



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

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## In the Appeal of JMSI Electrical Guam LLC

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

Thu, Jan 19, 2023 at 3:23 PM

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

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

Dear Mr. Hernandez:

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

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Regards,  
Claire Pollard

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

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<http://rwtguam.com>**1.19.23 Notice of Appeal.pdf**

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*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 19<sup>th</sup> day of January 2023.

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

By: 

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

**VERIFICATION**

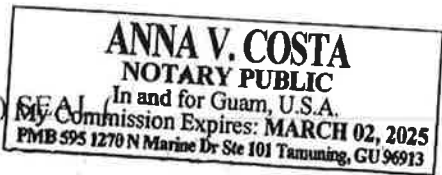
I, MARVIN D. SMITH, am a member of Appellant JMSI Electrical Guam, LLC and I am authorized to make this verification. I have read the foregoing Notice of Appeal, based on information and belief and to the best of my knowledge, the facts stated therein are true and correct. I declare under penalty of perjury under the laws of Guam that the foregoing is true and correct. This verification was executed on the 19<sup>th</sup> day of January 2023.

By:   
MARVIN D. SMITH  
*Appellant JMSI Electrical Guam, LLC*

GUAM, U.S.A.,            )  
                                  ) ( SS.:  
City of Hagåtña.        )

On this 19<sup>th</sup> day of January 2023, before me, a notary public in and for Guam, personally appeared MARVIN D. SMITH, known to me to be the person whose name is subscribed to the foregoing **NOTICE OF APPEAL**, and he acknowledged to me that he executed the same.

WITNESS my hand and official seal.





# **EXHIBIT A**



# RAZZANO WALSH & TORRES, P.C.

www.rwtguam.com

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

November 10, 2022

**VIA EMAIL**

*mmminas@gpagwa.com*

Manuel Minas  
Engineering/Project Manager  
Guam Power Authority  
P.O. Box 2977  
Hagatna, Guam 96932

***Re: Guam Power Authority OP No. 28553; Access Control System for Lobby Elevator and Stairway no. 3, Fadian.***

Dear Mr. Minas:

This office has been retained by JMSI Electrical, LLC ("JMSI") in order to address a contract dispute which has arisen between JMSI and the Guam Power Authority ("GPA").

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. Specifically, JMSI was tasked with installing a new access control reader, interface controller for the elevator, address electronic locks for the stairwell door and linking the system to the main control server. The original project completion date was March 31, 2021, which was extended through an August 18, 2021, amendment to September 27, 2021, because of a delay in the original contract execution. The scope of work was completed by September 27, 2021, and a final invoice was sent by JMSI to GPA. That invoice was never paid.

GPA's position in response to the request for final payment is that the final installation and testing for PO28553 is not complete. GPA is wrong. JMSI and all necessary third-party vendors have completed the installation contemplated by PO28553, and tests of the software and controls have been run on three (3) occasions in the presence of GPA personal.

Any further work on the elevators that GPA wants is not work contemplated under PO28553. GPA is now demanding that the elevators also interface with the

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facility communications interlink. Since at least April 20, 2021, GPA has been on notice that the elevators could not access the communications interlink because of the way the elevators were installed by the contractor who built the GPA facilities. This is all understood and known by Ralph Cruz and the facilities management team. The defect of the original installation could be addressed through a specific project initiated to correct the fault. On or about June 9, 2021, Oceanic submitted a proposal for the noted repairs to the GPA facility that would have allowed the elevators to access the communications interlink. The proposal was ignored by GPA. Instead, GPA requested that rather than fix the elevators correctly, Oceanic find a "band aid" fix with the controller communication interlink of the elevators so that the existing PO could be closed out. Unfortunately, there is no "band aid" fix, and certainly no fix that falls within the scope of PO28553. Repair work needs to be done correctly and completely for the Access Control System ("ACS") to function as it appears GPA originally intended. Therefore, if GPA does not intend to fix the elevators there will be no way to guarantee the ACS will perform as desired.

Since November of 2021, the parties have been engaged in a series of communications, meetings, and retests in an attempt to close out this purchase order. JMSI has repeatedly informed GPA, in conjunction with reports from the Department of Public Works as well as outside consultants, that until the communications interlink in the elevator is repaired, the ACS system will not function as GPA wants.

On or about January 18, 2022, after a series of successful retests, another final invoice was submitted to GPA in the amount of \$14,168.04. That invoice has also never been paid. Between January 18 and January 24, 2022, the parties submitted detailed emails and responses which outline the status of the project. JMSI's letter of January 24 summarizes all positions taken on December 1, 2021, and December 17, 2021, as well as GPA's responses and the evidence that responds and answers all of GPA's questions. Therefore, as of at least January 24, 2022, this project has been 100% completed. Further, on January 28, 2022, JMSI has explained to GPA that the system has been tested and retested in front of several GPA, JMSI, OTIS elevator employees, as well as Mr. Bill Craig who sold the system to GPA. These tests all show that JMSI's installation under PO2855 has been completed successfully, and that any further elevator communication issues can only be addressed through addressing the ACS. This can be confirmed by Blaine Dydasco, IT Specialist at GPA.

In March of 2022, JMSI agreed to meet the further demands of GPA and attempt one more time to get the readers to work. That good faith effort included the

November 10, 2022

Page 3

offer to pay for Mr. Craig's time to conduct the troubleshooting to determine if in fact the ANX box installed by JMSI was the problem as GPA suggested. However, JMSI also explained that if GPA was wrong and the ANX box was not the problem and in fact it was the communications interlink, then GPA would foot the bill for Mr. Craig's continued work that JMSI had already informed GPA would be unnecessary. This offer was rejected by GPA. Nevertheless, Mr. Craig confirmed JMSI's review of the situation. On March 18, 2022, Mr. Craig confirmed that he had already demonstrated the panel works on his software in front of GPA representatives. He further confirmed that during that test, a card was tested on all first floor doors — doors not impacted by the original installation defect — which was successful and included verification of software activity by GPA personnel. In a further effort to placate GPA, on September 21, 2022, JMSI offered to do additional work so that GPA's future efforts at correcting the communications interlink problem can be done more easily. That work would include running additional wiring for GPA and conducting more tests. JMSI also has offered to honor the warranty period for the key pad in the stairwell, and provide a discount of \$5,000.00 to close out the PO. *See attached.* As of this date, no further progress has been made on this project.

JMSI would like its September 21, 2022, offer accepted so that it can schedule the new work and conclude this matter. If this cannot be done by November 18, 2022, JMSI seeks a final determination and explanation on whether GPA believes the scope of work under PO28553 has been completed and if payment will be made. JMSI believes that its performance obligations have been completed and it is due payment, and intends to access its rights before the Office of Public Accountability to resolve any disputes GPA has about those facts.

Very Truly Yours,



Joseph C. Razzano

*Cc: Graham Botha (via email: gbotha@gpagwa.com)*



September 21, 2022

Guam Power Authority  
P.O. Box 2977  
Hagatna, Guam 96932

Attn: Manuel Minas  
Engineering/Project Management

Re: Purchase Order 28553OP  
Access Control System

Dear Mr. Minas:

Thank you for meeting with us last week. JMSI will commit to the following to get this project complete:

- 1) JMSI will run the wire from the stairwell keypad and devices back to your existing ANX panel.
- 2) GPA's Access Control contractor will terminate those wires and do the programming.
- 3) JMSI will be on hand for testing and commissioning.
- 4) JMSI will honor the warranty period on the stairwell keypad as per contract.

JMSI would like to offer a \$5,000.00 refund on our contractor amount to cover the work that could not be done on the elevator due to existing conditions and the boards that do not seem to be working.

Please let us know if you are amiable to the above and we will schedule the work as soon as possible. Should you have any questions, please do not hesitate to contact our office.

Regards,

Marvin Smith  
President

Approved: \_\_\_\_\_

Dated: \_\_\_\_\_