



Jerrick Hernandez <jhernandez@guamopa.com>

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

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

Wed, Nov 24, 2021 at 4:32 PM

To: Jerrick Hernandez <jhernandez@guamopa.com>

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

Dear Mr. Hernandez:

Please see attached **Interested Party Aircraft Service International, Inc. dba Menzies Aviation's Motion to Dismiss** 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.



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## 2 attachments

Member

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**271-MOTION TO DISMISS RE MENZIES AVIATION OPA PA-21-010.pdf**

165K

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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>MOTION TO DISMISS</b>        |
|   | ) |                                 |

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18 Interested Party **AIRCRAFT SERVICE INTERNATIONAL, INC. DBA MENZIES AVIATION**  
19 (“Menzies”), hereby submits its Motion for Summary Judgment in the above-captioned Office of  
20 Public Accountability Procurement Appeal concerning Guam International Airport Authority  
21 Request for Proposals RFP No. RFP-005-FY21.

22 The Public Auditor is limited by the authority granted to it by its enabling statute. *See*  
23 *Carlson v. Guam Tel. Auth.*, 2002 Guam 15, ¶ 9 (Guam Sept. 6, 2002) (“As creatures of legislation,  
24 the powers of administrative agencies and their executive officers are ‘dependent upon statutes, so  
25 that they must find within the statute warrant for the exercise of any authority which they claim.  
26 They have no general or common law powers but only such as have been conferred upon them by  
27 law expressly or by implication.’”).

1           The Public Auditor’s enabling statute is the Guam Procurement Law. 5 G.C.A. § 5010 to  
2 5908. The powers granted to the Public Auditor include the power to adjudicate procurement  
3 appeals. 5 G.C.A. §§ 5425(f) and 5702. The Public Auditor may also adjudicate suspension or  
4 debarment proceedings and adjudicate appeals from breach of contract controversies. 5 G.C.A.  
5 §§ 5705-5706. The Public Auditor is not explicitly or implicitly granted any authority to adjudicate  
6 whether a business is operating without a license issued by the Guam Contractors License Board  
7 (the “CLB”).  
8

9           The CLB alone is authorized by statute to “investigate, classify and qualify applicants for  
10 contractor’s licenses, and investigate for compliance with the rules and regulations of the Board  
11 and the provisions” of the Guam contractors law. 21 G.C.A. § 70109. This authority includes  
12 authority over unlicensed contractors. 21 G.C.A. § 70109.1(a) and (c). As such, the CLB is the  
13 proper forum for Johndel International, Inc. dba. JMI-Edison’s (“JMI”) allegation in this appeal.  
14 JMI clearly understands that the CLB has jurisdiction over contract licenses because Eduardo R.  
15 Ilao, President of JMI, filed a complaint with the CLB on September 21, 2021.  
16

17           As of the filing of this motion, Menzies has met with the CLB in response to a formal  
18 Notice to Appear, but no decision has yet been rendered by the CLB on Mr. Ilao’s complaint.  
19

20           The Public Auditor has previously held that it will not exercise jurisdiction over a matter  
21 within the jurisdiction of a separate administrative body of the government of Guam. *See* In re  
22 Appeal of Pacific Data Systems, Inc. (PDS), OPA-PA-21-004 (Oct. 5, 2021) (Order). In that  
23 appeal, the Public Auditor dismissed the appeal without prejudice and instructed the appellant to  
24 file a petition or complaint before the appropriate administrative agency, allowing the appellant to  
25 refile its appeal with the Office of Public Accountability (the “OPA”). Menzies respectfully  
26 requests that the Public Auditor recognize that the same problem exist with this appeal and do the  
27 same.  
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**CONCLUSION**

For the above-stated reasons, Menzies respectfully requests that the OPA dismiss JMI's appeal for lack of subject matter jurisdiction.

**DATED** this 24th day of November, 2021.

**BLAIR STERLING JOHNSON & MARTINEZ**  
A PROFESSIONAL CORPORATION



BY: \_\_\_\_\_

**R. MARSIL JOHNSON**  
*Attorneys for Party in Interest*  
*Aircraft Service International, Inc.*  
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