

## Judge Recommends Dismissal of Hill International's Lawsuit Against V.I. Public Finance Authority

**Magistrate Judge Alan Teague has advised dismissing Hill International's lawsuit challenging the PFA's award of a \$137 million disaster recovery contract. The judge cited procedural deficiencies, lack of standing, and insufficient evidence of wrongdoing.**

Disaster Recovery / **Published On March 06, 2025 05:48 AM /**

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**Hill International headquarters.**

A report from a District Court magistrate has recommended the dismissal of a lawsuit against the V.I. Public Finance Authority.

Last September, Hill International filed suit against the PFA's Office of Disaster Recovery, alleging that the process of awarding a contract to manage billions of dollars worth of recovery

projects [was fatally flawed](#). They are asking the court to declare that the contract – which ultimately went to CH2M – was improperly awarded, and to force PFA/ODR to abandon it in favor of a new contract with Hill.

The PFA's response was to call for the court to [throw out Hill's lawsuit](#), citing weak claims and missed deadlines. Hill skipped over several steps in the process of disputing a contract award, the defendants said, and thus the lawsuit was premature. If not for procedural deficiencies, the suit should be dismissed on the merits as well, PFA attorneys argued.

In November, District Court Magistrate Judge Alan Teague was asked to review several pending motions, including the one filed by the PFA asking that the matter be dismissed. In his report and recommendations, filed on Wednesday, Judge Teague agreed that the lawsuit be tossed out.

Hill's claim fails in several areas, Judge Teague found. Firstly, “Hill cannot show that its claimed injury of not being awarded the contract is fairly traceable to PFA's allegedly unlawful exercise of procurement power,” Judge Teague wrote. Indeed, claims that Hill would have been awarded the contract if a different agency had conducted the procurement process could be described as “an undistilled exercise in conjecture and speculation,” the magistrate wrote, citing previous case law.

Judge Teague also found inconsistencies in Hill's logic. “Hill argues simultaneously that PFA should have treated its lower-priced bid more favorably and awarded it the contract, and that PFA lacks statutory authority to conduct the procurement and issue the award,” he noted.

Altogether, the claim against the PFA's procurement power should be dismissed due to Hill's lack of standing, Judge Teague recommended. As a result, so should the request for declaratory judgement.

Hill is also attempting to bring a taxpayer suit, alleging that CH2M's successful bid – which was \$107 million higher than Hill's – is a waste of taxpayer money. However, Judge Teague ruled that first, Hill provided no proof that they are a Virgin Islands taxpayer. Even if they were, “the complaint fails to plead sufficient facts as to an act by Defendant that was either illegal or unauthorized, or will result in the wrongful disbursement of territorial funds,” the magistrate found.

There was nothing wrong with ODR ultimately awarding just one contract instead of the “minimum of two” that was contemplated in one section of the RFP, Judge Teague said. “Other provisions, however, indicate the possibility of one or multiple awards,” he noted, before dismantling another logical inconsistency. “Considering that Hill specifically sought (and in fact still seeks) a single contract to perform both PMand CM services, any claim by Hill that Defendant was required to award at least two contracts is dubious at best.” It is also too late in the process for Hill to complain, as the company failed to challenge the ambiguity before the contract was awarded.

Hill's conflict of interest claims also fail, Judge Teague found. The lawsuit alleges that some of the members on the evaluation committee that considered the bids work together with some employees of CH2M's parent company. “But there are no allegations suggesting the evaluation committee members and Jacob's employees worked together, or that they intentionally or inadvertently exchanged information that gave CH2M an unfair advantage...or caused the committee to unfairly favor CH2M or disfavor Hill,” the judge wrote.

Finally, Judge Teague dispensed with Hill's argument that the over \$100 million price differential between its bid and CH2M's bid is prima facie evidence that the contract's award to CH2M was “arbitrary and capricious.” This assertion, the judge said, “is a legal conclusion not entitled to the

assumption of truth.” In fact, Hill fails to outline any specific factual allegations to show why it believes the award was arbitrary and capricious. Judge Teague notes that the procurement guidelines in this case did not require that the lowest bid be accepted, as it was a “best value” procurement. According to the evaluation criteria, CH2M received the highest score, of which cost as a component was only weighted at 20% of the total possible points. “The technical component was significantly more important than price,” Judge Teague notes. The winning bid had the highest score in the technical aspect, and its price fell within the acceptable range. Therefore, an irrationality argument cannot be made regarding how the award was decided.

As a result, Judge Teague has recommended that Hill's lawsuit against the PFA be dismissed in its entirety. Any objections to these recommendations must now be filed within 14 days.

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