The Virgin Islands Consortium

Exclusive: Port Authority Signs Contract Agreeing To Pay Gross Receipt Taxes For Firm It Hired; V.I.P.A. Officials Say They Were Not Aware Of Clause

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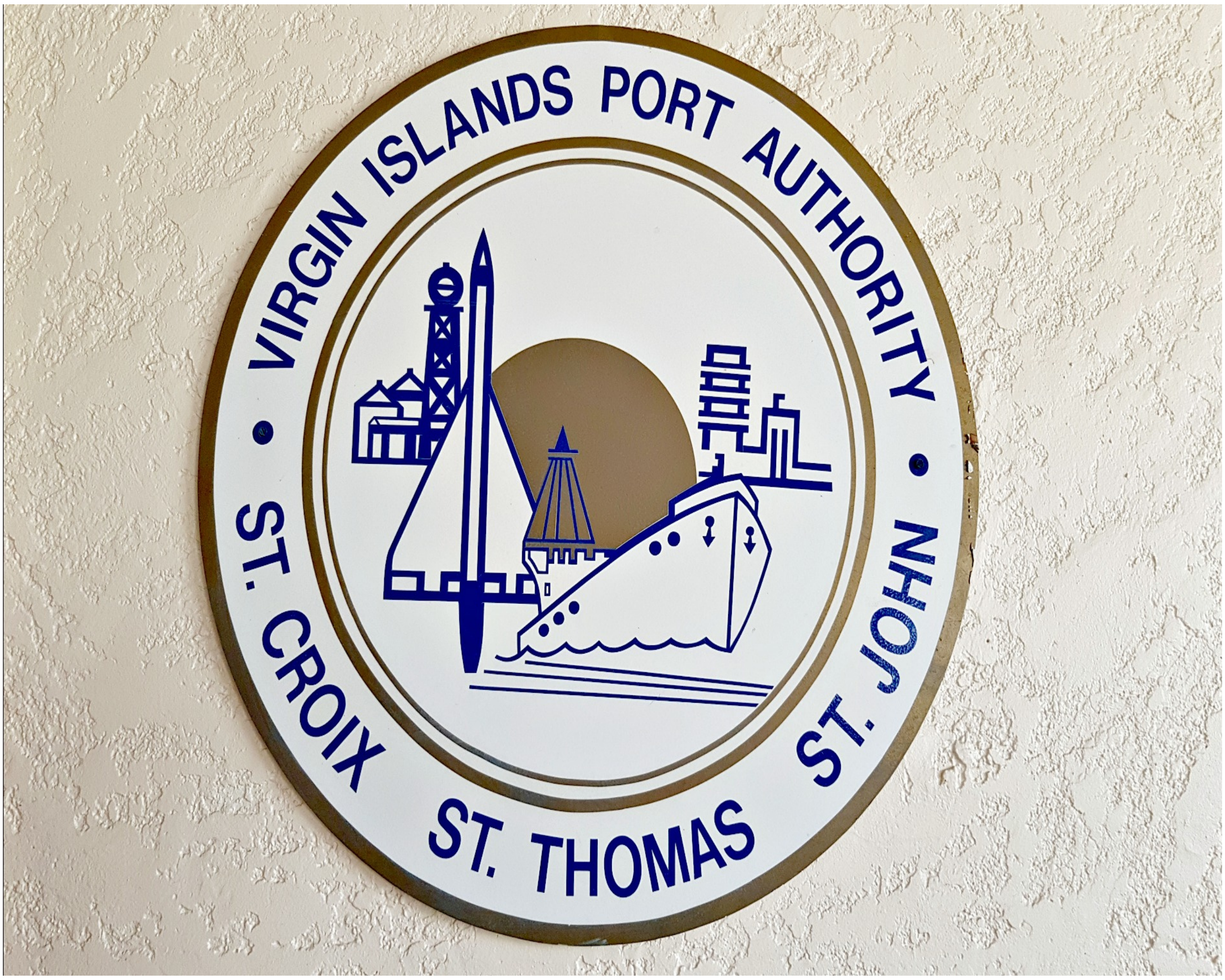

ST. CROIX -- A four-year contract between Lemartec Corporation, a Florida-based firm, and the Virgin Islands Port Authority, is the cause of much controversy over language included in the work agreement, which states that V.I.P.A. must pay gross receipt taxes for Lemartec, even as the Port Authority is paying Lemartec to perform millions of dollars worth of work.

The language, found in Article X on page 18 of the 73-page contract obtained by The Consortium, acknowledged that Lemartec must pay gross receipt taxes in accordance with the territory's laws. But it goes on to say that Lemartec shall separately identify the amount of gross receipt taxes due on its application for payment, and that, "Gross Receipt Taxes shall be reimbursed by the Authority pursuant to such application for payment submitted pursuant to a task order." Article X further states, "All payments under a task order to construction manager shall be grossed-up by an amount that holds construction manager harmless from gross receipt taxes, so that the gross-up amount, less all gross receipt taxes, equals the unadjusted payment."

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In short, Lemartec, which was hired on January 19, 2018 by V.I.P.A. to perform emergency engineering and construction management work related to damages caused by Hurricanes Irma and Maria, according to the contract, cleared itself from paying any gross receipt taxes in the territory, while passing on the cost to V.I.P.A., which is using both local and federal dollars, to pay Lemartec.

The agreement immediately raised red flags; Lemartec isn't offering anything of benefit to the territory outside of its scope of work -- which it's getting paid millions of dollars for. While the full cost of the contract was not publicized, an "Application and Certificate for Payment" document obtained by this publication, reveals that the first sum, for project mobilization, is $2 million. Project mobilization ensures that technical and organizational infrastructures and mechanisms are in place for a particular project.

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David Mapp, V.I.P.A. executive director, issued a statement to The Consortium through Monifa Brathwaite, V.I.P.A.'s public information officer, stating that Lemartec was advised that it must pay gross receipt taxes. Asked why did Mr. Mapp sign a contract that included language passing the responsibility of paying gross receipt taxes from Lemartec to V.I.P.A., Ms. Brathwaite said all she was told is that Lemartec was advised that it must pay its gross receipt taxes. But that would mean forfeiting the contract, this Consortium reporter told Ms. Brathwaite, who stressed that she hadn't seen the agreement and could only relay what she was told.

Damian Cartwright, who is less than a year into his role as V.I.P.A. assistant executive director, told The Consortium that V.I.P.A. would not adhere to the language in the contract, and that Lemartec had been advised of this decision. He said while the contract was signed by Mr. Mapp and V.I.P.A. board Chairwoman Laurel Hewitt-Sewer, it did not mean the two officials actually read the contract, because V.I.P.A. has attorneys employed to perform such prudence. "We have a legal department, and that's a legal provision -- a basic legal provision at that," Mr. Cartwright said. "So by the time these types of documents go to the executive director's desk, it's expected that it's been reviewed for legal sufficiency, and that our legal department is responsible for identifying and catching any sort of insertion that the vendor's counsel might try to insert. So to say how that could have been signed, well it's really when you're relying on your department to function and be able to catch those types of insertions and point it out to you before. Clearly that didn't happen."

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He added," Needless to say, the V.I. Port Authority is not paying taxes for any vendor and never will." Asked if the contract becomes void because of V.I.P.A.'s decision to not adhere to the language found in it, Mr. Cartwright said Lemartec, after being advised of the authority's decision, said it would abide by it. He said the contract would be amended.

Attorney General Claude Walker, who sits on the V.I.P.A. board, echoed Mr. Cartwright's sentiments, telling The Consortium late Thursday that he had not read the contract, and was relying on V.I.P.A.'s legal counsel to do so.

During a board meeting on Wednesday, V.I.P.A. officials went into executive session to act on matters it said should not be made public. Coming out of executive session, the board made known that it "took action concerning two V.I.P.A. employees," without revealing what those actions were. The Consortium has learned that the board fired Nycole Thompson, who served as general counsel for V.I.P.A. Both Mr. Cartwright and Mr. Walker said they would not comment on actions taken during executive session.

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The board also fired V.I.P.A. employee Byron Todman, who had served for over 20 years. Mr. Todman was said to have been party to a group of V.I.P.A. employees who recently crafted a letter of no confidence in the authority's leadership, and which also questioned V.I.P.A.'s bidding process, according to a person with intimate knowledge of the matter, who requested anonymity to speak freely.

Since leadership changed at the Port Authority in December 2016 following the board's firing of Carlton Dowe, the self-governing, government-owned entity, has fired multiple individuals in key positions. Lisa Alejandro, former V.I.P.A. procurement manager -- who would have possibly reviewed such contracts before they were approved -- was released in June, 2017. And Donna Frett-Gregory, former chief financial officer, was fired on July 26, 2017. (Mrs. Frett-Gregory's replacement, Mauricia Anna Penn, was appointed during executive session on Wednesday.)

As for the bid, it was awarded to Lemartec because the firm was best suited for the job, Mr. Mapp said. He said only two firms had presented bids.

Feature Image: V.I.P.A. logo (Ernice Gilbert, VIC)