of the OPA. Determining if GIAA's selection of Menzies, despite Menzies's failure to meet the requirement of the solicitation to comply with all laws — laws that include proper CLB licensing — is properly before the OPA.

The OPA's other powers also militate toward allowing the review that JMI seeks here. The Public Auditor has the power to promote the integrity of the procurement process and the purposes of Guam's procurement laws. *See* 5 G.C.A. § 5703 ("The Public Auditor's jurisdiction shall be utilized to promote the integrity of the procurement process and the purposes of 5 G.C.A. Chapter 5."). The Public Auditor has the power to review and determine "any matter properly submitted" to him, 5 G.C.A. § 5703, and reviews *de novo* denials of protests in connection with the solicitation or award of a contract. *See* 5 G.C.A. § 5425(e). Further, in the regime of

procurement, the OPA holds powers akin to a court, since Guam law allows procurement matters brought before a court to be, without limitation, remanded to the OPA. *See* 2 G.A.R. § 12103(b). Simply put, the OPA has been presented with a procurement appeal of an agency denial of a bid protest. Such an appellate review is the proper province of the OPA, even if the merits of that review — Menzies’s need for licensing — touch upon the non-exclusive investigative powers of another government agency. The “subject matter jurisdiction” limits articulated by Menzies simply do not exist.

**C. THE OPA HAS PREVIOUSLY ENGAGED WITH THE ISSUE OF APPROPRIATE CLB LICENSING, AND RECENTLY DENIED A MOTION TO DISMISS BASED UPON THE SAME GROUNDS MENZIES RAISES HERE.**

The failure to comply with licensing law was ignored by GIAA, as was any review by GIAA of how that failure to comply with law rendered Menzies a non-responsible offeror. Menzies, in urging the dismissal based upon a lack of subject matter jurisdiction, unfortunately also ignores OPA precedent where the OPA has reviewed the matter of appropriate CLB licensing in the context of a procurement. In *In the Appeal of Pacific Data Systems Inc.* (2015), the OPA moved forward with an analysis of whether the awardee “had a contractor’s license material to the procurement” based upon evidence presented at the merits hearing on the matter. *In the Appeal of Pacific Data Systems Inc.*, OPA -PA 15-012, Decision, (January 13, 2016), pg. 7. The OPA did not, as Menzies urges here, punt the matter over to the CLB.

Similarly, and more recently, the OPA was presented with a motion to dismiss filed by the Guam Department of Education in *In G4S Security Systems (Guam), Inc. vs. Department of Education*, OPA-PA-21-007. DOE, like Menzies here, sought dismissal based upon the belief that CLB licensing matters were exclusively within the purview of the CLB, and the OPA had no jurisdiction to proceed over the matter. The OPA disagreed, and denied the Motion to Dismiss so as to proceed to the merits of the appeal. Hearing recording, *G4S Security Systems (Guam), Inc. vs. Department of Education*, Case Number: OPA-PA-21-007 [https://www.opaguam.org/sites/default/files/opa-pa-21-007\\_motion\\_hearing\\_-\\_november\\_17\\_2021.m4a](https://www.opaguam.org/sites/default/files/opa-pa-21-007_motion_hearing_-_november_17_2021.m4a). The same result must occur here, and the matter should proceed to a review of the merits of JMI's protest.

### **III. OPPOSITION TO MOTION TO FOR SUMMARY JUDGMENT**

While urging dismissal because of a lack of subject matter jurisdiction, Menzies contemporaneously moves for “Summary Judgment” in these administrative proceedings. Menzies argues — an argument made without a single citation to the standard that would apply to such a determination—that summary judgment is appropriate because the RFP does not involve construction work, no subclassification for baggage systems exists, the RFP did not specify the need for a specific CLB license, and that Menzies employs a “master electrician.” Motion 2, 1. Summary Judgment is inappropriate in these proceedings, and even if such a maneuver were possible, genuine questions of fact must be developed at a merits hearing on this appeal.

**A. THE OPA HAS PREVIOUSLY DETERMINED THAT SUMMARY JUDGMENT IS INAPPROPRIATE IN THESE TYPES OF ADMINISTRATIVE PROCEEDINGS.**

Menzies moves for Summary Judgment, but declines to provide a legal standard, statute, or procedural rule justifying such a maneuver. That is because no such maneuver properly exists before the OPA. Summary Judgment on Guam is rooted in Guam R. Civ. Proc. 56. (“A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.” Guam R. Civ. Proc. 56. Summary Judgment.). The OPA has previously declared Summary Judgment under that rule inapplicable to proceedings before the OPA. In *In the Appeal of Core Tech International Corp*, OPA-PA-17-009, the Public Auditor explained that “Rule 56, Guam Rules of Civil Procedure are inapplicable to this administrative proceeding.” *In the Appeal of Core Tech International Corp*, OPA-PA-17-009, Decision and Order RE Purchasing Agency’s Motion to Dismiss<sup>3</sup>. The OPA went on to reiterate that:

Procurement Appeals hearings shall be as informal as may be reasonable and appropriate under the circumstances and shall not be bound by statutory rules of evidence or by technical or formal rules of procedure. 2 G.A.R., Div. 4, Chap. 12, § 12108(d). Hence, summary judgment as permitted by Rule 56, GRCP, in civil cases being heard before the Superior Court of Guam and the cases interpreting that rule are inapplicable to this matter because this proceeding is an informal procurement appeal that is not bound by such formal rules of civil procedure.”

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<sup>3</sup> The OPA captioned its decision as one on the Agency’s “Motion to Dismiss.” The agency had called its Motion a “Motion for Summary Judgment,” but the OPA had decided to construe the procedurally infirm summary judgment motion as one instead for dismissal. *See*, Motion for Summary Judgment, OPA-PA-17-009, November 3, 2017.

*In the Appeal of Core Tech International Corp*, OPA-PA-17-009, Decision and Order RE Purchasing Agency's Motion to Dismiss, 2.<sup>4</sup>

**B. EVEN IF SUMMARY JUDGMENT WERE PROCEDURALLY APPROPRIATE IN AN ADMINISTRATIVE PROCEEDING BEFORE THE OPA, SIGNIFICANT FACT ISSUES PREVENT SUCH A SUMMARY ADJUDICATION.**

Menzies argues first that it is entitled to “summary judgment” since it is not a special contractor. Without reliance upon a declaration, affidavit, or single citation to the procurement record, Menzies simply avers that it “does not offer or perform construction work.” Motion 2, 2. While Menzies is correct in its recitation that a specialty contractor is an entity “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”, 21 GCA §70106(d), Menzies completely ignores the definitions section of the Contractor statute. On Guam, a "contractor" needing a contractor's license is defined as "any person who undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project development or improvement or do any part thereof, including the erection

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<sup>4</sup> Summary Judgment proceedings do exist in the context of administrative proceedings, but those are allowed and controlled by specific statutes in those jurisdictions, or by judicial precedent that adopt rules of civil procedure when the administrative code is silent. *See, e.g.*, Ind. Code Ann. § 4-21.5-3-23 (“A party may, at any time after a matter is assigned to an administrative law judge, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding.”); *Bd. of Ethics in Matter of Monsour*, 2017-1274 (La. 5/1/18), 249 So. 3d 808, 810 (“The Louisiana Code of Civil Procedure governs civil proceedings in administrative agency proceedings where agency laws are silent.”). Here, *Liheslaturan Guåhan* has declined to provide for an administrative summary judgment proceeding, and the OPA has specifically declined to adopt Guam R. Civ. Proc. 56 that would provide a framework for summary adjudication in the administrative context.

of scaffolding or other structure of works in connection therewith for another person for a fee." 21 G.C.A. § 70100(b). Contractors working on Guam may not do so, or even present themselves as being able to do so, "without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractor's License Board (CLB)." 21 G.C.A. § 70108(a). 21 G.C.A. §70100(c) makes it clear that a "Contractor includes a subcontractor and a specialty contractor."

Menzies claims it does not need a CLB license since it is not a "specialty contractor." Menzies ignores the fact that, even if it does not think of itself as a special contractor, it is a contractor nonetheless, and as such, needs an appropriate CLB license. Menzies, we are told, also does not need a CLB license since it is not performing construction but instead will be performing work under the RFP for the "operation, maintenance, troubleshooting, and repair" of the baggage system. Motion, 2, 2. A specialty license, such as "C-25," is not required in Menzies's view since it does no "installation work." Motion 2, 4. Here again Menzies ignores the obvious; repair and maintenance work often involves "installation." For instance, in this system, numerous aspects of the project, from failure of one of the numerous motors, to the need for replacement of the thousands of feet of conveyor belts, to the changing of fuses, will require installation of replacement components. *See, Attachment A* to this Opposition (Detail of 480 Volt Electric motors that would be installed as part of repair processes for failure; Detail of portion of Conveyor Belts that would be installed as part of repair processes for failure.)

Since Menzies admits that it would need a CLB license for “installation,” and it admits that it is seeking an award for repair work, factual questions must be resolved to determine if repair work involves the installation of any material that would fall under the ambit of the “C-25” license. This factual dispute alone requires that “summary judgment” not be granted.<sup>5</sup>

Menzies next claims that summary judgment is appropriate since GIAA did not, as part of its RFP, specifically describe the need for CLB licensure. Motion 2, 6. While it is correct to point out that GIAA did not explicitly demand CLB licensure, it is incontrovertible that GIAA commanded that offerors must be properly licensed in Guam. GIAA’s failure to recognize that CLB licensure would be an essential part of such compliance is at the heart of JMI’s appeal, and must be resolved through the taking of evidence in a hearing. While the merits of this point will be developed at trial in this matter, there are numerous facts that show that GIAA was seeking services from a professional would need an appropriate professional contractors license.

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<sup>5</sup> Menzies also argues that it does not need a Specialty Contractor license since no particular specialty license appears to apply to the specific work of baggage conveyor system operation, maintenance, and repair. In order to make this argument, Menzies ignores the regulatory guidance that provides for the *de facto* catch-all C-68 license. That license is for a specialty contractor whose operations as such is in the performance of construction work requiring special skills and whose contracting business involves the use of specialized building trades in crafts **not listed above** and who meets the standards set by the Board for such classification.” 25 GAR §12106 et seq. (emphasis added). The C-68 classification was implemented to prevent exactly what Menzies is attempting to do here, i.e., claim that it does not fit a particular box. The regulation makes it clear that “Temporary classifications under C-68, classified specialist may be established by the Board until the work performed is defined and the proper classification is established.

GIAA describes the work it is procuring as "Infrastructure Support Services" that requires "technical expertise and guidance." Procurement Record ("PR"), 08. GIAA is seeking contractors with "extensive knowledge to mechanical aspects (sic)" who should have electricians with "sufficient experience in power, controls, and PLC software." The RFP also confirms the need to both operate and maintain the "power supply conduits." RFP, pg. 4; 6. To be sure, the services being sought include direct interaction with significant electrical systems. *See, e.g., Attachment B* (Photo of 480 Volt Motor Control Panels from GIAA project). As the baggage system includes significant electrical systems, it can only be worked on by "a licensed Electrical Contractor or licensed General Contractor with registered Electrical Engineer or licensed Master Electrician." 29 GAR §1315. The procurement record kept by GIAA shows that Menzies is neither, and Menzies claims that it has a single employee who is a "master electrician." Motion 2, 1. This is not enough, as the law requires a conjunctive — "a licensed General Contractor **with** registered Electrical Engineer or licensed Master Electrician." 29 GAR §1315. (emphasis added).<sup>6</sup>

Beyond the RFP's demand for specialized electrical contractor knowledge, GIAA's RFP also recognizes the professional nature of the contractor it will hire, as

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<sup>6</sup> Menzies also incorrectly claims that GIAA procurements require specialized licenses when such licenses are required by law. This is not the case. For instance, GIAA RFP 002-FY21 sought the same management and support services for elevators, but did not explicitly call for submission of a C-16 Elevator Contractor license, despite the fact that performing the work without such a license would have violated Guam law. The RFP documents can be accessed at: <https://www.guamairport.com/corporate/business-opportunities/public-solicitation-for-services/request-for-proposals/rfp-no-002-fy2021/management-and-infrastructure-support-services-to-giaas-passenger-conveyance-systems>



the proposed contract demands that the contractor “shall procure and maintain professional liability insurance for the term of this Agreement, plus two (2) years after completion.” Procurement Record, 285. GIAA’s specification for professional liability insurance is telling, since “unlike general liability insurance, professional liability insurance is designed to insure against claims related to acts or omissions in the provision of professional services.” *Church Mut. Ins. Co. v. Lake Pointe Assisted Living, Inc.*, 517 F. Supp. 3d 467, 476 (E.D.N.C. 2021), *motion to certify appeal granted*, No. 4:20-CV-00055-M, 2021 WL 2136419 (E.D.N.C. May 26, 2021). Professional services are “an act or service arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual.” *Id* (internal quotations and citations omitted). If GIAA’s Professional attorneys require appropriate licensing from the governing body overseeing Guam attorneys, then GIAA’s professional baggage contractors require appropriate licensing from the governing body overseeing Guam contractors.

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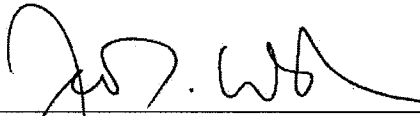
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**IV. CONCLUSION**

Menzies urges the OPA to dismiss JMI's appeal based upon its belief that reviewing whether or not Menzies can legally perform is somehow beyond the reach of the OPA, and that even if reviewable, a standardless summary judgment should be granted. The OPA should reject Menzies's invitation, and move this matter forward to an analysis of the merits of the JMI's protest.

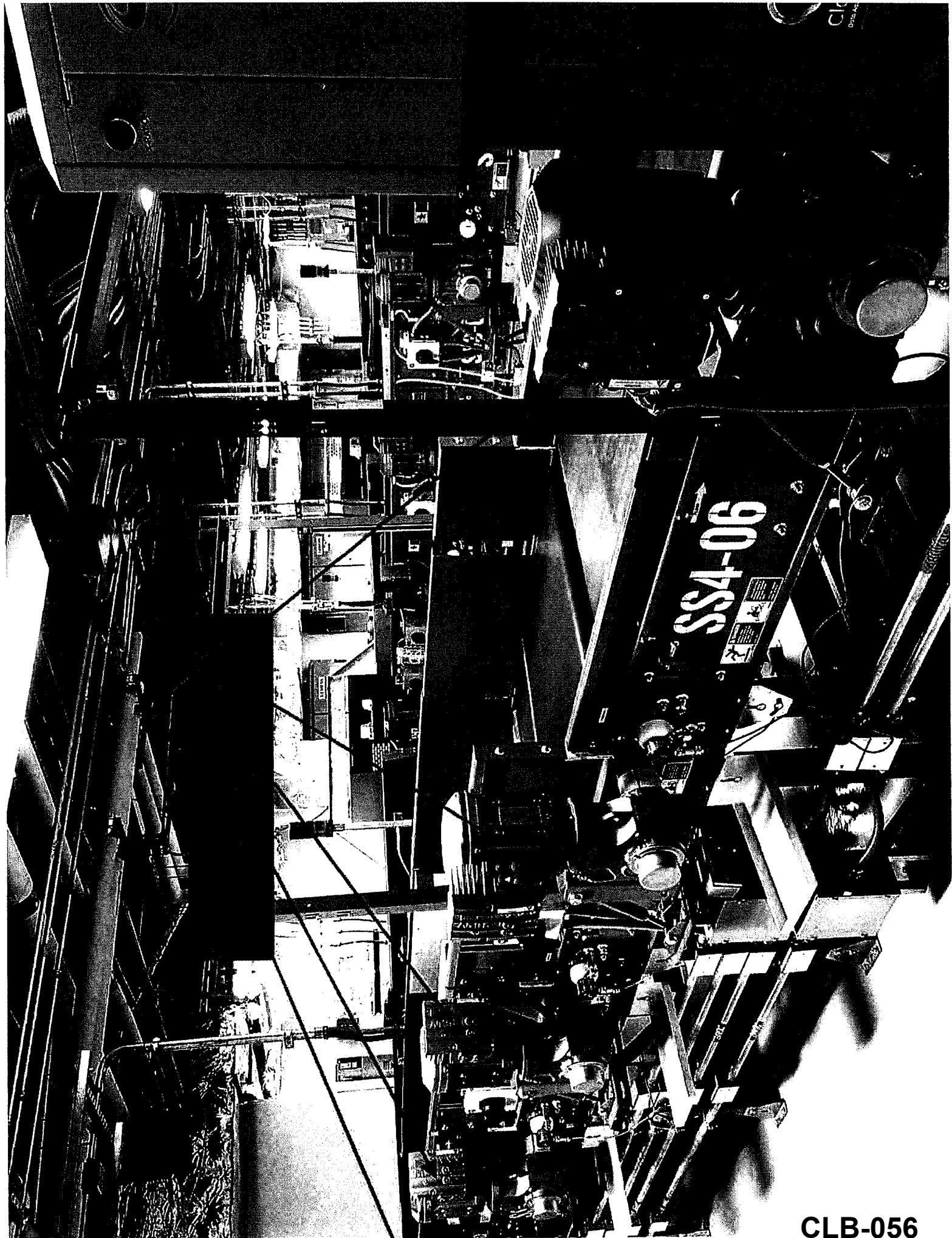
Submitted this 3<sup>rd</sup> day of December, 2021.

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

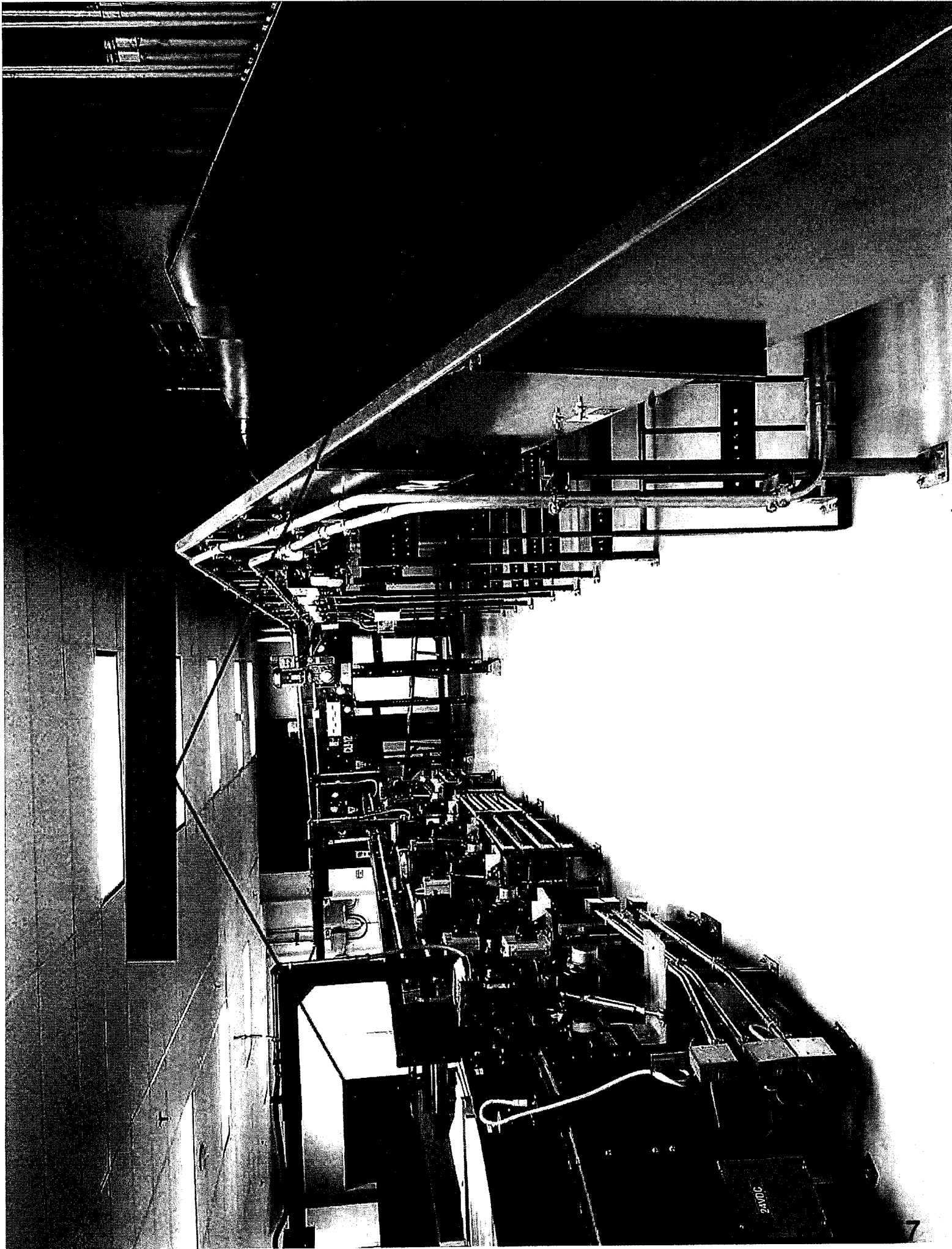
By: 

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

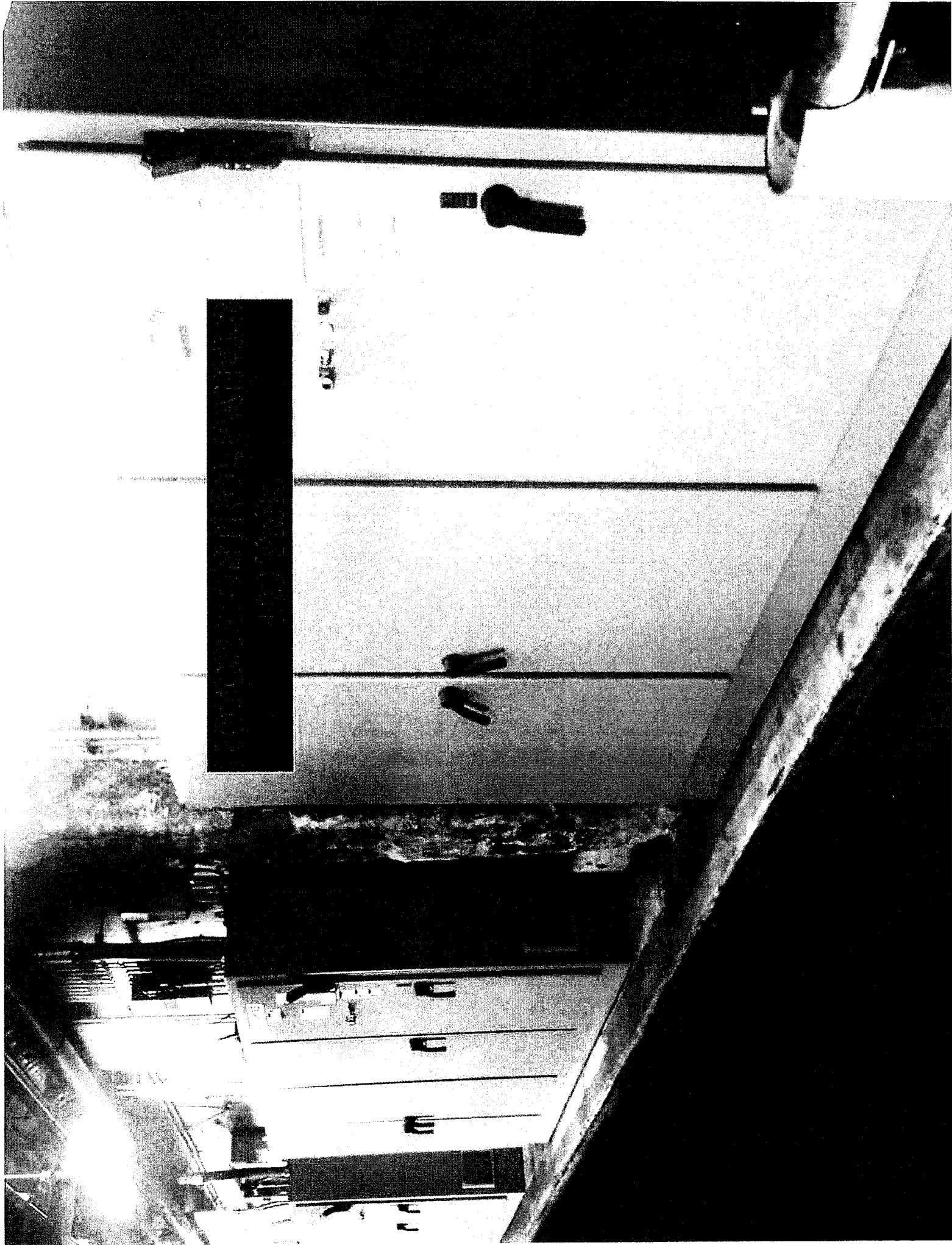
# **ATTACHMENT A**



CLB-056



# **ATTACHMENT B**



project shall be inspected on regular basis by building inspectors from the Department of Public Works to assure compliance with approved plans and specifications, and in accordance with all Department of Public Works building and safety regulations.

**NOTE:** In accordance with Public Works standards:

(a) Schedule of concrete pouring must be made twenty-four (24) hours in advance and work must be performed in the presence of a Building Inspector.

(b) All major construction work such as electrical rough-in and finishing, plumbing rough-in, septic tank and leaching field installation must be inspected by a Building Inspector or a GEPA inspector as applicable, prior to covering or concealment. Failure to comply with the above requirements may result in unnecessary delays to the project or a suspension of work or denial of a Certificate of Occupancy and an order to remove portions or all of the offending structures.

After completion of the project, final inspection by appropriate government of Guam officials shall be conducted to assure that the work is in accordance with the approved plans and specifications and that government of Guam requirements are met.

**§1313. Stop Work Orders.** In the event of a project is commenced without a building permit, or work performed is not in accordance with approved plans and specifications or any approved changes or revisions thereto, or unsafe construction practices are continued after sufficient warnings by the Building Official or his authorized representatives, a STOP WORK ORDER shall be issued and take effect until the conflict resolved.

**§1314. Certificate of Occupancy.** After final inspection of the project indicates that the work performed was done in accordance with approved plans and specifications and has met all government of Guam requirements, the Building Official shall issue a Certificate of Occupancy.

~~**§1315. Installation of Electrical Systems.**  
Procedures and regulations for electrical systems  
installation and wiring for single, multiple family~~



~~dwelling units, commercial, industrial and public buildings:~~

~~(a) Effective August 1, 1973, all electrical wiring, maintenance and installation of electrical systems in multiple family dwelling units, commercial, industrial and public buildings shall be performed by a licensed Electrical Contractor or licensed General Contractor with Registered Electrical Engineer or licensed Master Electricians.~~

(b) Effective September 1, 1973, all electrical systems, wiring and installation in single family dwelling units shall be performed by a licensed Electrical Contractor or licensed General Contractor with registered Electrical Engineer or licensed Master Electrician.

(c) All electricians performing wiring work shall be under the direct supervision of a licensed Electrical Contractor, registered Electrical Engineer or licensed Master Electrician.

(d) After the electrical work is completed, the Electrical Contractor or General Contractor with their licensed Electrical Engineer or Master Electrician shall endorse the approved job site electrical plans with the statement, "I hereby certify that the electrical work was performed by me or under my supervision".

(e) The endorsed plans must then be approved by the Director of Public Works or his authorized designee.



Marcus G. Finona <marcus.finona@clb.guam.gov>

## JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)

3 messages

Claire Pollard <cpollard@rwtguam.com>

Wed, Dec 8, 2021 at 3:38 PM

To: Marcus.finona@clb.guam.gov

Cc: Nida.bailey@clb.guam.gov, Cecil.orsini@clb.guam.gov, "Joseph C. Razzano" <jrazzano@rwtguam.com>, "Joshua D. Walsh" <jdwalsh@rwtguam.com>

Dear Mr. Finona:

Please see the following documents below for filing in the above-referenced matter:

- **Entry of Appearance**
- **JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)**

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): 989-3009

(F): 989-8750

### 2 attachments

12.8.21 ENTRY OF APPEARANCE.pdf  
36K

12.8.21 JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04).pdf  
1970K

Marcus G. Finona <marcus.finona@clb.guam.gov>

Thu, Dec 9, 2021 at 1:18 PM

To: Claire Pollard <cpollard@rwtguam.com>

Cc: Nida Bailey <Nida.bailey@clb.guam.gov>, Cecil Orsini <Cecil.orsini@clb.guam.gov>, "Joseph C. Razzano" <jrazzano@rwtguam.com>, "Joshua D. Walsh" <jdwalsh@rwtguam.com>

Hafa Adai,

Thank you for your email. I have received your documents regarding Case#2021-09-04 (Ed Ilao vs. ASIG/ Menzies Aviation). This case is currently under review. Should I have any questions or concerns, I will certainly contact you. Thanks again.

[Quoted text hidden]

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Si Yu'us Ma'ase,

Marcus G. Finona

Investigator

Guam Contractors License Board *Inetnon Malisensiyen Kontratista*

1/13/2022

Guam Contractors License Board Mail - JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)

542 North Marine Corp Drive A. – Tamuning, Guam 96911

(671) 649-2219

marcus.finona@clb.guam.gov

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

Thu, Dec 9, 2021 at 1:30 PM

To: "Marcus G. Finona" <marcus.finona@clb.guam.gov>

Cc: Nida Bailey <Nida.bailey@clb.guam.gov>, Cecil Orsini <Cecil.orsini@clb.guam.gov>, "Joseph C. Razzano" <jrazzano@rwtguam.com>, "Joshua D. Walsh" <jdwalsh@rwtguam.com>

Received. Thank you for your response, Mr. Finona.

[Quoted text hidden]

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

SUITE 100, 139 MURRAY BLVD.

HAGÁTÑA, GUAM 96910

TELEPHONE: (671)989-3009

FACSIMILE: (671) 989-8750

*Attorneys for Petitioner*

*Johndel International, Inc. dba JMI-Edison*

*and Ed Ilaó*

**BEFORE THE GUAM CONTRACTORS LICENSING BOARD**

IN RE:

AIRCRAFT SERVICE  
INTERNATIONAL, INC. dba  
MENZIES AVIATION,

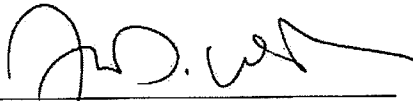
Case No. 2021-09-04

**ENTRY OF APPEARANCE**

PLEASE TAKE NOTICE that Joshua D. Walsh and Joseph C. Razzano of the law offices of Razzano Walsh & Torres, P.C., hereby enters their appearance as counsel for Petitioner in the above-entitled case. The undersigned requests service of all pleadings, documents, and correspondence in the above captioned and titled cause.

*Respectfully submitted* on this 8<sup>th</sup> day of December, 2021.

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

By:   
\_\_\_\_\_  
**JOSHUA D. WALSH**  
**JOSEPH C. RAZZANO**  
*Attorneys for Petitioner*

# RAZZANO WALSH & TORRES, P.C.

www.rwtguam.com

Sender's Direct E-Mail:  
jdwalsh@rwtguam.com

December 8, 2021

**VIA EMAIL AND HAND DELIVERY**

*marcus.finona@CLB.guam.gov*

Marcus G. Finona  
Investigator  
Contractor License Board  
542 North Marine Corp. Drive A  
Tamuning, Guam

***Re: JMI response to Menzies' Written Statement (CLB Case No. 2021-09-04)***

Dear Mr. Finona:

Our office represents JMI-Edison ("JMI") and its President, Mr. Ed Ilaio (collectively "JMI"). Mr. Ilaio had previously called the attention of the Contractor's Licensing Board to the contractor work of Aircraft Service International, Inc, doing business as "Menzies Aviation," ("Menzies"). Recently, JMI discovered that for at least six years now, and perhaps even over a decade, Menzies has been working at the Guam International Airport Authority (the "Airport") on the Airport's Baggage Handling System — a system encompassing 3,360 feet, or nearly 2/3 of a mile of new mechanical conveyors linked to electrical motor control systems that require constant specialized oversight and upkeep. Menzies is also seeking to gain an award from the Airport for work on that system for another five years. Menzies has done all of this work, and proposes to do more, while claiming that the CLB has no oversight over it. The CLB has been asked to review the matter.

Mr. Ilaio has provided us with a copy of the written responsive statement submitted to your office by Menzies on November 19, 2021. Our office has been engaged to respond directly to the statements contained in the Menzies correspondence. In particular, we have been instructed to explain how Menzies's positions neither provide an excuse for the company's failure to obtain appropriate contractor licensing despite receiving approximately \$1,000,000.00 per year in

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(T): 671-989-3009 (F): 671-989-8750

**CLB-066**

contractor payments for its airport work, nor provide cover for the violation penalties codified in 21 G.C.A. §70121.<sup>1</sup>

**I. MENZIES’S CLAIMS THAT IT DOES NOT NEED CONTRACTOR LICENSING SINCE IT DOES NOT KNOW WHAT LICENSE TO OBTAIN IS WITHOUT MERIT.**

Menzies argues that the CLB should take no action against it since Menzies has not been told what license it must obtain. This is, of course, antithetical to Guam law. While Menzies may want to be told what license to obtain, Guam’s law places the **obligation on the contractor** to come in compliance with the law. Guam’s contractor statute explains that:

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).

21 G.C.A. § 70108.

Nothing in the law commands that a person — or corporate entity like Menzies — should be told by the CLB or any other party what licenses it should obtain. To the contrary, that burden is on Menzies to comply with the law, and its claimed ignorance of what appropriate licensing to obtain is no excuse for the fact that it has worked as a contractor on Guam without CLB oversight.

**II. MENZIES DOES NOT CONTEST THAT IT HAS DONE CONTRACTOR WORK IN THE PAST, AND SEEKS TO CONTINUE TO DO CONTRACTOR WORK IN THE FUTURE. INSTEAD, MENZIES HAS CHOSEN TO COMPLAIN THAT IT DOES NOT FIT WITHIN A PARTICULAR SPECIALTY LICENSE CATEGORY**

Rather than attempt to explain that its Airport work is not the type of contractor work that would fall under CLB review, Menzies simply says that it “does not offer or perform construction work.” To make this argument, Menzies relies on the law’s definition of “specialty contractor.” While Menzies is correct that a specialty contractor is an entity “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”, 21 GCA §70106(d), Menzies completely

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<sup>1</sup> For your ease of reference, we have included the relevant excerpts from the Guam statutes cited herein as **Attachment A** to this correspondence.

ignores the definitions section of the Contractor statute. On Guam, a "contractor" needing a contractor's license is defined as "any person who undertakes to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project development or improvement or do any part thereof, including the erection of scaffolding or other structure of works in connection therewith for another person for a fee." 21 G.C.A. § 70100(b). Contractors working on Guam may not do so, or even present themselves as being able to do so, "without a license previously obtained under and in compliance with this Chapter and the rules and regulations of the Contractor's License Board (CLB)." 21 G.C.A. § 70108(a). 21 G.C.A. §70100(c) makes it clear that a "Contractor includes a subcontractor and a specialty contractor."

**III. MENZIES IGNORES THE FACT THAT, EVEN IF IT DOES NOT THINK OF ITSELF AS A "SPECIALTY CONTRACTOR," IT IS A CONTRACTOR NONETHELESS, AND AS SUCH, NEEDS AN APPROPRIATE CLB LICENSE.**

Menzies says it does not need a CLB license since it is not performing construction but instead will be performing work under the RFP for the "operation, maintenance, troubleshooting, and repair" of the baggage system. A specialty license, such as "C-25," is not required in Menzies's view since it does no "installation work." To make this claim **Menzies ignores the obvious; repair and maintenance work often involves "installation."** For instance, in this system, numerous aspects of the project, from failure of one of the numerous electric motors, to the need for replacement of the thousands of feet of conveyor belts, to the changing of fuses, will require installation of replacement components. *See, Attachment B* to this Response (Detail of 480 Volt Electric motors that would be installed as part of repair processes for failure; detail of portion of Conveyor Belts that would be installed as part of repair processes for failure.) Since Menzies admits that it would need a CLB license for "installation," and it admits that it is seeking an award for repair work, repair work that involves the installation of any new parts, places Menzies under the ambit of the "C-25" license. Menzies's lack of such a license places it in violation of the law.

**IV. MENZIES'S CLAIM THAT "NO SPECIALTY LICENSE SUBCLASSIFICATION EXISTS" FOR IT IS WITHOUT MERIT.**

Menzies also argues that it does not need a Specialty Contractor license since no particular specialty license appears to apply to the specific work of baggage conveyor system operation, maintenance, and repair. In order to make this argument,



Menzies again ignores the law. Guam law provides for a catch-all C-68 license. That license is for “a specialty contractor whose operations as such is in the performance of construction work requiring special skills and whose contracting business involves the use of specialized building trades in **crafts not listed above** and who meets the standards set by the Board for such classification.” 25 GAR §12106 et seq. (emphasis added). The C-68 classification was implemented to prevent exactly what Menzies is attempting to do here, *i.e.*, claim that it does not fit a particular box. Furthermore, both the “A” and “B” contractor licenses carry with them the explicit notice that the work described is not exhaustive. Instead, the list is of trades that require a license are “not limited to...” the items listed. *See*, 25 GAR, §12106. Menzies falls under CLB review, even though the exact nature of the work Menzies does is not written in another specialty license category or the trades listed in “A” and “B”. Again, the burden is on Menzies to obtain an appropriate license, and they have simply ignored that obligation.

**V. THE 2021 RFP, LIKE THE EARLIER AIRPORT 2015 RFP THAT MENZIES HAS BEEN OPERATING UNDER, COMMANDS CONTRACTORS TO OBTAIN ALL RELEVANT LICENSES. MENZIES’S ARGUMENT THAT THIS EXCUSES THE NEED FOR A CONTRACTOR’S LICENSE IS WITHOUT MERIT.**

Menzies claims that no CLB oversight or licensing is necessary since the Airport did not specifically call for CLB licensing is, again, wrong. The Airport’s terms and conditions of the IFB require responsive offerors to be knowledgeable and observe “Federal and Local regulations and/or codes.” The Airport’s procurement mandates compliance with “federal and local laws, codes, ordinances, and regulations which, in any manner, affect those engaged or employed in the work. No misunderstanding or ignorance on the part of the Offeror will in any way serve to modify any provisions of the resulting contract.” The Airport also demanded that offerors must be appropriately licensed. This is similar to other procurements that the Airport has conducted where the RFP did not explicitly call for submission of a Contractor license, despite the fact that performing the work without such a license would have violated Guam law. *See*, GIAA RFP 002-FY21 seeking management and support services for elevators.

Beyond the RFP’s demand for specialized electrical contractor knowledge, The Airport’s RFP also recognizes the professional nature of the contractor it will hire, as the proposed contract demands that the contractor “shall procure and maintain professional liability insurance for the term of this Agreement, plus two (2) years

after completion.” GIAA’s specification for professional liability insurance is telling, since “unlike general liability insurance, professional liability insurance is designed to insure against claims related to acts or omissions in the provision of professional services.” *Church Mut. Ins. Co. v. Lake Pointe Assisted Living, Inc.*, 517 F. Supp. 3d 467, 476 (E.D.N.C. 2021), motion to certify appeal granted, No. 4:20-CV-00055-M, 2021 WL 2136419 (E.D.N.C. May 26, 2021). Professional services are “an act or service arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual.” Like the Airport’s professional attorneys that must have appropriate licensing from the governing body overseeing Guam attorneys, the Airport’s professional baggage contractors should obtain appropriate contractor licensing from the CLB.

**VI. MR. RETIRO’S MASTER ELECTRICIAN CERTIFICATION DOES NOT HELP MENZIES AVOID HAVING A CLB LICENSE.**

While Menzie’s does not have a Responsible Managing Employee (“RME”), Menzies claims it can do the airport work since it employs a master electrician, Mr. Reynaldo T. Retiro. Menzies is wrong.

The Airport’s RFP contains the preliminary scope of services being procured, and mandates that the successful contractor will need “extensive knowledge to mechanical aspects” and should have electricians with “sufficient experience in power, controls, and PLC software.” The Airport RFP also confirms the need of the contractor to both operate and maintain electrical equipment including high voltage motor control panels, electric motors, and sensors. The Airport describes the work it is procuring as “Infrastructure Support Services” that requires “technical expertise and guidance.” The Airport is seeking contractors with “extensive knowledge to mechanical aspects (sic)” who should have electricians with “sufficient experience in power, controls, and PLC software.” **To be sure, the services being sought include direct interaction with significant electrical systems. See, e.g., Attachment C (Photo of 480 Volt Motor Control Panels from GIAA project).** As the baggage system includes significant high voltage electrical systems, it can only be worked on by “a licensed Electrical Contractor or licensed General Contractor with registered Electrical Engineer or licensed Master Electrician.” 29 GAR §1315. Menzies is neither. Menzies claims that it has a single employee who is a “master electrician.” While Mr. Retiro may be a well-qualified electrician, this is not enough under the law. Menzies, like any contractor seeking to handle or otherwise repair

December 8, 2021

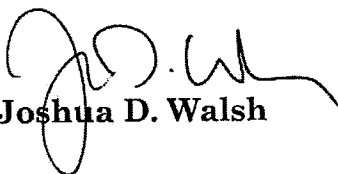
Page 6

electrical systems, has been mandated since 1973 to be either “a licensed Electrical Contractor or licensed General Contractor with registered Electrical Engineer or licensed Master Electrician.” 29 GAR §1315. This means that Menzies needed to, at a minimum, obtain a C-13 electrical contractor license, or instead obtain a general contractor license and contemporaneously rely upon its licensed master electrician. Again, Menzies has done neither. <sup>2</sup>

\* \* \* \*

Menzies is performing significant work with electrical systems, yet claims that the CLB has no oversight over its contracting efforts. The CLB should ignore Menzies’s attempts to distract from this reality, move forward with determining that Menzies’s past work for the airport was done without appropriate licensing. Furthermore, the CLB should reject any effort by Menzies to obtain new CLB licensing given Menzies’s demonstrated failure of “character, experience and past and future methods of doing business.” 25 GAR §12103(5).

Sincerely,



**Joshua D. Walsh**

*cc: Mr. Cecil Orsini – Executive Director CLB*  
*Ms. Nida Bailey – Investigator Supervisor CLB*

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<sup>2</sup> More, Menzies should have also obtained a C-15 license. That license covers electronic systems that involve “inter communication” within the system. The Baggage system contains controlnet ethernet cabling consisting of fiber optics communication lines that allow inter-communication between the computers inside the system control room and the twelve motor control panels located throughout the airport area.

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**CLB-071**

# **ATTACHMENT A**

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CH. 70 CONTRACTORS

CHAPTER 70  
CONTRACTORS

**SOURCE:** This Chapter was added by P.L. 14-051, and later amended. The original enactment was to add §§ 19599 et seq. to the Government Code. The Chapter is placed here because of its relationship to prior Chapters of this Title. The entire Chapter was repealed and reenacted by P.L. 30-011:1 (Apr. 17, 2009).

- § 70100. Definitions.
- § 70101. Exemptions.
- § 70102. Contractors License Board.
- § 70103. Powers and Duties of Board.
- § 70104. Executive Director; Other Assistants.
- § 70105. Place of Meeting.
- § 70106. Classification.
- § 70107. Powers to Classify and Limit Operations.
- § 70108. Licenses; Publication of Contractors List Required.
- § 70108.1. Advertising.
- § 70109. Investigation Permitted.
- § 70109.1. Investigation Citation Authority.
- § 70109.2. Immediate Cease Work Order Permitted.
- § 70109.3. Cease Work Order Permitted.
- § 70110. No License Issued When.
- § 70111. Application: Fees.
- § 70112. Form of Licenses.
- § 70113. Place of Business and Posting of License.
- § 70114. Fees; Annual.
- § 70115. Action on Application.
- § 70116. Revocation, Suspension and Renewal of Licenses.
- § 70117. Hearings.
- § 70118. Appeal to Superior Court.
- § 70119. Disposition of Fees, Refunds.
- § 70120. Death *or* Dissociation.
- § 70121. Violation, Penalty.
- § 70122. Injunction.
- § 70123. Exemptions for Prior Licensees.
- § 70100. **Definitions.**

As used in this Chapter:

- (a) *Board* means the Contractors License Board.

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(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.

(c) Contractor includes a subcontractor and a specialty contractor.

(d) *Person* means an individual, partnership, joint venture, corporation *or* any combination thereof. Corporation includes an association, business trust *or* any organized group of persons.

(e) *Self-construction* means a project *or* operation performed by the owner for personal needs on personal premises; a self-constructed/performed project *or* operation *shall* otherwise be deemed performed by a contractor.

(f) *Investigator* means an employee with the Contractors License Board who conducts thorough investigations of applicants applying for a contractor's license and who inspects, regulates, and enforces the laws, rules and regulations of the Licensing Board for Contractors.

(g) *Responsible Management Employee* means the individual responsible for the direct management of the contracting business of the licensee.

**§ 70101. Exemptions.**

This Chapter *shall not* apply to:

(a) An officer *or* employee of the United States, the Territory *or* any political subdivision, *if* the project *or* operation is performed by employees thereof;

(b) Any person acting as a receiver, trustee in bankruptcy, administrator *or* executor, *or* any other person acting under any order *or* authorization of any court;

(c) A person who sells *or* installs any finished products, materials *or* articles *or* merchandise which are *not* actually fabricated into and *do not* become a permanent fixed part of the structure, *or* to the construction, alteration, improvement *or* repair of personal property;

§ 70106. Classification.

(a) For the purpose of classification, the contracting business includes any *or* all of the following branches:

- (1) General Engineering Contracting;
- (2) General Building Contracting;
- (3) Specialty Contracting; and
- (4) Responsible Management Employee (R.M.E.).

(b) A *General Engineering Contractor* is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions *or* subjects: irrigations, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, highways, streets and roads, tunnels, airports and airways, sewer, sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid *or* gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land leveling and earth-moving projects, excavating, grating, trenching, paving and surfacing work and cement and concrete works in connection with the above-mentioned fixed works.

(c) A *General Building Contractor* is a contractor whose principal contracting business is in connection with any structure built, being built *or* to be built, for the support, shelter and enclosure of persons, animals, chattels *or* movable property of any kind, requiring in its construction the use of more than two (2) unrelated building trades *or* crafts, *or* to do *or* superintend the whole *or* any part thereof.

(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.

(e) A *Responsible Management Employee* is an individual responsible for the direct management of the contracting business of the licensee and has

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proved contracting knowledge by both written examination, as administered by the Board, and the fulfillment of requirements, as stated in Part II Section 2.2 of the Guam Contractors License Board Rules and Regulations.

**§ 70107. Powers to Classify and Limit Operations.**

(a) The Contractors License Board may adopt rules and regulations necessary to effect the classification of contractors and *shall* require a written examination in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which the licensed contractor is classified and qualified to engage, as defined in § 70106.

(b) A licensee may make application for classification and be classified in more than one (1) classification *if* the licensee meets the qualifications prescribed by the Board for such additional classification. For qualifying *or* classifying in additional classifications, the licensee *shall* pay the appropriate application fee but *shall not* be required to pay any additional license fee.

(c) This Section *shall not* prohibit a specialty contractor from taking and executing a contract involving the use of two (2) *or* more crafts *or* trades, *if* the performance of the work in the crafts *or* trades, other than in which the specialty contractor is licensed, is *less than* thirty-five percent (35%) and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

**§ 70108. Licenses; Publication of Contractors List Required.**

(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).

(b) The CLB *shall* publish, in print and electronically, in a newspaper of general circulation, as defined in Title 5 GCA, § 8104(a)(5)(B), a list of contractors authorized to conduct business on Guam. The list of contractors *shall* include, but *not* be limited to, the contractor's name and phone number(s), CLB license number, identification of responsible managing employee, and authorized classification(s). The CLB *shall* also include instructions on how the public may verify if certain contractors have been



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added to, or removed from, the contractors list. The list of contractors *shall* be published annually, *no later than* on the first Monday of August, *shall* be made available to the general public via the CLB's website, and *shall* be updated on a monthly basis.

**SOURCE:** Added by P.L. 14-051. Repealed and reenacted by P.L. 30-011:1 (Apr. 17, 2009). Amended by P.L. 33-103:1 (Dec. 1, 2015).

**2015 NOTE:** Subsection designations added pursuant to authority granted by 1 GCA § 1606.

**§ 70108.1. Advertising.**

A Contractor may advertise in print *or* broadcast medium *only if* the contractor includes in the advertisement *or* listing the contractor's applicable and current license number, and provides proof of the number's validity to the publisher *or* producer of the advertising medium. Violation of this Section may be subject to the provisions of § 70116 and/or § 70121.

**§ 70109. Investigation Permitted.**

The Contractors License Board may investigate, classify and qualify applicants for contractor's licenses, and investigate for compliance with the rules and regulations of the Board and the provisions of this Chapter.

**§ 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.

requirements of a subpoena issued by the Superior Court, *or* a refusal to testify therein.

**§ 70118. Appeal to Superior Court.**

An applicant who has been refused a license and every licensee whose license has been suspended, revoked *or not* renewed may appeal the Contractors License Board's decision to the Superior Court in the manner provided in the Administrative Adjudication Law.

**§ 70119. Disposition of Fees, Refunds.**

(a) Notwithstanding the Central Accounting Act, all fees and money collected under the provisions of this Chapter *shall* be deposited in a special fund known as the *Contractors License Board Fund*. This Fund *shall* be kept in a bank licensed to do business on Guam and funds *shall* be paid out only upon a request for payment *or* requisition submitted by the Executive Director *or* its personnel and countersigned by the Chairman of the Board. All monies in this Fund *shall* require legislative appropriation.

(b) The Board may request the Treasurer of Guam to have any fee erroneously paid to it under this Chapter refunded when the Board deems it just and equitable.

**§ 70120. Death *or* Dissociation.**

*No* co-partnership, joint venture *or* corporation *shall* be deemed to have violated any provision of this Chapter by acting *or* assuming to act as a contractor after the death *or* dissociation of a licensee who had the direct management of the contracting business thereof prior to final disposition by the Contractors License Board of an application for a license made within thirty (30) days from the date of the death *or* dissociation.

**§ 70121. Violation, Penalty.**

Any person who violates *or* omits to comply with any of the provisions of this Chapter *shall* be fined an amount *no less than* Two Hundred Dollars (\$200) but *not to exceed* fifty percent (50%) of the value of the project.

**§ 70122. Injunction.**

The Contractors License Board may, in addition to any other remedies available, apply to a judge of the Superior Court for a preliminary *or* permanent injunction restraining any person from acting *or* assuming to act *or* advertising as general engineering contractor, general building contractor

someone else and which structure is not for use by the general public.

(e) *Home Improvement and Renovation Contracting.* Home Improvement and Renovation Contracting means undertaking or holding oneself out as being able to undertake directly or indirectly renovation, remodeling, repairing or otherwise improving a residential property for compensation.

(f) *Home Improvement and Renovation Salesman.*

(1) *Home Improvement and Renovation Salesman* means an individual who, as a representative of a home improvement contractor, solicits for or negotiates a home improvement contract.

(2) Any individual representing more than one principal or acting on his own behalf as a home improvement and renovation salesman shall be treated for all purposes hereunder as a contractor and shall be required to hold a proper license.

**§12103. processing License Application. (a) Application Form for Contractors License.** All applications for an original contractors license shall be made in writing upon a form to be prescribed by the Board, which form shall be designed to seek from the applicant the following information:

(1) A complete statement of the general nature of the applicant's contracting business;

(2) If the applicant is an Individual, his name and address; if a Partnership, the names and addresses of all partners, and the names and addresses of the Responsible Management Employee(s); if a Corporation, the names and addresses of the Responsible Management Employee(s) and all officers; if a Joint venture, the names and addresses of the Employee(s). For the purpose of this article, any person(s) in any of the capacities set forth in this rule shall be deemed to be members of the personnel of applicant.

(3) A record of the previous experience of applicant and applicant's Responsible Management Employee(s) in the field of construction: Designate the projects associated with by name, size, location and title of position held.

(4) Sworn certificates of not less than two (2) persons who have known the applicant for a period of not less than six (6) months, certifying that the applicant bears a good reputation for honesty, truthfulness and fair dealings.

(5) Nothing contained herein shall be construed to limit the Board's authority to seek from the applicant such other information pertinent to the character, experience and past and future methods of doing business as may be deemed necessary to determine the applicant's qualifications.

(b) **Individual License Required.** Responsible Management Employee must be licensed. The Corporation, Partnership or Joint Venture which employs him must be also licensed as a contractor. Home Improvement and Renovation Salesman falling under §12102 of these rules and regulations must be licensed.

(c) **Management of Applicant to Furnish Information.** An Officer, Director or Partner of an applicant shall furnish the information requested in the prescribed application form.

(d) **Signing and Verification of Applications.** Every application for contractors licenses shall be signed by the individual applying if applicant is an individual; if a Partnership, by a copartner; if a Corporation or Joint Venture, by its President or its authorized representative; and by all other persons concerning whom information is given in the application form. All persons signing the application shall swear to the truth of the statements contained therein before a notary public. Evidence of the authority of authorized representative of a Joint Venture or Corporation shall be filed with its application.

(e) **Exhibits Required.** Every applicant shall be required to furnish the Board with the following documents:

(1) If the applicant is an individual, sworn certificates of not less than two (2) persons who have known the applicant for a period of not less than six (6) months, certifying that the applicant bears a good reputation for honesty, truthfulness and fair dealings.

(2) Not less than three (3) certificates in support of experience qualifications as set forth hereinafter in §12104.

**§12106. Classifications. (a) All Contractors Classified.**  
All persons heretofore or hereinafter licensed under these rules and regulations will be classified by the Board into one or more classifications and/or sub-classifications as follows:

GENERAL ENGINEERING CONTRACTOR	"A"
GENERAL BUILDING CONTRACTOR	"B"
SPECIALTY CONTRACTOR	"C"

- (1) GENERAL ENGINEERING CONTRACTOR:  
More than two unrelated heavy construction trades or crafts including but not limited to the following:  
Asphalt Paving & Surfacing  
Cement Concrete  
Concrete Paving & Surfacing  
Classified Specialties  
Demolition  
Excavating, Grading & Trenching  
Fencing  
Guniting  
Housing & Building Moving & Wrecking  
Landscaping  
Pile Driving & Foundation  
Pest Control  
Post Tensioning/Prestress  
Reinforcing Steel  
Septic Tank  
Sewer: Sewage; Disposal Drain; Cement Pipe Laying  
Stone Masonry  
Structural Steel  
Water Proofing  
Welding
- (2) GENERAL BUILDING CONTRACTOR:  
More than two unrelated building trades or crafts including but not limited to the following:  
Acoustical Tile  
Aluminum Roofing & Siding  
Cabinet & Millwork  
Carpentry Framing  
Carpet Laying  
Cement Concrete  
Concrete Paving & Surfacing  
Demolition  
Drywall  
Fencing  
Floor Covering  
Glazing  
Guniting  
House a Building Moving a Wrecking  
Institutional a Commercial Equipment  
Insulation  
Landscaping

Lift Slab  
Limited House Improvement & Renovation Masonry  
Ornamental Metal  
Painting & Decorating  
Pest Control  
Pile Driving & Foundation  
Plastering  
Post Tensioning/Prestress  
Prefabricated Steel Building  
Reinforcing Steel  
Roofing  
Septic Tank  
Sheet Metal  
Spray, Texture Coating  
Stone Masonry  
Structural Steel  
Swimming Pool  
Tile  
Water Proofing  
Welding  
Wood Flooring  
Wood Shingle & Shake  
Classified Specialties

- (3) SPECIALTY CONTRACTOR: This classification shall not prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work is less than thirty five percent (35%) and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

Acoustical Tile  
Asphalt Paving & Surfacing  
Aluminum Roofing & Siding  
Boiler, Hot Water Heating & Steam Fitting  
Cabinet g Millwork  
Carpentry Framing  
Carpet laying  
Cement Concrete  
Concrete Paving & Surfacing  
Demolition  
Drywall  
Electrical  
Electrical Pole & Line  
Electrical Sign  
Electronic System  
Elevator Installation  
Excavating, Grading & Trenching  
Fire a Burglar Alarm  
Fire Protection  
Floor Covering  
Glazing  
Guniting  
House & Building Moving & Wrecking  
Institutional & Commercial Equipment

Insulation  
Landscaping  
Lathing  
Lift Slab  
Limited House Improvement & Renovation Masonry  
Ornamental Metal  
Painting & Decorating  
Pest Control  
Pile Driving & Foundation  
Plastering  
Plumbing  
Post Tensioning/Prestress  
Prefabricated Steel Building  
Reconditioning Concrete Water & Sewer lines  
Refrigeration  
Reinforcing Steel  
Roofing  
Septic Tank  
Fencing  
Sewer, Sewage Disposal Drain: Cement Pipe Laying  
Sheet Metal  
Solar  
Spray, Texture Coating  
Structural Pest Control  
Structural Steel  
Swimming Pool  
Tile  
Warm Air Heating, Ventilating & Air Conditioning  
Water Chlorination  
Water Proofing  
Welding  
Well Drilling  
Wood Flooring Wood Shingle & Shake  
Classified Specialties

(4) Definitions of Sub-Classifications:

(C-1) *Acoustical Tile Contractor*: An Acoustical Tile Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to execute preparatory work necessary to bring surfaces to a condition where acoustical tile can be laid thereon and to lay such tile by the use of adhesive or other acceptable installation media and to install metal suspension members and place acoustical materials for suspended ceilings.

(C-2) *Aluminum Shingle and Siding Contractors*: An Aluminum Shingle and Siding Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to

install aluminum shingles and siding so that an acceptable water-tight surface is obtained.

*(C-3) Asphalt Paving and Surfacing Contractor:* An Asphalt Paving and Surfacing Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently proportion, mix and place paving and surfacing consisting of graded miner aggregates bonded with asphalt or bituminous materials so that a firm, smooth surface suitable for roadways, runways and parking areas is obtained.

*(C-4) Boiler, Hot Water Heating and Steam Fitting Contractor:* A Boiler, Hot Water Heating and Steam Fitting Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently install fire-tube and water-tube power boilers and hot water heating boilers, including all fitting and piping, valves, gauges, pumps, radiators, connectors, fuel oil tanks fuel oil lines, chimneys, fuels, heat insulation and all other devices, apparatus and equipment pertinent thereto.

*(C-5) Cabinet and Millwork Contractor:* A Cabinet and Millwork Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently cut, surface, join and frame wood and wood products into cabinet, case, sash, door, trim, non-bearing partition and such other mill products as are by custom and usage accepted in the building and construction industry as cabinet and millwork. Included is the placing and finishing in buildings of such cabinet and millwork.

*(C-6) Carpentry Framing Contractor:* A Carpentry Framing Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to do carpentry framing. Such work to include floor framing and siding, roof framing including wood truss, roof sheathing and such other work as is by custom and usage accepted in the construction



industry as carpentry framing. This classification also includes work of the C-58, Wood Flooring Contractor.

(C-7) *Carpet Laying Contractor*: A Carpet Laying Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently prepare floor surfaces to a condition where acceptable fabric floor covering can be laid thereon and to lay such covering.

(C-8) *Cement Concrete Contractor*: A Cement Concrete Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently proportion and mix aggregates, cement and water to make acceptable concrete and to pour, place and finish same including the placing and setting of screens and forms including driveways and sidewalks. Excluded is the work covered by classification C-10, Paving and Surfacing Contractor.

(C-9) *Septic Tank Contractor*: A Septic Tank Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to excavate and install septic tanks in compliance with the requirements of the Department of Public Health.

(C-10) *Concrete Paving and Surfacing Contractor*: A Concrete Paving and Surfacing Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently proportion, mix and place paving and surfacing consisting of graded mineral aggregates bond, with cement so that a firm, smooth surface suitable for roadways, runways and parking areas is obtained.

(C-11) *Demolition Contractor*: A Demolition Contractor is a specialty Contractor whose contracting business is the execution of contracts requiring the ability to intelligently demolish all types of building or structure and to remove all of

such building or structure from the premises on which it was built.

(C-12) *Drywall Contractor:* A Drywall Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently install gypsum wallboard systems and sheathing; to tape and fill joints and indentations of wallboard with simulated acoustic or gypsum texture to not include the work of the C-33 Painting and Decorating or C-36 Plastering Contractors.

(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 C-19 Fire and Burglar Alarm Contractor.

(C-13A) *Pole and Line Contractor:* A Pole and Line Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to dress, ground, anchor and erect poles designed to carry electrical wires and to connect and string electrical wires and fixtures and apparatus to and between such poles. A C-13 Electrical Contractor classification is a prerequisite to obtaining this classification.

(C-14) *Electrical Sign Contractor:* An Electrical Sign Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently fabricate, install and erect electrical signs.

(C-15) *Electronic System Contractor:* An Electronic System Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently install, maintain, repair and service electronic equipment and electronic controls for public address, inter communication, master antenna and music distribution systems.

Electronic controls to include those controls in conjunction with other specialty contracting work.

(C-16) *Elevator Installation Contractor:* An Elevator Installation Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently fabricate, erect and install sheave beams motors, sheaves, cable and wire rope, guides, cab, counter weight, doors including sidewalk elevator doors, hydraulic systems, automatic and manual controls, signal systems and all other devices, apparatus and equipment appurtenances for the safe and efficient installation and operation of electrical, hydraulic and manually-operated elevators.

(C-17) *Excavating, Grading and Trenching Contractor:* An Excavating, Grading and Trenching Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently dig, move and place earthen materials for a cut, fill, grade or trench, including the use of explosives in connection therewith.

(C-18) *Fencing Contractor:* A Fencing Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently assemble, fabricate and install metal fencing and gates.

(C-19) *Fire and Burglar Alarm Contractor:* A Fire and Burglar Alarm Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently install, maintain and repair fire and burglar alarm systems.

(C-20) *Fire Protection Contractor:* A fire Protection Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently lay out, fabricate and install approved types of fire prevention and protection systems including all mechanical apparatus, devices, piping and equipment appurtenant thereto except electrical

devices, apparatus and wiring which shall be installed by specialty contractors in the classifications C-13 or C.15. The licensee shall have the ability to comply with applicable provisions of the NBFU Standards to meet all requirements of the local authorities having jurisdiction.

(C-21) *Floor Covering Contractor:* A Floor Covering Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently prepare floor surfaces to a condition where he can lay acceptable flooring with the use of linoleum, rubber, vinyl, cork, asphalt, plastic aluminates or such other materials as are by custom and usage in the construction industry known as composition flooring.

(C-22) *Glazing Contractor:* A Glazing Contractor is a specialty contractor whose contracting business is the execution of. contracts requiring the ability to intelligently cut glass and to glaze frames, panels, sash and doors. It shall also include fabrication and installation of shower doors, tub enclosures, metal jealousies, store front metal and trim plastics, tempered glass doors including such items as frames and hardware and any allied products not stipulated above but affiliated with the glass and glazing industry.

(C-23) *Gunite Contractor:* A Gunite Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently proportion and mix aggregates, cement and water and to pneumatically apply and finish the mix including the setting of ground wires and pencil rods to establish the finished surface planes.

(C-24) *House and Building Moving and Wrecking Contractor:* A House and Building Moving and Wrecking Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to

intelligently raise and underpin buildings so that alterations, additions, repairs and new sub-structures may be built under the permanently retained portions of such buildings and to move or wreck buildings provided, however, that wrecking shall be limited to those buildings which could otherwise be moved in whole or not more than three sections.

(C-25) *Institutional and Commercial Equipment Contractor:* An Institutional and Commercial Equipment Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to install laboratory equipment, for services equipment, folding and sliding partitions, stationary metal partitions, and such other equipment and materials as are by custom and usage accepted in the construction industry as institutional and commercial equipment work. Excluded is the work done by classifications C-13 Electrical and C-37 Plumbing contractors.

(C-26) *Insulation Contractor:* An Insulation Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently install any insulating media in buildings and structures for the sole purpose of temperature control.

(C-27) *Landscaping Contractor:* A Landscaping Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the art and ability to intelligently prepare plots of land for architectural horticulture and to provide decorative treatment and arrange gardens, lawns, shrubs, vines, bushes, trees and other decorative vegetation; construct conservatories, hot and green houses, drainage and sprinkler systems and ornamental pools, tanks, fountains, walls, fences and walks; arrange, fabricate and place garden furniture, statuary and monuments in connection therewith. and metal lath, or any other materials which provide a key or suction base for the support of plaster-coating; including the light gauge metal shapes for the support of metal or other fireproof lath.

(C-29) *Lift Slab Contractor*: A Lift Slab Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently lift or lower concrete slabs or prefabricated steel work, in a vertical dimension, into predesignated positions through the use of jacks.

(C-30) *Limited Home Improvement and Renovation Contractor*: A Limited Home Improvement and Renovation Contractor is a specialty contractor whose contracting business is the execution of home improvement and renovation contracts requiring the ability to intelligently perform the carpentry work to remodel and/or to make repairs to existing buildings or structures and to do any other work which would be incidental and supplemental to such remodeling or repairing. This contractor shall be licensed only for contractors not exceeding Three Thousand Five Hundred Dollars (\$3,500).

(C-31) *Masonry Contractor*: A Masonry Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently select, cut and lay brick and other baked clay products, rough stone, cut and dressed stone, artificial stone and precast blocks, structural glass brick or block, laid at random or in courses with or without mortar.

(C-32) *Ornamental Metal Contractor*: An Ornamental Metal Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently cast, cut, shape, stamp, forge, weld, braze, solder fabricate any metal used in the building and construction industry for the architectural treatment and ornamental decoration of buildings and structures; but shall not include the work of a Sheet Metal Contractor (C-44) or Structural Steel Contractor (C-48).

(C-33) *Painting and Decorating Contractor*: A Painting and Decorating Contractor is a specialty contractor whose contracting business is the

execution of contracts requiring the ability to intelligently prepare surfaces, including the taping of joints in wallboard, and to apply acceptable finishes thereon with the use of paints, varnishes, shellacs, stains, fillers, waxes and any other vehicles and materials that may be mixed and applied as finish to surfaces of buildings including texture coatings and coverings.

(C-34) *Pest Control Contractor:* A Pest Control Contractor is a specialty contractor whose contracting business is the execution of pest control contracts requiring a practical knowledge of the life cycles, habits and habitat of wood destroying insects and household pest and such knowledge of construction as will enable him to determine where the insects or pests are and the proper method to use in ridding a building of such insects or pests. This classification does not include the work of the C-47 Structural Pest Control Contractor.

(C-35) *Pile Driving and Foundation Contractor:* A Pile Driving and Foundation Contractor is specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently drive pilings of wood, concrete or steel to cut off same and prepare pilings for permanent foundations.

(C-36) *Plastering Contractor:* A Plastering Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to prepare mixtures of sand, gypsum, plaster, quicklime or hydrated lime and water, or sand and cement and water, or a combination of such other materials as created a permanent surface coating; including coloring for same, and to apply such mixtures by use of a plasterer's trowel, brush or spray gun to any surface which offers a mechanical key for the support of such mixture, or to which such mixture will adhere by suction; and to apply lath or any other material that will provide a base for such mixture.

(C-37) *Plumbing Contractor*: A Plumbing Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently install supply water piping systems, waste water piping systems and fuel gas piping systems, the fixtures for these systems and the venting for waste water piping systems and fuel gas piping systems; within such structures and works where people or animals live, work and assemble.

(C-38) *Post Tensioning Contractor*: A Post Tensioning Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently apply compression to concrete structures or various components by the use of steels, bars or wires and to bring such bars or wires to proper tension after the structures or components are built or placed.

(C-39) *Reconditioning Concrete Pipeline Contractor*: A Reconditioning Concrete Pipeline Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently recondition or restore concrete water or sewer lines through the use of manually or machine-applied grout.

(C-40) *Refrigeration Contractor*: A Refrigeration Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently construct, erect and install devices, machinery and units including temperature insulation units, ducts, blowers, registers, humidity and thermostatic controls for the control of air temperature below fifty degrees Fahrenheit (50°F) in refrigerators, refrigerator rooms and insulated refrigerator spaces.

(C-41) *Reinforcing Steel Contractors*: A Reinforcing Steel Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently fabricate, place and tie steel reinforcing bars (rods) of any profile, perimeter or



cross-section, that are or may be used to reinforce concrete buildings and structures.

(C-42) *Roofing Contractor*: A Roofing Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently prepare surfaces and apply a watertight covering to such surfaces with the use of any or all of the following: asphalt, pitch, tar, felt, glass, fabric, flax, composition, shingles, roof tile, slate and such other materials that are established by use and custom as suitable for a watertight cover. This classification includes the work of the C-55 Waterproofing Contractor, but does not include the work of the C-2 Aluminum Roofing and Siding Contractor or the C-59 Wood Shingle and Shake Contractor.

(C-43) *Sewer, Sewage Disposal, Drain, Cement Pipe Laying Contractor*: A Sewer, Sewage Disposal, Drain, Cement Pipe Laying Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently fabricate concrete and masonry sewers, sewage disposal concrete and masonry sewers, sewage disposal and drain structures, packaged sewer disposal plants, sewage lift stations, septic tanks and appurtenances thereto; to lay iron, steel, concrete, vitreous and non-vitreous pipe; including the excavation, grading, trenching, backfilling paving and surfacing in connection therewith.

(C-44) *Sheet Metal Contractor*: A Sheet Metal Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently cut, shape, fabricate and install sheet metal such as cornices, flashings, gutters, ladders, rainwater downspouts, pond, kitchen equipment, duct work and metal flues.

(C-45) *Spray Texture Coatings Contractor*: A Spray Texture Coatings Contractor is a specialty contractor whose contracting business is the execution of contract requiring the ability to

intelligently prepare surfaces and apply acceptable texture coating finishes, but shall not include the work of the C-33 Painting and Decorating or the C-36 Plastering Contractor.

(C-46) *Stone Masonry Contractor:* A Stone Masonry Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently select, cut and dress stone, and to construct ornamental walls, veneer walls and structural walls or columns from such stones; to lay stone in such manner that an acceptable paved surface is obtained and to construct stone retaining walls with or without mortar, sufficient in strength and weight to retain the earth which it was built to retain.

(C-47) *Structural Pest Control Contractor:* A Structural Pest Control Contractor is a specialty contractor whose contracting business is the execution of contracts requiring a practical knowledge of the life cycles, habits and habitats of wood destroying insects and household pests; the ability to destroy same and to intelligently repair any damage resulting from such insects and pests. This classification includes the work of the C-34 Pest Control Contractor.

(C-48) *Structural Steel Contractor:* A Structural Steel Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently fabricate and erect structural steel shapes, bars, rods and plates of any profile, perimeter or cross-section that are or may be used as structural members for buildings and structures, including riveting, bolting, welding and rigging in connection therewith.

(C-49) *Swimming Pool Contractor:* A Swimming Pool Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to construct swimming pools with the use those construction industry trades as are necessary for the construction of such pools.

(C-50) *Tile Contractor*: A Tile Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently prepare a base upon which ceramic and other tile work, including all pseudo ceramic tile products, will adhere by suction or by adhesive and to install such tiles.

(C-51) *Warm Air Heating, Ventilating and Air Conditioning Contractor*: A Warm Air Heating, Ventilating and Air Conditioning Contractor is a specialty contractor whose business is the execution of contracts requiring the ability to intelligently fabricate and install warm air heating and cooling systems, complete air conditioning systems except for those air conditioning systems requiring refrigeration as an integral part of the system.

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(C-53) *Solar Contractor*: A Solar Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to place, install and erect apparatus for heating, water heating, air conditioning, refrigeration or other devices powered by solar energy or conversion of solar energy to electromotive forces used or to be used for structures or in conjunction with any classification or specialties listed in Public law 14-51 or these Rules and Regulations. Prerequisites for this classification are: C-13 Electrical Contractor, C-37 Plumbing Contractor, and C-40 Refrigeration Contractor or C-51 Warm Air Heating, Ventilating and Air Conditioning Contractor.

(C-54) *Water Chlorination Contractor*: A Water Chlorination Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to chlorinate water lines so that tests approved by the Department of Public Health show that water in such lines meet the standard of that department and is acceptable to the Department of Public Health,

(C-55) *Waterproofing Contractor:* A waterproofing Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently apply felt, flax, glass, asphaltum, pitch, latex or other materials or any combination of any thereof to surfaces to prevent, hold, keep and stop water vapor from penetrating and passing such materials.

(C-56) *Welding Contractor:* A Welding Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently use gases and electrical energy or other heating media, fluxes and metal rods to cause materials to become fused or jointed together.

(C-57) *Well-Drilling Contractor:* A Well Drilling Contractor is a specialty contractor whose contracting business is the execution of contracts requiring some practical elementary knowledge of geology, hydrology, the occurrence of water in the ground, water levels in wells; the prevention of surface and sub-surface contamination and pollution of the ground-water supply; and the ability to intelligently bore, drill, excavate, case, cement, clean and repair waterwells with hand to power tools or rigs.

(C-58) *Wood Flooring Contractor:* A Wood Flooring Contractor is a specialty contractor whose contracting business is the execution of contracts requiring the ability to intelligently lay and repair wood floor and to finish such floors by sanding, filling and sealing.

(C-68) *Classified Specialist:* A Classified Specialist is a specialty contractor whose operations as such is in the performance of construction work requiring special skills and whose contracting business involves the use of specialized building trades in crafts not listed above and who meets the standards set by the Board for such classification.

Temporary classifications under C-68, classified specialist may be established by the Board until the work performed is defined and the proper classification is established.

**§12107. Scope of Classification. (a) General Engineering, General Building and Specialty Contractors.**

(1) A General Engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill including the following divisions and subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydro-electric projects; levees, tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works; pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances; parks, playgrounds and other recreational works; refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill; houses, power plants and other utility plants and installations; mines, metallurgical plants, land leveling and earthmoving projects; excavating, grading, trenching, paving and surfacing work; and cement and concrete works in conjunction with the above mentioned fixed works.

(2) A General Building Contractor is a contractor whose principal contracting business is in connection with any structure built, being built or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind requiring in its construction the use of unrelated building trades or crafts or to do or superintend the whole or any part thereof.

(3) A Specialty Contractor is a contractor whose operations as such are the performance of construction work requiring special skills and whose principal contracting business involves the use of specialized building trades or crafts or licensing to meet safety standards.

project shall be inspected on regular basis by building inspectors from the Department of Public Works to assure compliance with approved plans and specifications, and in accordance with all Department of Public Works building and safety regulations.

NOTE: In accordance with Public Works standards:

(a) Schedule of concrete pouring must be made twenty-four (24) hours in advance and work must be performed in the presence of a Building Inspector.

(b) All major construction work such as electrical rough-in and finishing, plumbing rough-in, septic tank and leaching field installation must be inspected by a Building Inspector or a GEPA inspector as applicable, prior to covering or concealment. Failure to comply with the above requirements may result in unnecessary delays to the project or a suspension of work or denial of a Certificate of Occupancy and an order to remove portions or all of the offending structures.

After completion of the project, final inspection by appropriate government of Guam officials shall be conducted to assure that the work is in accordance with the approved plans and specifications and that government of Guam requirements are met.

**§1313. Stop Work Orders.** In the event of a project is commenced without a building permit, or work performed is not in accordance with approved plans and specifications or any approved changes or revisions thereto, or unsafe construction practices are continued after sufficient warnings by the Building Official or his authorized representatives, a STOP WORK ORDER shall be issued and take effect until the conflict resolved.

**§1314. Certificate of Occupancy.** After final inspection of the project indicates that the work performed was done in accordance with approved plans and specifications and has met all government of Guam requirements, the Building Official shall issue a Certificate of Occupancy.

**§1315. Installation of Electrical Systems.** Procedures and regulations for electrical systems installation and wiring for single, multiple family

dwelling units, commercial, industrial and public buildings:

(a) Effective August 1, 1973, all electrical wiring, maintenance and installation of electrical systems in multiple family dwelling units, commercial, industrial and public buildings shall be performed by a licensed Electrical Contractor or licensed General Contractor with Registered Electrical Engineer or licensed Master Electricians.

(b) Effective September 1, 1973, all electrical systems, wiring and installation in single family dwelling units shall be performed by a licensed Electrical Contractor or licensed General Contractor with registered Electrical Engineer or licensed Master Electrician.

(c) All electricians performing wiring work shall be under the direct supervision of a licensed Electrical Contractor, registered Electrical Engineer or licensed Master Electrician.

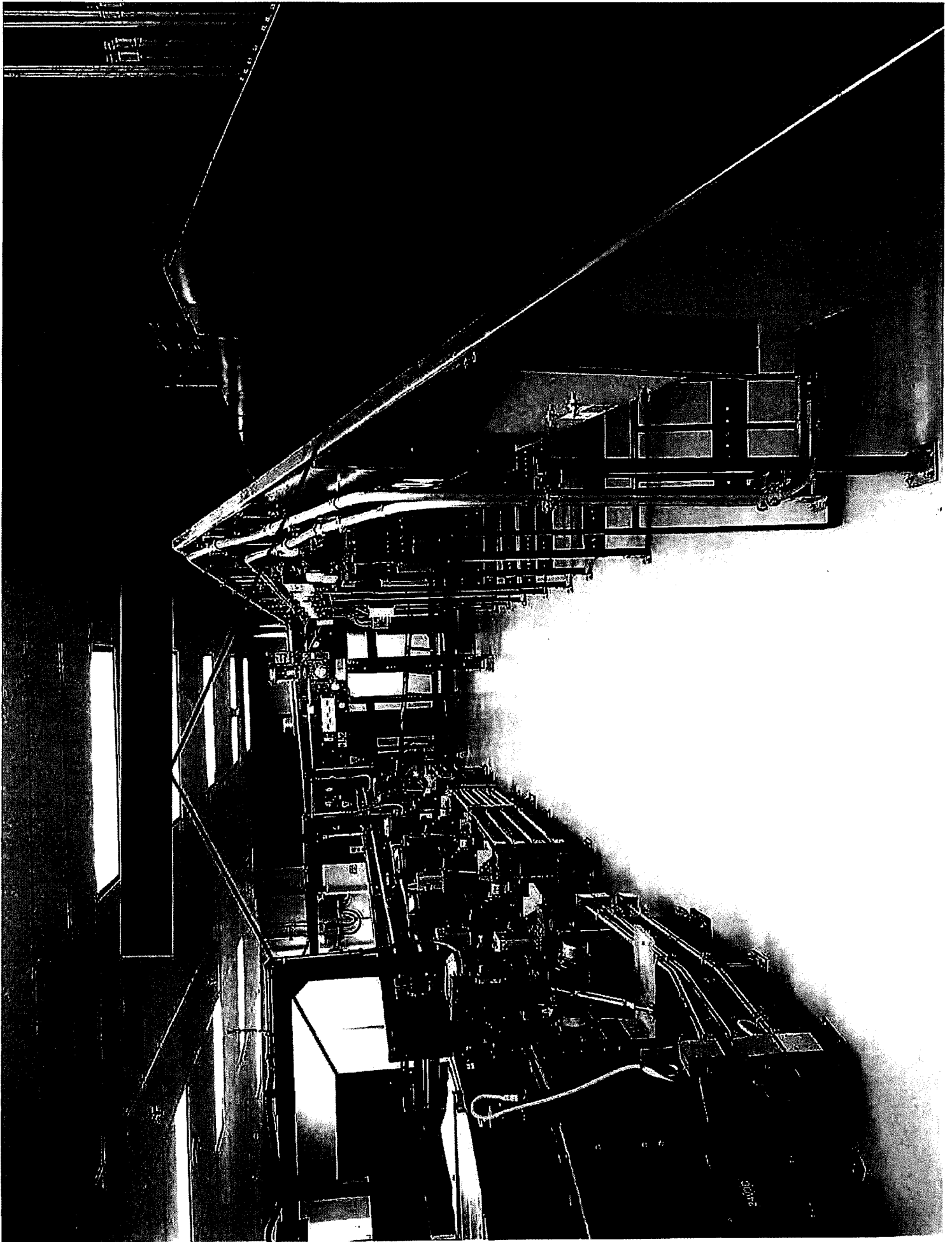
(d) After the electrical work is completed, the Electrical Contractor or General Contractor with their licensed Electrical Engineer or Master Electrician shall endorse the approved job site electrical plans with the statement, "I hereby certify that the electrical work was performed by me or under my supervision".

(e) The endorsed plans must then be approved by the Director of Public Works or his authorized designee.

# **ATTACHMENT B**







CLB-102

# ATTACHMENT C



SIEMENS

