

Memorandum



Date: February 9, 2009

RCTC

To: Honorable Javier D. Souto and Members
Recreation, Culture and Tourism Committee

Agenda Item No. 8(B)

From: George M. Burgess
County Manager

Subject: South Miami-Dade Cultural Arts Center
Status Report

The Department of Cultural Affairs has prepared this report in response to the Committee's request for a monthly update on the progress with constructing and opening the new South Miami-Dade Cultural Arts Center.

BACKGROUND

The South Miami-Dade Cultural Arts Center is located on S.W. 211 Street in Cutler Bay and is being developed to serve as a multidisciplinary arts center to showcase the performing arts. The design team includes an architectural and engineering team led by Arquitectonica International, Inc, theater consultant Fisher Dachs Associates, Inc., acoustical and sound and communications consultant Artec Consultants, Inc., and arts management consultant AMS Planning & Research Corp.

The Center's 966 seat state-of-the-art Theater Building includes a fly tower, orchestra pit, front of house spaces (box office, lobby, restrooms, concessions, etc.), back of house support spaces (dressing rooms, storage and work areas, administrative offices, etc.) and a multi-purpose rehearsal space. The separate Activities Building of the Center will house an informal performance space, and smaller multi-purpose spaces for lectures, classes, or community gatherings. The Center's two buildings will be joined by an outdoor promenade leading to a gently sloping lawn for outdoor concerts and festivals along the Black Creek Canal.

Through the Miami-Dade County's Art in Public Places Program, the Center will have major public art works created by Miami artist Robert Chambers. An innovative light piece will illuminate the entire, translucent inner lobby wall with changing designs created by computer-programmed LED fixtures. In addition, the lobby will feature a number of marble sculptures also created by Robert Chambers.

A contract with The Tower Group, Inc. (TTG) for the construction of the South Miami-Dade Cultural Arts Center was approved in July 2005 and the Department of Cultural Affairs issued the Notice to Proceed to the Contractor on December 29, 2005. The Department is managing the construction of the Center and will operate the facilities upon completion.

CONSTRUCTION

Construction is approximately 85% complete. The Tower Group (TTG) is formulating alternative solutions to address the curtain wall system deficiencies and is expected to have a plan of action in place by the end of January. TTG is working closely with Arquitectonica (ARQ), the project architect, to ensure that any proposed solutions will meet ARQ's design intent and aesthetic concerns.

As a result of the overall assessment of the project being conducted by TTG's new project management team, several areas of work will be addressed in an effort to comply with all open deficiencies, outstanding submittals, construction quality concerns, etc. For example, additional spray-on fireproofing is being installed throughout the building; the fixed windows throughout the project, which had been noted by the threshold inspector to be non-compliant, will be removed and replaced with new windows; and stucco work at the Activity Building will be torn down and re-installed due to cracking and moisture intrusion.

CONSTRUCTION SCHEDULE

Based on TTG's latest schedule update received by the Department on 12/19/08, the substantial completion date of the project is projected to be 04/17/09 which is 431 calendar days beyond the contractual substantial completion date of February 11, 2008 and 59 days beyond the previously submitted schedule update. The submitted schedule update, however, does not accurately reflect work progress or contain sufficient logic ties between the building components necessary to complete the buildings. The schedule and its projected substantial completion date are unreliable and therefore, the Department has rejected it.

TTG's payment application package for the month of November was submitted by TTG on 1/12/09. The Department is in the process of reviewing the package and routing for signatures before the payment is processed.

The Department continues to assess delay damages each month against the 10% retainage being held for the project. Over \$972,000 has been assessed up to the end of November 2008.

CONSTRUCTION BUDGET/PROPOSED CHANGE ORDERS/CONTRACT TIME EXTENSIONS

Once the complete November payment application is submitted by TTG and processed by the Department, approximately \$29.0 million of the overall \$38.8 million contract amount will have been paid. Retainage currently totals approximately \$3.2 million, leaving an approximately \$6.6 million balance to finish. Change Order #3 was executed in late 2008 to deduct from TTG's contract \$972,081 which the Department has paid directly for materials and equipment purchased through the Direct Purchase Program. The net savings from this Change Order is over \$55,000 and has been added to the Owner-controlled contingency account. Savings from the Direct Purchase program totals approximately \$129,000 to date.

The Department and A/E team have reviewed most of the Proposed Change Orders (PCOs) submitted by TTG and have either issued Work Orders to compensate the Contractor for substantiated additional costs and/or time or submitted comments to the Contractor outlining the reason for rejection or requesting additional information. In total, the Department has issued approximately \$1.9 million in Work Orders from the \$3.6 million contingency account.

The following summarizes the status of all PCOs received to date:

- (17) PCOs have been voided;
- (18) PCOs have been rejected by the Department and/or Architect;
- (38) PCOs have been reviewed and Work Orders have been issued to TTG;
- (5) PCOs are currently under review by the A/E and/or the Department;

- (15) PCOs have been reviewed and comments provided to TTG for re-submittal.

Since June 2008, TTG has submitted five PCOs that include contract time extension requests totaling 343 days. Two of these PCOs have been reviewed and rejected, totaling 141 of the days requested. One was reviewed and a 15-day non-compensable contract extension was awarded from the 29 compensable days requested by the Contractor. TTG has not yet accepted the 15-day non-compensable contract time extension. The remaining two PCOs with requests totaling 173 days are currently under review by the Department, A/E team, and the scheduling consultant. The Department and consultants continue to fairly review all PCOs and contract time extension requests to compensate the Contractor for all substantiated additional costs and time.

AUDIT REPORT FROM THE OFFICE OF THE INSPECTOR GENERAL

On January 5, 2009, the Office of the Inspector General (OIG) issued an Audit Report on the South Miami-Dade Cultural Arts Center that included a 12-page response from the Department of Cultural Affairs to a draft version of the OIG report. The report and the Department's response can be viewed at <http://www.miamidadeig.org/reports/CUAFinalAudit.pdf>. Due to serious concerns about some essential components of our response that were not taken into account in the final version of the Audit Report, I have asked the Department to issue a response to the final Audit Report. This response is attached.

attachment



Assistant County Manager

Memorandum



Date: January 15, 2009

To: George M. Burgess
County Manager

From: Michael Spring, Director
Department of Cultural Affairs

Subject: Response to OIG Audit Report, IG07-40A
South Miami-Dade Cultural Arts Center

A handwritten signature in black ink, appearing to read "Michael Spring", with a large, stylized flourish extending to the right.

I am providing this memorandum to address the OIG Audit Report, IG07-40A on the South Miami-Dade Cultural Arts Center. While I appreciate that the OIG report incorporated several of the points that were made in our 12-page response to the draft version of the Audit Report, I am very concerned that some very essential components of our response were not taken into account in the final version of the Audit Report. I want to take this opportunity to re-emphasize this important and unacknowledged information.

First, it is essential to underscore the fact that each finding and recommendation of the OIG Audit Report affirmed the written reports and oral presentations that our department has been making directly to you and the Recreation and Cultural Affairs Committee (RCAC) since the inception of construction. While I understand that the OIG's independent verification of our department's diligent work to manage this project is important, there are noticeable absences of attribution of our work – and the work of our fellow departments – in the OIG report. A reader of the OIG Audit Report incorrectly might conclude that the Audit Report's "findings" had been unreported by our department and were "discovered" by the OIG. Worse yet, the reader might mistakenly conclude that these findings and recommendations were unaddressed by our department. In fact, every finding in the OIG Audit Report had been reported publicly and each finding and recommendation has been and is continuing to be addressed by our department.

Below is a sample summary of these OIG findings and recommendations and our responses that were not reflected adequately in the final Audit Report.

Schedule – The OIG Audit Report expresses serious concern about the feasibility of The Tower Group's (TTG) construction schedules. Our monthly written reports to the RCAC and to the County Manager and my oral reports to RCAC not only have highlighted this same concern but also have documented the significant monthly slippage in TTG's schedule submissions. Our department has rejected schedule submissions in writing to TTG and provided TTG with specific instructions to submit schedules that accurately account for work in place and that represent a realistic plan for completing the project. These schedule rejections and instructions to the contractor are not acknowledged in the OIG Audit Report.

The Project's Work Scope – The OIG Audit Report speculates that the schedule slippage may be in part attributable to "major" work that our Department has added to the project's work scope. This is inaccurate and puzzling, especially in light of the fact that our department made available to the OIG all of the project's authorized work orders and proposed change orders currently under review. These documents clearly demonstrate that the overall scope of the project remains unchanged. It is important to underscore that evidence to date clearly attributes the delays in completion of our project to the contractor.

Funds to Complete the Work – The OIG Audit Report questions whether the 81% of construction progress calculated by our staff and consultants is accurate. While we are grateful that the OIG Audit Report includes our objection to their skepticism, the Audit Report does not adequately report that our architects, engineers, consultants and staff employ an exhaustive and

regular empirical review of work in place and materials stored and measure this against the project's schedule of values to provide realistic estimates for the project's percentage of completion. The OIG report included a brief list of unfinished work to "substantiate" its doubt about the project's percentage of completion; by contrast, our staff has extensive documentation for the contractor's applications for payment that have been made and these documents substantiate work and expenses to date. This documentation and our explanations to the OIG that given the steel structure of our buildings, a significant percentage of the project's cost is attributable to this structural work were not noted adequately in the OIG Audit Report.

Curtain Wall – The OIG Audit Report fails to adequately point out our department's pro-active management of the contractor's work, including our hiring of specialized inspectors to ensure the quality of key building features. One of our inspectors, IBA Consultants, Inc., revealed the significant problems with the curtain wall system which resulted in the Building Department's stop work order to the contractor on the curtain wall. Additionally, one of the OIG Audit Report's two recommendations is that our department should advise TTG to re-integrate curtain wall activities into the overall schedule and to identify the critical path(s). The OIG neglects to report that these instructions, in writing and at weekly construction meetings, have been given to the contractor for months and that our department has been rejecting TTG schedule updates explicitly because they fail to accurately account for work in place and do not represent a realistic plan for completing the project.

Support from the Office of the County Attorney (OCA) and Other County Departments – The second of the OIG Audit Report's two recommendations is that our department should use the expertise of the County Attorney's Office to defend itself against future claims. It is particularly frustrating to see this recommendation when we repeatedly have requested that the OIG contact the Assistant County Attorney working with us on our project and confirm the close collaboration between our staff and the OCA on the overall project and specifically, on key issues related to claims. I am proud of the way in which our department's project managers continue to work collaboratively with OCA, the Department of Small Business Development, the Building Department, the Building Code Compliance Office and the Office of the County Manager to help manage our project more effectively. I take exception to the OIG's characterization of "project-end issues" as "distracting" to our project managers and consider it to be an essential part of our project managers' work to manage the job's paperwork and address and prevent potential claims. Our project managers' familiarity with the project and professional expertise make them uniquely qualified to handle these issues. In addition, the OIG "learned" of the instances of the contractor's non-compliance with the County's Responsible Wages and Benefits Ordinance as a result of the effective monitoring work being done on our project by the Department of Small Business Development. The OIG Audit Report neglected to conclude explicitly that there is a track record of resolving underpayments to subcontractors successfully due to SBD's diligent work.

Delay Damages – While the OIG Audit Report "commends" our department for assessing delay damages against TTG, it neglects to note that this is a contractual requirement. During one of the OIG interviews with me, the OIG raised a concern about whether withholding these funds from the project's retainage would impact the contractor's payment to subcontractors at the end of the job. In spite of my assurance to the OIG that we would require the contractor to provide us with final releases of liens from subcontractors before making final payment to TTG, this puzzling section of the OIG Audit Report remains. Even more perplexing is the implication that our department has some choice in exercising delay damages, a contractual requirement.

We will be certain to comply with the OIG's request for copies of future progress reports and note that any extensions of existing A&E consultants' professional services agreements must be agenda items reviewed and authorized by the Board of County Commissioners and Mayor and will be made available to the OIG and anyone else who may request them.

5