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PFA and ODR Urge Court to Dismiss Hill International's Lawsuit Over Rejected Bid, Citing Weak Claims and Missed Deadlines

Government agencies argue that Hill International bypassed proper protest procedures, failed to provide evidence of conflict of interest, and missed critical deadlines in its challenge to the \$137 million disaster recovery contract

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With \$15 billion in construction projects at stake, the PFA and ODR look to move beyond Hill's court and focus on rebuilding the USVI. By. GETTY IMAGES

The government agencies named in a lawsuit by Hill International, Inc., have filed a response to the company's request for the courts to [halt a major disaster recovery contract](#). Hill alleges

conflict of interest after its \$30.2 million bid for a contract with the territory's super project management office was rejected in favor of the \$137 million bid from CH2M. However, the Office of Disaster Recovery and the Public Finance Authority say Hill is merely "a disappointed Respondent who was not chosen for award under the RFP."

In their response, attorneys for the defendants say that Hill's challenge of the RFP result should never have come to the courts. "Hill disingenuously fails to mention anywhere in its pleadings that Hill had an opportunity and obligation to file a bid protest in accordance with the RFP and the relevant procurement manual but failed to do so," they argue.

The PFA's procurement procedures manual reportedly stipulates that bid protests must be filed within five days after notice of an award, and no more than 10 days after the contract date. Any such protests must be delivered to the ODR director. Only after receiving a determination from the ODR director can a dissatisfied party seek redress with the courts. Hill, defending attorneys argue, bypassed the procedure outlined in the manual because it realized that it had failed to act within the designated five-day period, and thus any properly filed bid protest would have been denied as untimely.?

Since the motion before the courts is constructively a bid protest, and since Hill did not follow the outlined guidelines, PFA attorneys argue that the request for a TRO and permanent injunction must be immediately dismissed, with prejudice. "This type of forum-shopping is disallowed by the VIPFA," the response states.

Even if the courts decide otherwise, attorneys for the government agencies say that Hill has failed to demonstrate that its motion for a temporary restraining order and ultimately a permanent injunction against awarding the contract to CH2M has any likelihood of success on merit.

The response seeks to methodically destroy Hill's credibility in filing its action, noting that the company did not alert the court to "the many provisions in the RFP that put Respondents on notice that there was a possibility of a single award." PFA/ODR attorneys list at least eight places in the RFP and associated documents where it indicates that the procurement process may result in the selection of only one contractor. Hill is also misrepresenting itself as a local taxpayer, as the company "only registered for a General Business License in the Virgin Islands on May 1, 2024, and therefore it is highly unlikely that it has paid one cent of tax to the Virgin Islands." Another limb of the argument against Hill's motion for a TRO or preliminary injunction was redacted from the public version of the defendants' response.

Additionally, the claims of conflict of interest have not been supported by any evidence, PFA/ODR attorneys argue. The facts asserted – that members of the evaluation committee and employees of CH2M's parent company Jacob worked together for the same government agency – "do not demonstrate even the appearance of a conflict of interest, let alone an actual conflict of interest," the response argues. In its motion, Hill fails to make the case that any improper influence was had, or even attempted, with respect to the evaluation of proposals, contended ODR and PFA counsel. Instead, "plaintiff attempts to conjure up a cloud of suspicion regarding the procurement, but it cannot succeed...because its argument is based solely on speculation and innuendo rather than facts." There is no "clear and strong evidence" to suggest that government officials were not acting in good faith only "self-serving speculation" by Hill, PFA/ODR attorneys argued. These speculations are "easily disproved" by the disclosures made in the deconfliction portion of the procurement process, they said.

The attorneys go on to argue that Hill has not made a case for the claim that the PFA's choice of a higher-priced respondent was erroneous or irrational. There was no obligation for the lowest-cost bid to be selected, they said, as the criteria for procurement was best value, considering both price and non-price factors.

Cost-effectiveness, on which Hill did score higher than CH2M, only represented 20% of the weighting. CH2M scored highest in the other four evaluation factors that were worth the other 80%, and thus received the highest overall score – 432.5 points to Hill's 406 points. "Given that it received lower scores in 80% of the evaluation factors, Plaintiff cannot rationally succeed on the merits of its argument that its lower price should have necessarily resulted in a contract award," concluded the attorneys.

Indeed, Hill's proposal featured substantial technical deficiencies, responding attorneys argue. In a section significantly redacted, they argue that the unsuccessful proposal did not make sufficient accommodation for the number of staff required for the construction management scope of work. Evaluators were concerned about gaps in the plan, and in its representation to court, "Hill ignores the weakness of its proposal," ODR/PFA attorneys — [led by David A. Bornn](#) — contended.

Ultimately, the PFA and the people of the Virgin Islands would be most harmed by the imposition of a temporary restraining order or permanent injunction, as work on much-needed hurricane recovery construction projects would suffer additional delays, argued the defendants. The characterization of this harm as slight by Hill, as opposed to its lost opportunity for profit, "reflects precisely Hill's failure to comprehend the urgency and circumstances of the contract," the legal response claims. As such, the court is urged to completely deny Hill's motion for a temporary restraining order, preliminary injunction and declaratory relief.