The Virgin Islands Consortium

Bill That Sought to Reimburse Major Construction Companies Gross Receipt Tax Payments Held in Committee

Government / **Published On April 23, 2022 08:52 AM /**

Ernice Gilbert April 23, 2022

Senators held for further discussion a bill that would reimburse AECOM and APTIM — two of the largest companies performing construction work in the territory since Hurricanes Irma and Maria — gross receipt tax (GRT) payments the firms made as part of the Emergency Home Repair Program.

Normally, gross receipt taxes, a 5 percent levy, are not included as pass-through costs in contracts. GRT costs are usually obligations that must be met with other local work and employment taxes in the U.S. Virgin Islands. Pass-through costs are reimbursable expenses such as vehicle rentals, property rentals and per diem included in contracts.

However, the V.I. Housing Finance Authority, at the time led by former executive director Daryl Griffith during the Mapp administration, agreed in contracts with AECOM and APTIM that gross receipt taxes would be pass-through costs that they would be reimbursed for, the companies said Friday. It was not clear why V.I.H.F.A. would enter such contracts whose fulfillment would contravene local law. Also unclear is why the two companies are seeking the reimbursements now — four years from the start of the Emergency Home Repair Program.

On Friday, Bill No. 34-0197, whose original sponsor was Sen. Kurt Vialet but in an updated version listed Sen. Marvin Blyden as the chief proposer according to versions of the bill gleaned by the Consortium, sought to change the current Virgin Islands gross receipt tax law by allowing GRT expenses owed to APTIM and AECOM to be listed as construction or project costs in invoices that the federal government would then have to pay.

Representatives of APTIM and AECOM were present to provide testimony in favor of the measure, with the companies arguing that the outcome of the bill could have negative repercussions for the U.S. Virgin Islands. They argued that construction firms would not want to participate in the territory's rebuild process in the event of another devastating storm.

Attorney Adriane Dudley, who appeared as counsel for AECOM, pleaded with lawmakers to approve the measure so that the government could fulfill its what she said was its covenant with the two companies.

"The reason why this bill needs to be passed is because there is a contract that provides all of the costs of doing this project. Typically the cost of a project, including taxes, are bundled into the project... but in this case, because there was a distinct set-aside sum of money purely to help owners shelter in place, we were told specifically to back out all of these other costs..."

Ms. Dudley said that V.I.H.F.A. because it is constrained by the current GRT law, will not submit invoices for GRT reimbursements to the companies, and therefore the law needs to be amended so that APTIM and AECOM could receive their contractually agreed upon reimbursements.

"These contractors entered into this contract expecting that their costs, like in any other contract, would all be paid. They weren't. All the other costs were paid," Ms. Dudley further stated, adding that the companies have a letter signed by Mr. Griffith, the former V.I.H.F.A. director who is now employed at the V.I. Waste Management Authority as chief financial officer, stating that V.I.H.F.A. would submit invoices and the companies would be reimbursed "all of their costs, including gross receipt taxes."

The Bryan administration is opposing the bill, with Office of Disaster Recovery Director Adrienne Williams-Octalien stating that approving the measure would have a negative impact on disaster recovery efforts. "There's several implications. 1) it drives up the costs of the recovery because we're invoicing more so that it can be reimbursed. 2), we have to pay the match on any additional amount that has been obligated to the territory. Then the option for any other disaster recovery contractor to expect the same thing. So there's a multiplier effect that will come from it," Mrs. Williams-Octalien said.

Dayna Clendinen, interim executive director of V.I.H.F.A., stated, “It appears that the intent of this bill is to right a perceived wrong on behalf of Hurricane Disaster contractors AECOM and APTIM, and it is our position that crafting legislation to benefit two specific companies today may cause irreparable harm tomorrow."

Some lawmakers were wary of changing the current law, concerned that such action would have the effect of causing other construction companies to seek similar contracts from the government. Some contended that what appeared to be a breach in contract would be better fought in court.

“If we are talking about a contract, I am not certain why as legislators we are asked to change our laws to address a contract," said Sen. Donna Frett-Gregory. "So clearly there was a botched contract and now the Senate is being asked to address a botched contract — that is a matter for the courts... not to change our tax laws to address an issue that is occurring with a particular contractor."

Senator Alma Heyliger-Francis said that while she would like to see the companies get reimbursed, she was concerned that amending the law would "open the floodgates."

Senator Dwane DeGraff held a similar sentiment to Ms. Frett-Gregory's, stating that he believes the matter should be addressed in court.

Shack Hawkins, representative of Polaris Engineering, a full-service provider of engineering, procurement, and construction for heavy industries around the world, said settling the matter in court could result in large expenses for the local government.

"If it went to the courts it's going to take a lot of time and energy and costs from the Virgin Islands government," he said. "And the legal solution today by changing a law avoids that and allows that cost to be borne by FEMA instead of borne by the Virgin Islands government."

Other Senate Action

Though Bill 34-0197 was put on hold, lawmakers voted to forwarded bills 34-0205 and 34-0226 to the Committee on Rules and Judiciary for further consideration.

Bill 34-0205 is an Act amending title 33 Virgin Islands Code, chapter 111 relating to the Virgin Islands Veterans Emergency Transportation Fund to make healthcare more accessible to veterans in the Virgin Islands by enacting The Veterans Medical Transportation Act.

Bill 34-0226 is An Act amending Act Nos. 8474, 8479, 8486, 8494, 8496, and 8498 to adjust the fiscal year 2022 budget to appropriate funds to the Casino Control Commission for capital outlay, WTJX for capital outlay and satellite uplink respectively, Elections System of the Virgin Islands for General Election, Virgin Islands Cricket Board, Department of Tourism for personnel and fringe benefits, Virgin Islands Board of Nurse Licensure for personnel and fringe benefits, and 8% salary restoration Social Security and Medicare taxes reimbursement to the Economic Development Authority, Governor Juan F. Luis Hospital and Medical Center and the Virgin Islands Waste Management

Authority.