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Dept. of Health Rejects No-Bid \$1 Million Avera Deal; TSG, Gov't House, Engage in What Appears to Be Illegal Contract

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Straight out the gate while giving testimony during a Committee of the Whole hearing Wednesday, Dept. of Health Commissioner Justa Encarnacion revealed that D.O.H. had informed Avera that the department had rejected its \$1 million proposal, a move that came after particulars of the process was laid bare during a Finance Committee hearing in July in which chairman Kurt Vialet brought up the matter. Persistent media coverage swiftly followed, which led to the Wednesday Committee of the Whole hearing.

Previously, D.O.H. had awarded Avera the \$1 million deal and Ms. Encarnacion had said D.O.H. had several talks with the company and wanted to move quickly because of the importance of coronavirus contact tracing.

On Wednesday, she said, "As it relates to Avera, I understand the community's concern and the appearance of a conflict of interest. On July 23 the Dept. of Health notified Avera Inc. that we disqualified the proposal sent by them due to their failure to submit their corporate documents on time, and we are pursuing other options for electronic contact tracing."

Ms. Encarnacion said since initiating the new RFP process, D.O.H. had received 6 responses and would begin the vetting process soon. Tuesday was the last day for companies to submit their proposals, she said.

A number of government arms were invited to testify Wednesday, among them the Office of Disaster Recovery, the Public Finance Authority, the Dept. of Planning and Natural Resources, D.O.H. and the Dept. of Property and Procurement. Firms The Strategy Group and Avera were also invited, but only TSG showed, with Avera sending a letter to Senate President Novelle Francis stating that it would not be present because of proprietary information contained in its proposal to D.O.H., and because it did not have a contract with the health department. The Avera proposal was shared widely online.

John Engerman, founder and CEO of TSG, whose presence at the hearing was related to the \$2.1 million contract awarded to TSG by the V.I. Housing Finance Authority, also gave testimony that highlighted Mr. Engerman's history, including as a founding member of the legendary Seventeen Plus Band, and his entrepreneurial traits from a young child that has led him to this point of his life — leading a firm of over 50 employees, many of whom are locals. He proudly spoke of the company's successes, and sought to build a narrative that showed TSG's victories as being uninfluenced by his ties to Governor Albert Bryan. Mr. Bryan and Mr. Engerman a close friends, and Mr. Engerman was one of the main architects of the 2018 Bryan campaign. TSG, formed after BDO PR/USVI got into [federal trouble](#) in summer 2019, has received an abundance of government contracts.

On Wednesday, V.I.H.F.A. Executive Director Daryl Griffith defended the \$2.1 million deal by explaining a thorough vetting process for the four companies involved. Mr. Griffith was later asked by Mr. Vialet what, exactly, did V.I.H.F.A. needed to promote that would cost \$2.1 million. "We're advertising and marketing the \$774 million Community Development Block Grant Mitigation Funds that have to come to the territory," Mr. Griffith said. Mr. Vialet responded, "So you need \$2.1 million to advertise monies that are supposed to come to the territory that we're supposed to develop a plan for? You need \$2.1 million to advertise that?"

"Yes," Mr. Griffith responded.

Mr. Vialet explained why ascertaining that federal dollars are properly spent is so important to him. "I have sat in this body and have had to be a signatory and a sponsor on legislation to pay back VITEMA for federal funds that were misspent. We did that during the Mapp administration, and I've sat here and had to pass money to pay back millions of dollars as a result of errors made when we went to the bond market. So when you enjoy it one day, you're going to pay for it the next day. And nothing with my discussion is personal, but we got to make sure that we're doing what we're supposed to do," Mr. Vialet said.

Mr. Vialet had previously questioned testifiers about a contract that TSG had with the Bryan administration for live-streaming Government House press briefings. The Public Finance

Authority said it had no idea of such a contract, and Dept. of Property and Procurement Commissioner Anthony Thomas, who said all government contracts — barring the semiautonomous entities — must go through P&P — said he was not aware of such a contract.

TSG CEO John Engerman, however confirmed the contract. "TSG had a 6-month contract with the Government House office of communications that expired on June 30. It ran from January through June," he said during the hearing.

Asked if the Government House office of communications had the authority to execute a contract outside of P&P, Mr. Thomas said, "No, not directly, but they could engage in a discussion to create the contract." Mr. Vialet responded by telling Mr. Thomas that Mr. Engerman had just placed on the record that there was a 6-month contract with the communications office of Government House.

"I'm not speaking hypothetical," Mr. Vialet said. Mr. Thomas then responded, "No agency can execute a contract without my signature for the central government." Mr. Vialet then said, "But you just heard there was a contract, correct?" Mr. Thomas responded, "I just heard that it was stated on the record that there was a contract, yes."

Richard Motta, the Bryan administration's communications director, in a statement issued to the Consortium Thursday afternoon requesting a retraction of our headline and correction of the record, said Government House entered into a \$30,000 6-month contract with TSG for "print and digital marketing services," which covered the January 10-July 10 period.

"The total procurement was less than \$50,000 which ordinarily does not require a written contract under the provisions of Title 31 of the V.I. Code," Mr. Motta wrote. "Further, given competitive negotiations with 3 possible vendors and compliance with the procurement exemptions, a justification letter requesting authorization to procure the services of TSG was approved by Property and Procurement Commissioner Anthony Thomas on January 10, 2020."

The Consortium is seeking answers for 5 questions posed to the Gov't House communications director: 1) John Engerman said he was contracted by Gov't House for the 6-month job, but now Gov't House is saying something different. Was there a contract? 2) Who were the other two vendors considered? 3) Does "procurement exemptions" fall under protocols put in place under the State of Emergency Declaration? 4) What, exactly, did the contract with TSG entail? 5) Was the contract renewed? If not, is TSG working on an as-needed basis at Gov't House?

Ms. Encarnacion had a difficult time at the hearing when responding to the questioning of Senator Janelle Sarauw. Ms. Encarnacion was asked to provide the date when it contacted the two other companies aside from Avera during the original process. Ms. Encarnacion deferred to her chief procurement officer, who herself said she did not have that information because she was not privy to those conversations.

"You don't have the information that they were contacted and you're the chief procurement officer? Impossible," Mr. Sarauw said.

Ms. Encarnacion had said during the Finance Committee hearing in July that she would provide the information, including email and RFP to the Senate as proof as to how the two other companies were contacted. Even so, Ms. Encarnacion still could not provide the information during the Wednesday hearing.

Ms. Sarauw pointed out that Ms. Encarnacion's testimony on Wednesday contradicted what she said on July 21. "You indicated that you chose a company and that you were waiting for the information from them; you were trying to hustle them for the information. On the record you indicated you picked a company and that company was Avera," Mr. Sarauw said, setting the stage for her next line of questioning. Ms. Sarauw then asked Ms. Encarnacion whether she knew if Avera had general liability. Ms. Encarnacion deferred to her chief procurement officer, Ms. Harley, who said she did not know.

Asked whether Avera had workmen's compensation, Ms. Harley said no.

Asked whether D.O.H. knew if Avera had a good-standing certificate, Ms. Harley said, "The corporate documents were requested, we didn't get any of it yet."

Ms. Sarauw, who explained the meaning of exigency — a word used by D.O.H. to justify the rushed process — questioned how exigent was the need for contact tracing if the department still had to wait on important, basic documents from Avera before it could move forward. Ms. Encarnacion said the contact tracing need is indeed a matter of exigency and that's why Avera was rejected.

Ms. Sarauw had asked Senate President Novelle Francis to swear-in the testifiers but Mr. Francis refused. "This is why I asked for them to be sworn in because the information is contradictory and we're all over. The point I am making is how exigent could the situation have been if the company did not have their documents in order. Citing exigency for the manner in which the department proceeded is a faulty premise because it couldn't have been exigent if we were waiting for all of these documentations to come in," Mr. Sarauw said.

She then asked Ms. Encarnacion to furnish the individuals who were part of the selection team. Ms. Encarnacion, sidestepping the question, said, "Senator Sarauw you are asking a lot of questions and you're not allowing us to actually fully answer the questions, and so if you choose for me to wait until a get back to the chair [of the committee] to answer the questions, I will do so. However, I think it's only fair if we want to give the general public the true meaning of why we're here today, you should be able to give me the opportunity to answer your questions, because it is an exigency, it continues to be an exigency."

Ms. Sarauw wrest back control of the conversation to hone in on the matter at hand, reminding that Ms. Encarnacion was the one who on July 21 testified and said Avera had been chosen.

Later during the hearing, Senator Alicia Barnes, who is not seeking reelection, sought to change the narrative from the issue of conflict of interest, and even took a swipe at the media. The outgoing senator ignored the fact that the matter had nothing to do with young Virgin Islanders having opportunities to succeed, but that the individuals involved included the governor's daughter and his friend Michael Pemberton, someone Mr. Bryan said he mentored. Furthermore, D.O.H. has since admitted that the process gave the appearance of conflict of interest. If D.O.H. had went along with Avera through a process with such glaring problems and a contract was signed by Governor Bryan, it could have triggered federal alarms.

Ms. Barnes, though, had different thoughts. She said she was not condoning wrongdoing, however, "What concerns me is that we have four young Virgin Islanders with an entrepreneurial spirit that instead of taking the traditional route maybe their parents or their grandparents took in just trying to get a government job, working for 30 years and fighting the retirement system for your annuity payments, they have taken the initiative, the innovation, to seize an opportunity, and that is something we should celebrate in terms of mentorship and the success and training

that should be a part of our society."

She later addressed the Avera officials: "While right now you may be encountering some challenges, I encouraging you to stay the course."

She then added, "As a mother I was very heartbroken to see the faces of these young individuals on the front page of the Daily News. And I'm not knocking the Daily News because the Daily News is going to print what sells, and if we continue to buy, they will continue to print what sells. Maybe if that day everyone boycotted the paper, maybe that sort of presentation of the news may not be the norm."

Senator Myron Jackson was swift in his rebuttal to Ms. Barnes. "As an institution we have the responsibility to lead checks and balances and that's what we're doing today," Mr. Jackson, also an outgoing senator, said.

He said while it was unfortunate that the company at the center of the matter was led by young Virgin Islanders, "There are those of us in elected office who have a responsibility to make sure that those checks and balances are correct, and that nepotism and ethics, and the human rights, and all of the isms are in place... We are a small community and with that comes at times what is convenient but not necessarily what is right, and we justify it."

Mr. Jackson added, "With the headlines of ["Company Co-Owned by Governor Bryan's Daughter and Friend Awarded \\$1 Million No-Bid Contract"](#) that circulates around the world, and likewise as these hearings are being monitored in Washington, that we are saying that we do business correctly and should do it correctly."