

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

HILL INTERNATIONAL, INC.,	)	
	)	
Plaintiff,	)	
v.	)	
	)	CASE NO. 3:24-cv-00049
VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY, OFFICE OF DISASTER RECOVERY,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

Before the Court is Plaintiff Hill International, Inc.’s (“Hill”) Application for a Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and Declaratory Relief. [ECF 1-3]. Defendant Virgin Islands Public Finance Authority, Office of Disaster Recovery (collectively “PFA” or “Defendant”) opposes the motion [ECF 32], and Hill filed a reply [ECF 47]. For the reasons set forth below, the Court recommends that the District Court deny Plaintiff’s motion for injunctive relief.¹

I. BACKGROUND²

Hill, a project and construction management firm, sued PFA after it selected another bidder for a government contract. *See* Compl. [ECF 1-2]. In March 2024, the Office of Disaster Recovery (“ODR”) issued a request for proposals (“RFP”) to solicit proposals for project management (“PM”) and construction management (“CM”) services for federally funded recovery projects.

¹ The District Court referred Plaintiff’s motion to the undersigned for a Report and Recommendation. [ECF 78].

² As the parties are well familiar with the factual and procedural background of this matter, the following summary includes only the information most pertinent to Plaintiff’s motion for injunctive relief.

[ECF 48-2]. Hill submitted its proposal on May 23, 2024, seeking to provide both PM and CM services for a total cost of \$30,288,984.64. [ECF 1-2] ¶ 12; *see* [ECF 49-2].

In a letter dated August 15, 2024, PFA notified Hill that CH2M Hill, Inc. (“CH2M”) had been awarded the contract. [ECF 50-4]. Hill then sought a debriefing meeting to determine why Defendant rejected its proposal. *See* [ECF 1-2] at 7–8. Prior to the meeting, Defendant provided Hill with a copy of the evaluation committee’s report to ODR Director Adrienne Williams-Octalien, which recommended “the Executive Director seek the Governing Board’s approval to execute a contract . . . with CH2M . . . [for] \$137,235,258.00.” *See* [ECF 50-10]; [ECF 50-11] at 3. According to Hill, at the August 30, 2024 debriefing meeting, ODR Director Williams-Octalien stated “CH2M’s proposal represented the ‘best value.’” [ECF 1-2] ¶ 23. Finding Defendant’s response unsatisfactory, Hill decided to file suit. [ECF 1-2] ¶¶ 26–27.^{3, 4}

Hill’s motion for injunctive relief largely mirrors its complaint and asserts PFA’s award to CH2M “contravenes the applicable federal and VI procurement law” for three reasons: (1) the price disparity between the bids “renders the award arbitrary and capricious”; (2) the award of a single contract contravenes the RFP’s requirement to award at least two contracts; and (3) the Evaluation Committee’s decision “was tainted by impermissible conflicts of interest.” [ECF 1-2] at 3; *see id.* at 8–9. Hill contends all four factors a court must consider prior to granting injunctive

³ Hill, in a September 3, 2024 letter to Director Williams-Octalien, stated there was “no justifiable basis” for PFA to award a contract for a bid exceeding Hill’s by at least 90 million dollars, and that such decision was “untenable” and would “not survive scrutiny by the courts.” [ECF 50-12]. Hill stated its only option was “to file a bid protest challenging this award and to seek a preliminary injunction” enjoining PFA from entering a contract with CH2M or proceeding with any work under that contract. *Id.* Hill also stated it was open to further discussions with PFA to avoid litigation. *Id.* When PFA did not respond, Hill brought the instant suit. *See* [ECF 1-2] ¶ 27.

⁴ Hill filed its complaint and application for injunctive relief in Virgin Islands Superior Court on September 10, 2024. *See* [ECFs 1-2 & 1-3]. PFA removed the matter to this Court on September 12, 2024. [ECF 1].

relief weigh in its favor. First, as to success on the merits, Hill alleges PFA's award to CH2M violates federal procurement regulations because it fails to consider the bid price, there exists a real or apparent conflict of interest, and it fails to comply with the terms of the solicitation. *Id.* at 10–13. Hill further suggests PFA acted outside its statutory authority in conducting the procurement here. *Id.* at 14. Second, Hill asserts that a lost opportunity to fairly compete is sufficient to show irreparable harm. *Id.* at 15. Third, Hill contends the balance of hardships weighs in its favor because “[a]ny delay in commencing the project and construction management work that would be occasioned by entry of a preliminary injunction is slight compared to the need to ensure that an award of this significance is fair, equitable and in compliance with the law.” *Id.* at 16. Finally, Hill urges the importance of “preserv[ing] public confidence in the award of contracts on a basis that is untainted by collusion, favoritism and arbitrary action.” *Id.* at 17. Hill seeks an order precluding PFA “from entering a contract with CM2H [sic], or, if that has already happened, [an] order that no work commence under that contract, or that any work already commenced under it cease immediately.” *Id.* at 18–19.

In opposition, PFA first argues this matter is not properly before the Court because Hill failed to exhaust its administrative remedies. [ECF 24] at 5–7. PFA next argues Hill has not shown entitlement to injunctive relief because it “fail[s] to demonstrate any likelihood of success on the merits on any of the three counts in its Complaint.” *Id.* at 8. Specifically, PFA contends Hill's conflict of interest claim is speculative and without factual support. *Id.* at 9–13. As to Hill's price disparity claim, PFA states it “was not required to make award to the lowest-price proposal,” but rather used price and non-price evaluation factors to determine the best value for the Virgin Islands. *Id.* at 13. PFA next contends it had discretion to make a single award and that Hill waived any right to challenge any ambiguity as to the number of awards. *Id.* at 16–21. Lastly, PFA contends

Hill lacks standing to bring a taxpayer suit. *Id.* at 22. Turning to the balance of hardships, PFA argues it will be irreparably harmed by a delay in implementing the contract because it is essential for the Territory’s recovery from hurricanes Irma and Maria, and also cites concerns about federal cost-share deadlines. *Id.* at 23–25. PFA further contends Hill alleges only financial losses insufficient to show irreparable harm, and that the remedy Hill seeks is available through a trial on the merits. *Id.* at 26–29. Finally, PFA urges the public’s interest in “reconstructing essential public facilities as efficiently and expeditiously as possible.” *Id.* at 32.

II. LEGAL STANDARDS

Parties may seek preliminary injunctive relief under Rule 65 of the Federal Rules of Civil Procedure.⁵ A court must determine whether the movant has shown: “(1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief.” *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004).⁶ “The burden lies with the plaintiff to establish every element in its favor, or the grant of a preliminary injunction is inappropriate.” *P.C. Yonkers, Inc. v. Celebrations the Party & Seasonal Superstore, LLC*, 428 F.3d 504, 508 (3d Cir. 2005); *see N.J. Hosp. Ass’n v. Waldman*, 73 F.3d 509, 512 (3d Cir. 1995) (“The injunction shall issue only if the plaintiff produces evidence sufficient to convince the district court that all four factors favor preliminary relief.”); *see also*

⁵ The Court may issue a temporary restraining order only if specific facts clearly show that the movant will suffer immediate and irreparable injury if relief is not granted before the adverse party is given notice and an opportunity to respond. Fed. R. Civ. P. 65(b). Because Defendant here has been notified and responded, a temporary restraining order is not applicable, and the motion is properly considered as one for preliminary injunctive relief. *See* Fed. R. Civ. P. 65(a).

⁶ “The test for a preliminary injunction and a temporary restraining order are the same.” *Smith v. Litton Loan Servicing, LP*, 2005 WL 289927, at *6 (E.D. Pa. Feb. 4, 2005).

Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (“a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion” (citation omitted)). Moreover, a court may not grant the movant’s request without satisfying the likelihood of success and irreparable injury elements, regardless of what the equities require. *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484 (3d Cir. 2000); *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989); *accord SEKRI, Inc. v. United States*, 2023 WL 1428644, at *2 (Fed. Cl. Jan. 31, 2023). Only if these two “‘gateway factors’ are established [does] the ‘court then determine[] in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief.’” *Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty.*, 39 F.4th 95, 103 (3d Cir. 2022) (citation omitted).

Injunctive relief “is an extraordinary remedy never awarded as of right,” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), and “should be granted only in limited circumstances.” *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1426–27 (3d Cir. 1994) (citation omitted); *accord Bassil v. Klein*, 7 V.I. 19, 27 (Super. Ct. 2021) (“A preliminary injunction is considered an extraordinary and drastic remedy that is never awarded as of right, but only upon a clear showing that the plaintiff is entitled to such relief.” (internal quotations and citation omitted)); *see also Adams*, 204 F.3d at 487 (recognizing “the extraordinary nature of the preliminary injunction power” and the Third Circuit’s “repeated[] insiste[nce] that the use of judicial power to arrange relationships prior to a full determination on the merits is a weighty matter”). “The purpose of a preliminary injunction is to preserve the status quo,” *Anderson v. Davila*, 125 F.3d 148, 156 (3d Cir. 1997), and thus one should only be granted when necessary to “preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of*

Tex. v. Camenisch, 451 U.S. 390, 395 (1981). As such, when the Rule 65 motion “is directed not merely at preserving the status quo but . . . at providing mandatory relief, the burden on the moving party is particularly heavy.” *Punnett v. Carter*, 621 F.2d 578, 582 (3d Cir. 1980).

Finally, “[i]t is well established that ‘a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits,’” *Kos Pharms.*, 369 F.3d at 718 (quoting *Univ. of Tex.*, 451 U.S. at 395), and “an evidentiary hearing is not always required.” *Arrowpoint Cap. Corp. v. Arrowpoint Asset Mgmt., LLC*, 793 F.3d 313, 324 (3d Cir. 2015). “[A] district court is not obliged to hold a hearing when the movant has not presented a colorable factual basis to support the claim on the merits or the contention of irreparable harm[,] . . . [or] if the movant is proceeding on a legal theory which cannot be sustained.” *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1176 (3d Cir. 1990). “[W]here the motion turns on a disputed factual issue, [however,] an evidentiary hearing is ordinarily required.” *Kos Pharms.*, 369 F.3d at 719 n.16

III. DISCUSSION

To show entitlement to injunctive relief, a movant must first “make a prima facie case showing a reasonable probability that it will prevail on the merits.” *Punnett*, 621 F.2d at 583 (citation omitted); see *Amalgamated Transit*, 39 F.4th at 102; *Arrowpoint Cap. Corp.*, 793 F.3d at 319. “In the area of government procurement contracts, however, . . . a more stringent standard governs a determination of the first factor” *Princeton Combustion Rsch. Lab’ys, Inc. v. McCarthy*, 674 F.2d 1016, 1019 (3d Cir. 1982). Specifically, “a procurement contract [may] not be set aside at the behest of a ‘disappointed bidder’ unless the awarding agency’s decision was irrational or clearly illegal.” *Id.*; see also *KPMG LLP v. United States*, 139 Fed. Cl. 533, 536 (2018) (in considering likelihood of success on the merits in a bid protest action, the court “must analyze

whether the decisions made by the [government] were arbitrary, capricious, and not in accordance with procurement law”).⁷

Here, Hill cannot show it is likely to succeed on the merits of its claims because the undersigned previously found that all of Hill’s claims should be dismissed for lack of standing and for failure to state a claim. *See* [ECF 87] (Report and Recommendation); *see also Fres-co Ss. USA, Inc. v. Hawkins*, 690 F. App’x 72, 77 (3d Cir. 2017) (in determining likelihood of success on the merits, “the trial court should analyze the elements of the movant’s claims to determine whether the movant can likely meet each element”). The undersigned’s recommendation is currently pending before the District Court; thus, at the present juncture, it is unknown which, if any, of Hill’s claims will ultimately survive. Accordingly, at this stage of the proceedings, Hill cannot demonstrate a likelihood of success on the merits of its claims. As such, Hill also cannot meet its additional burden to show that PFA’s decision to award the contract to CH2M was irrational or illegal. Hill’s application for injunctive relief must therefore be denied. *Am. Exp. Travel Related Servs., Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 366 (3d Cir. 2012) (“The moving party’s failure to show a likelihood of success on the merits ‘must necessarily result in the denial of a preliminary

⁷ As the Third Circuit has explained, “the district court’s review of an agency’s procurement decision is extremely limited in scope. The district court is not to substitute its judgment for the agency’s, but may only act when an agency’s decision is found to be irrational.” *Princeton Combustion*, 674 F.2d at 1021. “Thus, a district court may not overturn a procurement decision ‘unless the aggrieved bidder demonstrates that there was no rational basis for the agency’s decision.’” *Alpha Painting & Constr. Co. Inc. v. Del. River Port Auth.*, 853 F.3d 671, 683 (3d Cir. 2017) (citation omitted).

Moreover, “even if the district court finds that the agency’s decision was irrational, the district court nevertheless has discretion to decide whether to grant or deny the injunction.” *Princeton Combustion*, 674 F.2d at 1022. To make that determination, “district courts should weigh (1) the practical considerations of efficient procurement of supplies for continuing government operations, (2) the public interest in avoiding excessive costs, and (3) the bidder’s entitlement to fair treatment through adherence to statutes and regulations.” *Alpha Painting*, 853 F.3d at 688–89. But once the court “determines that an agency’s procurement decision is rational, its inquiry is at an end: the district court must deny the motion for a preliminary injunction, and may not go on to engage in a balancing of the three factors.” *Princeton Combustion*, 674 F.2d at 1022.

injunction.” (citation omitted)).⁸

IV. CONCLUSION

On the current record, Hill cannot demonstrate that it is likely to succeed on the merits of its claims and that there was no rational basis for PFA’s decision. As the Third Circuit has observed, “upon an application for a preliminary injunction to doubt is to deny.” *Madison Square Garden Corp. v. Braddock*, 90 F.2d 924, 927 (3d Cir. 1937). Accordingly, for the foregoing reasons, the Court **RECOMMENDS** that Plaintiff’s motion for a temporary restraining order and preliminary injunctive relief be **DENIED**.

Any objections to this Report and Recommendation must be filed in writing within 14 days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3.

ENTER:

Dated: March 12, 2025

/s/ G. Alan Teague
G. ALAN TEAGUE
U.S. MAGISTRATE JUDGE

⁸ Additionally, Hill’s motion seeks “largely the same injunctive relief sought in [its] complaint” such that “granting [Hill’s] requests at this stage in the proceedings would, in effect, fail to ‘preserve the relative positions of the parties’ until the merits of the case are considered and would instead amount to a ‘final judgment on the merits.’” *Martinez v. Rivello*, 2023 WL 3376545, at *2 (3d Cir. May 11, 2023) (quoting *Univ. of Tex.*, 451 U.S. at 395). For this reason also, Hill’s motion should be denied.