

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



TRANSMITTAL

To:	Mr. John M. Benavente, P.E. General Manager Guam Power Authority P.O. Box 2977 Hagåtña, Guam 96932 Fax: (671) 648-3165 Email: jbenavente@gpagwa.com	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
	Mr. D. Graham Botha, Esq. General Counsel Guam Power Authority 688 Route 15, Suite 302 Mangilao, Guam, 96913 Phone: (671) 648-3203/3002 Fax: (671) 648-3290 Email: gbotha@gpagwa.com	Pages:	8 (including cover page)
CC:	Mr. Joseph C. Razzano, Esq. Mr. Joshua D. Walsh, Esq. Attorneys for Appellant JMSI Electrical Guam LLC Razono Walsh & Torres, P.C. 139 Murrery Blvd. Hagåtña, Guam 96910 Phone: (671) 989-3009 Email: jdwalsh@rwtguam.com	Date:	January 1, 2023
		Phone: (671) 475-0390 x. 204 Fax: (671) 472-7951	

Re: OPA-PA-23-001 Notice of Receipt of Appeal

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



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910

Phone: (671) 475-0390 / FAX: (671) 472-7951

January 20, 2023

John M. Benavente, P.E.
General Manager
Guam Power Authority
P.O. Box 2977
Hagåtña, Guam 96932

VIA FACSIMILE: (671) 648-3165

Re: Notice of Receipt of Appeal – OPA-PA-23-001

Dear Mr. Benavente,

Please be advised that JMSI Electrical LLC (hereinafter referred to as “JMSI”) filed an appeal with the Office of Public Accountability (OPA) on January 19, 2023, regarding GPA’s denial of JMSI’s request for a final written decision from GPA that should have been issued on or before January 6, 2023 related to Purchase Order No. PO 28553, Access Control System for Lobby Elevator and Stairway no. 3, Fadian. OPA has assigned this appeal case number OPA-PA-23-001.

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

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

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Friday, January 27, 2023**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Thursday, February 9, 2023**, twenty days following receipt of this notice.

When filing all required documents with our office, please provide one original and one copy to OPA (**electronic filings will be acceptable and highly encouraged**), and serve a copy to JMSI.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Benjamin J.F. Cruz". The signature is stylized and cursive.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Five Pages of the Notice of Appeal – OPA-PA-23-001

Cc: Joseph C. Razzano, Esq. and Joshua D. Walsh, Esq., Attorneys for JMSI

RAZZANO WALSH & TORRES, P.C.

SUITE 100, 139 MURRAY BLVD.

HAGÁTÑA, GUAM 96910

TELEPHONE: (671) 989-3009

FACSIMILE: (671) 989-8750

Attorneys for Appellant

JMSI Electrical Guam, LLC

**PROCUREMENT APPEAL OF DECISION ON CONTRACT CONTROVERSY
IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

PART I.

In the Appeal of

JMSI Electrical Guam LLC,

Appellant.

DOCKET NO. OPA-PA-_____

NOTICE OF APPEAL

PART II: APPELLANT INFORMATION

Name: JMSI Electrical LLC (“JMSI”)
Mailing Address: P.O. Box 9668
Tamuning, Guam 96931
Business Address: 380 C East Harmon Industrial Park Rd.
Tamuning, Guam 96913

For purposes of this appeal, please direct correspondence to JMSI’s counsels, Joseph C. Razzano and Joshua D. Walsh, RAZZANO WALSH & TORRES, P.C., 139 Murray Blvd. Ste. 100, Hagåtña, Guam 96910. Telephone: 671-988-6526; Facsimile: 671-989-8750.

PART III: APPEAL INFORMATION

- A. Purchasing Agency: Guam Power Authority
- B. Purchase Order: PO28553
- C. This appeal is made from a constructive denial of JMSI’s request for a final written decision from the Purchasing Agency that should have been issued on or before January 6, 2023. No final written decision was issued.
- D. Appeal is made from a Decision on Contract or breach of contract controversy excluding claims of money owed by the Government.
- E. There are no other competing bidders, offerors, or contractors known to Appellant.

PART IV: STATEMENT OF GROUNDS FOR APPEAL

A. This dispute is properly before the OPA.

JMSI and the Guam Power Authority (“GPA”) have, for a period of months, worked to resolve all controversies between them flowing from work that cannot be completed due to the fault of the purchasing agency. No mutual agreement settling the controversy was reached.

Both the Guam procurement code and GPA procurement regulations require that the contracting agency, through its procurement officer, provide a written decision on the contract controversy as requested by contractor within 60 days of such a request. 5 GCA § 5427 (f); *see also*, 5706(b).

On November 10, 2022, JMSI wrote to GPA asking for resolution of the dispute with GPA to close out the purchase order. JMSI requested a final written decision. Correspondence from JMSI to GPA, attached as **Exhibit A**.

Guam law provides that , that “If the Chief Procurement Officer, the Director of Public Works, the head of a purchasing agency, or the designee of one of these officers does not issue the written decision required under Subsection (c) of this Section within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.” 5 G.C.A. § 5427(f). Guam law provides that the decision— a constructive denial in this case— is final “...unless fraudulent, or the contractor appeals administratively to the Public Auditor in accordance with § 5706 of this Chapter.” 5 GCA §5427(e). That provision explains that “[t]he aggrieved contractor shall file his/her appeal with the Public Auditor within sixty (60) days of the receipt of the decision or within sixty (60) days following the failure to render a timely decision as provided in § 5427 of this Chapter.” 5 GCA §5706(b).

GPA’s written decision on JMI’s November 10, 2022 request was due on January 6, 2023. No written decision from GPA was provided.

This Appeal before the OPA of the constructive denial of January 6, 2023 is filed by Appellant- JMSI before the OPA on prior to the lapse of sixty (60) days following the failure to render a timely decision as provided in § 5427 of this Chapter.” 5 GCA §5706(e).

The issue being appealed to the OPA is direct; “Is the final installation and testing complete as contemplated by the contract scope of work?”

B. The Scope of Work under the contract is completed, as GPA Has Already Been Informed and Demonstrated That the Panel Works.

On or about December 31, 2020, JMSI and Oceanic Elevator Company, LLC (“Oceanic”) received a Notice to Proceed on Purchase Order No. 28553 (“PO28553”). The scope of the project set out by GPA was to provide an additional access control system for the lobby elevators and stairwell 3. The scope of work was completed by September 27, 2021, and a final invoice was sent by JMSI to GPA.

GPA’s position in response to the invoice is that the final installation and testing for PO28553 is not complete. GPA is wrong. On March 18, 2022, Bill Craig, the vendor who sold the Access Control System to GPA, confirmed that he had already demonstrated that the system works and all necessary GPA personnel were present. Mr. Craig has explained that he tested all first-floor doors which was successful and included verification of software activity by GPA personnel. Therefore, the scope of the contract is complete and JMSI would like to close out the purchase order.

C. Ruling Requested

JMSI requests a determination from the OPA that the work under Purchase Order No. 28553 is completed, and that the terms of contract call for GPA to pay JMSI its final invoice and close out the purchase order.

D. Supporting Exhibits, Evidence or Documents

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

- November 10, 2022, correspondence from JMSI to GPA, attached as **Exhibit A**.

JMSI also anticipates providing further documentation to substantiate its claims when GPA submits the full contracting record to the OPA.

V. DECLARATION RE COURT ACTION

Pursuant to 5 GCA Chapter 5, unless the court requests, expects, or otherwise expresses interest in a decision by the Public Auditor, the Office of Public Accountability will not take action on any appeal where action concerning the protest or appeal has commenced in any court.

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

Respectfully Submitted this 19th day of January 2023.

RAZZANO WALSH & TORRES, P.C.

By: 
JOSEPH C. RAZZANO
JOSHUA D. WALSH
Attorneys for Appellant
JMSI Electrical Guam LLC



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-23-001 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Fri, Jan 20, 2023 at 3:07 PM

To: John M Benavente <jbenavente@gpagwa.com>

Cc: Graham Botha <gbotha@gpagwa.com>, "Joseph C. Razzano" <jrazzano@rwtguam.com>, "Joshua D. Walsh" <jdwalsh@rwtguam.com>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-23-001. This email will serve as an official notice in lieu of a transmittal via Fax.

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

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Best Regards,



Jerrick J.J.G. Hernandez, MA, CFE, CGAP, CICA
Accountability Auditor

Office of Public Accountability

+1 671 475 0390 (ext. 204)

jhernandez@guamopa.com<https://www.opaguam.org/>

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