


Memorandum

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To: The Honorable Carlos Alvarez, Mayor, Miami-Dade County
The Honorable Chairman Dennis C. Moss and
Members, Board of County Commissioners, Miami-Dade County

From:  Christopher Mazzella, Inspector General

Date: January 5, 2009

Subject: *OIG Final Audit Report on Construction Concerns at the South Miami-Dade Cultural Arts Center*, Ref. IG07-40A

Attached please find the Office of the Inspector General's (OIG) Final Audit Report on the above-captioned subject. The OIG's review covered construction progress, related audit fieldwork, and requested updates through mid-October 2008. The report was issued as a draft to the Miami-Dade Cultural Affairs Department (CUA), the Department of Small Business Development (SBD), and to the contractor, Tower-OHL Group (Tower), on October 31, 2008. Extensions to submit responses were granted, and the OIG received a response from CUA, which is hereby attached as Appendix A. No comments were received from SBD and Tower. This report highlights our observational findings and discusses what we believe may be some causes and likely effects of the observed conditions. It is being provided for informational purposes.

The South Miami-Dade Cultural Arts Center project is currently 431 calendar days delayed beyond its contractual substantial completion date of February 11, 2008. The construction project's schedule slippage is of serious concern to the OIG. We noted that in the past six months ending September 2008, the schedule slipped an average of 25.7 days per month. The slippage has only gotten worse since work stopped on the curtain wall installation, and there have been delays in obtaining certain curtain wall-related product approvals. Our review raises serious doubt whether the reported projected substantial completion dates are even realistic.

The CUA, in its response to the OIG, maintains that our assessment, that the schedule is unrealistic, only confirms the department's previously written and issued assessments. Specifically, CUA writes:

in our [CUA's] September 18, 2008 report to the County Manager, we emphasize, "As of the progress meeting on September 11, 2008, TTG [Tower] maintains that the curtain wall activities have not impacted the critical path of the schedule and stands by the December 29, 2008 substantial completion date projected in their latest schedule update. *The Department does not agree with TTG's [Tower's] assessment.*"¹ (Emphasis added by OIG.)

CUA refers to the bi-weekly status reports submitted to the County Manager. However, as the OIG was not a recipient to those reports, and because our objective is to provide independent assurances, we rely on our own fieldwork and verification. Moreover, when compared to the monthly status reports submitted to the Board of County Commissioners, CUA's statement about disagreeing with Tower's assessment about the schedule is noticeably absent. For example, in its October 10, 2008 monthly status report to the Recreation and Cultural Affairs Committee, the passage reads:

As of September 11, 2008, TTG [Tower] maintains that the curtain wall activities have not impacted the critical path of the schedule and stands by the December 29, 2008 substantial completion date projected in their latest schedule update.²

In other areas of concern, the OIG reports on two conditions: remaining contract funds in order to complete the project and ensuring payments to subcontractors, especially construction workers, during the remaining months of construction activity. As learned during our survey process, at one point or another during the construction activity, more than 50 workers were underpaid a total of approximately \$117,000. Monitoring to ensure payment of responsible wages is even more crucial now, as remaining project funds vis-à-vis remaining construction activities will be stretched.

CUA advised, in its response to the OIG, that the contractor's management team had committed to responding by mid-December to the CUA's ongoing request for an accurate schedule. Accordingly, Tower provided an updated schedule to CUA on or about December 18, 2008.

Tower's latest schedule pushes out the projected substantial completion date to April 17, 2009—a slippage of 52 days from the previously submitted schedule of September 30, 2008. However, the April 17, 2009 date is highly suspect as, based upon Tower's

¹ See CUA response to the OIG's draft report, Appendix A, pages 3-4. See also September 18, 2008, South Miami-Dade Cultural Arts Center Progress Report, from CUA to County Manager, page 2.

² See October 10, 2008, South Miami-Dade Cultural Arts Center Status Report, from County Manager to Recreation and Cultural Affairs Committee, page 3.

own admission, the new date is still predicated upon the present, albeit updated, schedule and does take into account a longer critical path through a new curtain wall system. We believe that the project's substantial completion could well be in the summer of 2009.

Apparently, the issues with the curtain wall construction may be more severe than originally reported and Tower states that an entire new curtain wall system (to be provided by a different manufacturer) will have to be designed and installed. How funds already paid to Tower for curtain wall work and materials will be applied to the new curtain wall construction must be addressed expeditiously. Moreover, and significantly, there now appears to be an acknowledgment by Tower that curtain wall activities are on the critical path. (See OIG Finding No. 2 questioning the gap between the number of days requested in Tower's potential change orders versus the projected substantial completion date, and the sequencing of certain systems inspections.)

The OIG is committed to continual monitoring of the construction activity. We request to be provided with copies of all future progress reports from the CUA to the County Manager/Office of the Mayor, including any memoranda regarding extending the three A&E consultants' professional services agreements to the new projected substantial completion date. Lastly, we appreciate the cooperation and assistance afforded to us by CUA and Tower personnel involved in our review.

Attachment

cc: George Burgess, County Manager
Alex Munoz, Assistant County Manager
Michael Spring, Director, Cultural Affairs Department
Penelope Townsley, Director, Department of Small Business Development
Denis Morales, Chief of Staff, Office of the Mayor
Cathy Jackson, Director, Audit and Management Services Department
Charles Anderson, Commission Auditor
Tower-OHL Group (under separate cover)
Clerk of the Board (copy filed)

**MIAMI-DADE COUNTY
OFFICE OF THE INSPECTOR GENERAL**



FINAL AUDIT REPORT

*Construction Concerns at the
South Miami-Dade Cultural Arts Center*

IG07-40A

January 5, 2009

MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL

FINAL AUDIT REPORT

Construction Concerns at the South Miami-Dade Cultural Arts Center

INTRODUCTION

The Office of the Inspector General (OIG) performed an inspectional review of the South Miami-Dade Cultural Arts Center (the Center) construction activity. The purpose of our review was to monitor the Center's overall construction activity to assure that the project is being properly managed, that the contract's Community Small Business Enterprise goals are being attained, and that the required wages and benefits are being paid.

As of August 31, 2008, the Miami-Dade County Department of Cultural Affairs (CUA) estimated the project at 81% complete and the contractor, the Tower-OHL Group (Tower), reported a target substantial completion date of December 29, 2008, notwithstanding that the project's contract completion date is stated as February 11, 2008.¹ We note that CUA, who manages the Center's construction and who will be responsible for its daily operations, has been assessing liquidated damages against Tower since February 2008. CUA currently estimates that the Center will be opened for the Spring 2009 season.

This report highlights our observational findings and discusses what we believe may be some causes and likely effects of the observed conditions. The OIG's review covered construction progress, related audit fieldwork, and requested updates through mid-October 2008. The report was issued as a draft to CUA, the Department of Small Business Development (SBD), and to the contractor on October 31, 2008. Extensions to submit responses were granted, and the OIG received a response from CUA, which is hereby attached as Appendix A. No comments were received from SBD and Tower.

While mainly aiming to report our observations, we are also providing two recommendations to County management, which we believe would assist the County's project staff during the remaining few months of the Center's construction. *As a postscript, we note that on or about December 18, 2008, CUA received Tower's latest projected substantial completion date of April 17, 2009, making the project 431 calendar days delayed beyond its contractual completion date. However, the April 17, 2009 date is highly suspect as, based upon Tower's own admission, the new date is still predicated upon the present schedule and does not take into account a longer critical path through a new curtain wall system. The project's substantial completion could well be in the summer of 2009.*

¹ Although rejected by CUA, Tower's preliminary September 2008 schedule shows projected substantial completion on February 24, 2009.

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RESULTS SUMMARY

Our review shows that Tower has often rescheduled the project's substantial completion date. Over the past ten months, Tower's construction schedules reflect completion date slippages that average 12.3 days per month. Looking only at the past six months ending September 2008, Tower's schedules show average monthly slippages of 25.7 days. Because of the delays, as of September 30, 2008, CUA has assessed nearly \$815,000 in liquidated damages against Tower. Conversely, and expectedly, Tower has stated that it has not contributed to any of the delays and it has submitted several potential change orders (PCOs) requesting additional time and compensation to complete the project. Additionally, the County Building Department recently issued a stop-work order to Tower on the installation of the main building curtain wall, due to work deficiencies and non-compliance with specific building codes. Based on the current delays, and details uncovered by the OIG in our review, the OIG believes that the recently projected substantial completion date of April 17, 2009 date is unrealistic.

In addition, the OIG has concerns that CUA's reported project completion of 81% may be optimistic. However, during our closing meeting with the Department and in response to our concerns, CUA's Director asserted that the 81% project completion is an accurate reflection of the actual material and labor costs incurred for the project to date, and that that the remaining 19% of the contract's funds are sufficient to complete the work, even if, in a worst-case scenario, Tower does not finish the project.

Furthermore, the project will not achieve its Community Small Business Enterprises (CSBE) goals, since two of the three original CSBE subcontractors left the project. Tower replaced both firms with non-CSBE firms, with SBD's approval. Additionally, SBD has found six instances of wage underpayments and inaccurate subcontractor payrolls. SBD has issued violation notices to the subcontractors and has requested funds be withheld to satisfy the payroll underpayments.

TERMS USED IN THIS REPORT

A&E	Architectural and Engineering
BCC	Miami-Dade Board of County Commissioners
BCCO	Building Code Compliance Office (County)
Building Department	Building Department (County)
CO	Change Order
County	Miami-Dade County
CUA	Department of Cultural Affairs (County)
CSBE	Community Small Business Enterprise

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NOA	Notice of Acceptance
PCO	Potential Change Order
RFI	Request for Information
SBD	Department of Small Business Development (County)
The Center	South Miami-Dade Cultural Arts Center
Tower	Tower-OHL Group

BACKGROUND

The Center is conceived as a multi-disciplinary center for the arts and is adjacent to the South Miami-Dade Government Center, which is located in Cutler Bay, South Miami-Dade County. The Center consists of two buildings, the Theater Building and the Activities Building. The Theater Building (Phase 1) is a 71,500 square foot building that is expected to house an over 70-foot high lobby space, a 966-seat theater on three levels, and an orchestra pit. The Activities Building (Phase 2) is a 7,500 square foot building, which will provide rehearsal, small-scale performance, and classroom spaces.

The Miami-Dade Board of County Commissioners (BCC) approved Resolution R-880-05, on July 7, 2005, authorizing a construction agreement between Miami-Dade County (County) and the contractor, Tower-OHL Group (Tower).² The Center's contract award amount was \$38,412,280, with a 22-month construction period. CUA issued the notice to proceed to Tower on December 29, 2005. In May 2007, the contract amount was increased by \$2,322,210 to \$40,734,490, with the BCC's authorization of Change Order (CO) #1 (Resolution R-580-07, May 8, 2007).³ CO#1 replenished the contract's Contingency Allowance account, which was mostly absorbed by unforeseen sub-surface conditions encountered early in construction during the excavation and dewatering activities. As a result, the project's substantial completion date was contractually extended from August 27, 2007 to February 11, 2008. This has been the only authorized cost and time increase to the project.

Since late 2007, the project has been delayed. CUA informed the OIG that Tower has not provided any acceptable evidence that would substantiate any unforeseen or owner-caused delays to the project beyond the February 11, 2008 date. As such, CUA has been assessing liquidated damages against Tower by deducting amounts from the project's

² The Tower Group was purchased by a Spanish construction firm in 2007. Its new name is the Tower-OHL Group.

³ CO #1 increased the Contingency Allowance account by \$1,800,900, added \$500,000 for the Dedicated Allowance Account and increased the Office of the Inspector General fee by \$10,310.

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retainage. As of September 30, 2008, CUA has assessed \$814,880 in liquidated damages.⁴ Tower has submitted several PCOs to CUA requesting 343 days in time and \$2.02 million in compensation. Tower has stated that it played no role in the delays that resulted in the project's current expected substantial completion date of December 29, 2008.

Additionally, due to the extended construction period, the County has amended its three professional service agreements with its project consultants: Arquitectonica International, Artec Consultants, and Fisher Dachs Associates. The BCC approved amendments to these service agreements on July 1, 2008, which added both time and additional money to each of the three agreements. These agreements were extended only to Tower's previous substantial completion date of October 22, 2008, with a combined total of \$293,500 added to the agreements' amounts.⁵ According to CUA, it is in the process of further extending these contracts based on Tower's revised substantial completion date. Additionally, CUA stated that it would take funds to supplement these professional service agreements from numerous funding sources including the liquidated damages assessment, interest earnings and financing proceeds, Convention Development Tax, and General Obligation Bond proceeds.

OIG JURISDICTIONAL AUTHORITY

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs and the power to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts, and transactions. The Inspector General has the power to analyze the need for, and the reasonableness of, proposed change orders. The Inspector General is authorized to conduct any reviews, audits, inspections, investigations, or analyses relating to departments, offices, boards, activities, programs, and agencies of the County and the Public Health Trust.

The Inspector General may perform audits, inspections, and reviews of all County contracts on a random basis. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance and procurement process including, but not limited to, project design, establishment of bid specifications, bid submittals, activities of the contractor and its officers, agents and

⁴ CUA has used both terms "liquidated damages" and "delay damages" in their correspondences. In this report for simplicity, we will refer to all damages as liquidated damages.

⁵ Amendment Two increased Arquitectonica International (A&E consultant) contract by \$173,500 and Amendment Five and Six increased Artec Consultants (acoustical and sound consultant) and Fisher Dachs Associates (theater consultant) contracts by \$60,000 each.

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employees, lobbyists, and of County staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud.

The Inspector General shall have the power to review and investigate any citizen's complaints regarding County or Public Health Trust projects, programs, contracts or transactions. The Inspector General may exercise any of the powers contained in Section 2-1076, upon his or her own initiative.

The Inspector General shall have the power to require reports from the Mayor, County Commissioners, County Manager, County agencies and instrumentalities, County officers and employees and the Public Health Trust and its officers and employees regarding any matter within the jurisdiction of the Inspector General.

OBJECTIVES, SCOPE AND METHODOLOGY

Our objective was to monitor the Center's overall construction activity to gain an understanding of the issues and concerns that may affect the completion of the project. This objective includes assuring that the project is being properly managed, that construction is on schedule, that the contract's CSBE goals are being attained, and that the required wages and benefits are being paid.

We also reviewed construction documents and schedules, attended progress meetings, toured the construction worksite, and conducted meetings with both Tower and CUA staff. Additionally, the OIG forwarded construction activity surveys to CUA, SBD, and Tower. We sent each party a separate survey. CUA's survey consisted of 25 questions relating to construction changes, unforeseen events, contractor performance, and construction quality control processes. SBD's survey included questions about its site visits, and its monitoring of the contract's CSBE goals and subcontractor compliance with the County's Responsible Wages and Benefits Ordinance.⁶ Tower's survey included questions on the project's completion date, the construction delays, and its quality control program.

We conducted an in-depth review of the responses and accompanying records, schedules, and exhibits. We then directed follow-up questions and requested additional information, as we deemed relevant to our objectives.

⁶ Section 2-11.16, Code of Miami-Dade County and Administrative Order 3-24.

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FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 **Tower’s project management may be lacking as reflected in the continuous project schedule slippage and the inaccuracy of its progress reporting versus actual work.**

We reviewed several of Tower’s monthly project schedule updates and noted that the project substantial completion date has been slipping every month. On average, over the ten-month period beginning with December 2007, the project has had an average monthly slippage of 12.3 days, as shown next page in Table 1. Excluding what appears to be an extraordinary 83-day gain in January 2008, Tower’s projected substantial completion date has been slipping at an average rate of 23 days per month over the nine other months.⁷ Roughly speaking, this translates to a more than one-day schedule slippage for every day worked (assuming 5-day workweeks) during this period.

Table 1 Tower’s Schedule Updates for Substantial Completion Since November 2007

Monthly Schedule Update	Project Substantial Completion Date	Monthly Schedule Gains (-) and Slippages (+)	CUA Reported % of Completion ¹
November 2007	October 23, 2008	----	64.2%
December 2007	November 20, 2008	+ 27 days	66.0%
January 2008	August 29, 2008	- 83 days	67.7%
February 2008	September 23, 2008	+ 25 days	71.6%
March 2008	September 23, 2008	none	72.4%
April 2008	October 3, 2008	+ 10 days	74.1%
May 2008	October 22, 2008	+ 19 days	77.3%
June 2008	November 14, 2008	+ 23 days	79.3%
July 2008	December 4, 2008	+ 20 days	79.8%
August 2008	December 29, 2008	+ 25 days	81.1%
September 2008	February 24, 2009 ²	+ 57 days	81.6%
Average monthly slippage		12.3 days	

¹ Taken from CUA’s Payment Requisition Schedules.

² First noted on Tower’s preliminary curtain wall schedule that was mentioned in the weekly progress meeting minutes, dated September 11, 2008. In a meeting held on September 16, 2008, Tower’s Senior Project Manager told the OIG that the curtain wall installation delay would not affect the project’s critical path. On October 17, 2008, CUA informed us that Tower’s September 2008 preliminary schedule shows February 24, 2009 as the project’s estimated completion date; however, it has rejected Tower’s preliminary schedule.

⁷ There are a total of 207 days slippage in 9 months, not including the 83 days gained in January 2008, thus, the average slippage for the 9 months amounted to 207 days / 9 months = 23 days.

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We acknowledge that Tower's schedule variations may be caused by changes to the work, as indicated by its submission of 36 PCOs requesting over \$2 million of additional compensation and 343 days of added contract time (see Finding No. 2), most of which CUA has yet to review.⁸ In addition, we have been informed that Tower has initiated certain efforts in recent months to mitigate schedule slippage, such as increased workers and weekend work. Notwithstanding, such efforts do not appear to be having much positive impact as the scheduled completion date keeps slipping further into the future. More questions arise than there are answers. What, if any, work has CUA added to the project's work scope? Are the increased number of workers and work hours being productively managed? Was the original schedule so flawed as to be unworkable, or has Tower not adequately managed the project?

Given the continuing monthly slippages, except for January 2008's 83-day gain, we question whether Tower's schedule represents a realistic depiction of an activity plan for completing this project. Another OIG concern is that Tower's project management may not be adequate to ensure progress or, perhaps, that Tower is manipulating its schedule to show project progress to compensate for its lack of actual progress.

In addition, we question whether CUA's reported project percentages of completion have been accurate indicators of job progress. CUA bases its percentage of completion on amounts paid divided by the contract amount. We acknowledge that this methodology is a typical practice among County departments and should represent a reasonably accurate quantification of job progress. However, in this case, we think that something is not right.

It looks problematic to us when we match CUA's reported 81% construction progress over the first 32 months (January 2006 – August 2008) against what would be the remaining 19% construction progress over the next 4 months (September 2008 – December 2008), if we believe Tower's August 2008 schedule reflects a realistic completion date. During our site visit in September 2008, we observed that most of the interior finishes were incomplete, electrical and plumbing unfinished, lighting and staging in process, the building envelope was not closed in, sections of ductwork were uninstalled, the Center's permanent power was not in place, and there were some problematic issues delaying construction in certain areas, for which Tower has submitted yet-to-be-answered requests for information.

In addition, as we describe in Finding No. 2, Tower has incurred a time-consuming delay because of curtain wall installation issues. We noted that the 81% project completion appears to take into account the aforementioned curtain wall installation and related glazing that was removed pursuant to the Building Department's work stoppage. At the conclusion

⁸ Per Tower's response to OIG survey, dated September 5, 2008.

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of our site visit, we left thinking that the CUA's 81% project completion seemed optimistic. During our closing meeting with the Department and in response to our concerns, CUA's Director asserted that the 81% project completion is an accurate reflection of the actual material and labor costs incurred for the project to date, and that the remaining 19% of the contract's funds are sufficient to complete the work, even if, in a worst-case scenario, Tower does not finish the project.

We questioned CUA on Tower's schedule updates and according to CUA, Tower's progress reporting often does not match the progress that it observes. Additionally, CUA explained in its survey response to the OIG that Tower's actual construction progress sometimes does not follow the planned sequence of activities reflected in the schedule updates. Moreover, the schedule narratives often fail to explain the causes for the changes, and the reasons why activities planned during the month did not start and finish as planned. CUA also stated that it [CUA] often had to use other documents provided by Tower, such as, daily logs, weekly progress reports, meeting minutes and projected work plans, to identify actual project progress versus scheduled project progress accurately.⁹

The OIG's analysis of selected data taken from Tower's *PRELIMINARY Construction Progress Report August 2008 Schedule Update WP26* lends some credence to CUA's concern about Tower's construction schedule. For instance, we noted that Tower reported therein 83 activities with changes to their remaining durations totaling a net reduction of 373 days. On this basis alone, i.e., if no activity had taken place that month at all, Tower's project percent complete would have increased based solely on the reduced durations. This would occur because Tower calculates its percent complete values of in-process work using the items' remaining durations as compared to their original durations. Notwithstanding this "paper" decrease to selected activity durations, we note that Tower's completion date still slipped 25 more days pursuant to its August 2008 schedule update. We believe this slippage occurred because Tower did not make its "scheduled" progress on those activities with unchanged durations.

In summary, the project slippages may represent Tower's ineffective management or that CUA's has added major work to the original contract scope or some combination thereof. We are unable to authoritatively identify the causes of the schedule slippages ourselves but we believe that both Tower and CUA should evaluate their contributions to the project to assure that scheduled work is completed timely and added work, if any, is properly recognized and paid for, including schedule adjustments as needed.

⁹ Information taken from CUA's response, received April 16, 2008, in reference to the OIG survey.

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RECOMMENDATIONS

1. CUA should advise Tower to re-integrate the curtain wall activities into the overall schedule to determine a true substantial completion date for the project. Additionally, CUA should request Tower to establish the longest path(s) in the schedule and identify this (these) as the critical path(s).

2. CUA should consider supplementing its project management staff with expertise from other County departments' to assist with project-end issues, such as, potential claims, and paperwork overload. It may be more efficient if CUA uses the expertise of the County Attorney's Office to defend itself against future claims, from Tower, rather than distracting its project management staff from the completion of the project.

FINDING NO. 2 **Tower's projected substantial completion date is unrealistic due to the work stoppage on the curtain wall and other construction-related issues.**

Tower's August 2008 construction schedule shows the project's substantial completion date as December 29, 2008. However, the Center's construction will likely extend into 2009 based on the added contract time that Tower is seeking in already submitted PCOs. As of September 5, 2008, Tower has submitted 36 PCOs to CUA requesting \$2,018,407 in additional compensation and 343 days of added contract time to CUA for its review and approval. We calculated that by adding the 343 additional days that Tower has already requested in its PCOs to the contract's completion date of February 11, 2008, the project's substantial completion date is pushed out to January 19, 2009. More delays due to work stoppage on the curtain wall and the impact of unresolved construction issues will likely push out the substantial completion date well beyond January 19, 2009.

In August 2008, the Miami-Dade County Building Department (Building Department) issued a work stoppage to Tower regarding its construction of the Theater Building curtain wall. A CUA specialty inspector had earlier noted deficiencies in Tower's installation and non-compliances with Florida Building Code. The Building Department followed with its inspection, resulting in it issuing a work stoppage and directing Tower to submit its shop drawings for review and approval prior to its continuing work on constructing the curtain wall. Tower has since submitted the drawings to the Miami-Dade

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County Building Code Compliance Office for review and for a one-time product approval.¹⁰ Although Tower has stopped its work on the curtain wall, it has proceeded with scheduled work on other parts of the Center.

According to Tower, it expects approval of the plans and the resumption of work within a few weeks. Tower also stated that the curtain wall will not affect the project's critical path, thus, the substantial completion date will remain at December 29, 2008.¹¹ However, in construction meeting minutes dated September 11, 2008, Tower noted that the preliminary curtain wall construction schedule might push the project's substantial completion date to February 24, 2009. This would extend the completion date beyond the 343 days of added contract time sought by Tower in the aforementioned PCOs. As of the date of this report, the OIG understands that the submitted shop drawings have yet to be approved by the Building Department. According to the CUA Director, Tower is currently removing the deficient installation of the curtain wall and will resume reinstallation once the shop drawings are approved. *Again, as a postscript, the OIG notes that Tower has recently relayed to CUA project management staff that an entire new curtain wall will have to be erected, including a steel structural support system to be designed.*

We see another problematic issue arising from Tower's differing completion dates. Tower's December 29, 2008 appears to be predicated on logic that assumes that the main building's electrical and heating, ventilation, and air conditioning (HVAC) systems can be tested (and, in the case of the HVAC system, properly balanced), and that the Building Department can perform its final inspections without having the curtain wall erected, i.e., the building fully enclosed. *In its recent correspondence to CUA, Tower now acknowledges that the HVAC systems testing must necessarily take place after the building's envelope is enclosed.* However, Tower's February 24, 2009 may be questionable itself. We noted that Tower's current schedule durations for reinstalling the glazing and curtain wall were reduced by 50% from the durations for the original installation shown in its baseline schedule. Thus, if Tower cannot obtain the 50% improvement during its second-time performance of curtain wall installation, then the February 24th date is compromised.

As noted, Tower has submitted 36 PCOs to CUA requesting 343 days in additional time and \$2,018,407 in additional compensation to complete the project. In its response to the OIG survey, Tower stated that these PCOs, if approved by CUA, might extend the

¹⁰ A one-time product approval is a required Notice of Acceptance (NOA) from the Building Department for exterior building components, such as windows, doors, and louvers. The NOA ensures that the material and its assembly or installation has been approved by the County's BCCO and that they meet the standard codes and have been tested for impacts. (Explanation provided by CUA).

¹¹ Tower's senior project manager made these statements during a meeting with the OIG on September 16, 2008.

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substantial completion date into 2009.¹² However, the OIG notes that Tower did not indicate when in 2009. Tower also added that the current substantial completion date of December 29, 2008, is not a result of any action or inaction on its part.

The OIG discussed the status of Tower's PCOs and project delays with CUA. CUA informed the OIG that it has rejected PCO #38, which is for \$377,000 of additional compensation and 130 days of added time. CUA added that its A&E team and scheduling consultant are reviewing the other PCOs and it does not yet have their final responses. Table 2 (below) lists the five PCOs requesting added contract time, along with the additional days requested, the associated dollar amounts, and their status.

Table 2 Potential Change Orders for Added Contract Time

PCO #	Submittal Date ^a	Description	Days Requested	Amount Requested ^b	Status of PCOs per CUA ^c
38	6/19/08	Re-sequencing of Steel	130	\$377,000	Rejected 9/30/08
70	7/03/08	Revision to Building Automation System	117	\$339,000	Under review – not yet finalized
77	7/15/08	Revision to Interior Framing	56	\$162,400	Under review – not yet finalized
84	8/08/08	Revision to Room 501 HVAC System	11	\$31,900	Under review – not yet finalized
85	8/25/08	Revision to Fire Alarm EVAC System	29	\$81,400	Under review – not yet finalized
Total # of days and \$ amount			343 days	\$991,700	

^a Provided by CUA.

^b Amounts noted are a portion of the \$2.02 million that Tower has submitted to CUA requesting compensation for the extended construction period.

^c Status as of October 9, 2008.

As we earlier stated, the OIG believes it unlikely that this project will be finished by its current schedule completion date of December 29, 2008. We believe that the 343 added-days date of January 19, 2009 is also unrealistic. CUA should expect receiving additional PCOs asking for more time, especially given Tower's projected date of February 24, 2009. *Unfortunately, in light of the curtain wall work stoppage and the need to reinstall an entire new wall system, we believe that the April 17, 2009 date is too optimistic.* The stoppage of work on the curtain wall, along with the reasons underlying Tower's request for more days, valid or not, will more than likely delay the project's completion even further.

¹² Tower's response to the OIG survey is dated September 5, 2008.

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To the extent that CUA approves any of Tower's PCOs requesting added contract time or any of its other non-time related PCOs, CUA will have to use Contingency Allowance funds to pay Tower additional compensation. The OIG believes that CUA may approve some of Tower's requests for some amount of added money and/or time but we are unable to estimate the additional compensation needed or what time CUA may add to the contract duration. As of August 2008, the Contingency Allowance had a balance of \$2,344,459.

FINDING NO. 3 CUA is assessing liquidated damages against the contract retainage.

CUA is currently assessing liquidated damages against Tower for construction delays. CUA is deducting the assessed amounts from the contract retainage. Retainage are funds withheld by the County from progress billings submitted by Tower, until final and satisfactory project completion. The OIG commends CUA for taking the initiative to assess liquidated damages against Tower for the contract delays. However, the OIG is concerned because the retainage mostly consists of monies that Tower will need to make final payments to its subcontractors. To the extent that these funds are insufficient for Tower to pay its subcontractors fully, Tower would be obligated to make-up the difference using its own funds.

According to the contract documents, until substantial completion, the County shall retain 10% of the total requested amount from monthly payments made to Tower. Based on the Tower's contract schedule of values, the contract retainage includes monies for subcontractor work and materials, building permit fees, insurances, Tower's general conditions costs, overhead, and profit. As of August 2008, CUA has withheld \$3.75 million in contract retainage.¹³

The County will release all retainage after substantial completion except for an amount equal to twice the estimated cost to the Owner of completing the punch list items, as provided by the Architect/Engineer.¹⁴ Assuming all other conditions are met, the remaining retainage balance will be released to Tower at Final Acceptance with Final Payment.¹⁵ We note that pursuant to Section 10-35 of the Code of Miami-Dade County and the contract's provisions, Tower is obligated to submit to CUA either releases of lien from all first-tier subcontractors and suppliers or consents of surety when requesting payment. We note that

¹³ This amount is taken from the August 2008 Payment Requisition Management Schedule provided by CUA. This amount does not reflect the deduction of liquidated damages. Total retainage for the contract will be approximately \$4.0 million.

¹⁴ Contract Section 10.2.12

¹⁵ Contract Section 10.4

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Tower has been providing consents of surety to CUA with its progress billings. Furthermore, Contract Section 10.4.02, states:

In case of unresolved Subcontractor claims against the Contractor, the Owner will withhold all disputed amounts [from Final Payment] unless the Contractor provides a fully executed Consent of Surety in a form acceptable to the Owner.

Tower has submitted 5 PCOs seeking added time and compensation (See Finding No. 2, Table 2). Notwithstanding, CUA's position is that Tower has not yet adequately identified and justified the reasons for the construction delays beyond the contract substantial completion date, although CUA has not completed its analysis of all of the subject PCOs. Accordingly, CUA considers the delays non-excusable and non-compensable to Tower and, thus, justified to assess liquidated damages. According to Tower, however, the contract delays are not attributable to any Tower action or inaction but are the result of incomplete design plans and inaccurate information provided to them.

As of September 30, 2008, CUA has assessed \$814,880 against the contract's retainage balance, with additional amounts expected to be assessed continuing through the completion of the project.¹⁶ As noted in Table 3 (next page), if CUA continues to assess liquidated damages against Tower, by December 29, 2008, CUA will have assessed nearly \$1.2 million against the contract retainage.

¹⁶ This amount is based on CUA's September 30, 2008, Notice to Contractor – Delay Damages letter to Tower identifying the amounts of assessed liquidated damages as of September 30, 2008. This amount is a combination of the contractual daily amount of \$2,893, per day, for the first 90 days of delays, and CUA's actual daily cost of \$3,905 beyond the 90-day period. As of September 30, 2008, the contract was 232 days behind schedule.

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TABLE 3 Liquidated Damages Assessed Against Tower & Remaining Retainage Balances

Contractual Completion Date of 2/11/08	Assessed Liquidated Damages at 9/30/08	Estimated Assessed Liquidated Damages at 12/29/08	Estimated Assessed Liquidated Damages at 2/24/09	Estimated Assessed Liquidated Damages at 4/30/09	Estimated Assessed Liquidated Damages at 12/31/09	Estimated Assessed Liquidated Damages at 12/21/10
Cumulative Delay Days	232 days	322 days	379 days	444 days	689 days	1,044 days
Assessed(able) Amounts	\$814,880 ^a	\$351,450	\$222,585	\$253,825	\$956,725	\$1,386,275
Cumulative Amounts ^b	\$814,880	\$1,166,330	\$1,388,915	\$1,642,740	\$2,599,465	\$3,985,740
Retainage on Total Construction Amount	\$3,986,467	\$3,986,467	\$3,986,467	\$3,986,467	\$3,986,467	\$3,986,467
Remaining Retainage	\$3,171,587	\$2,820,137	\$2,597,552	\$2,343,727	\$1,387,002	\$727

^a CUA's \$814,880 is calculated as: 90 days x \$2,893 plus 142 days x \$3,905.

^b These amounts are assuming that CUA's daily costs will remain at \$3,905 until substantial completion is attained.

In addition to its earlier noted disclaimer, Tower has disputed the liquidated damages beyond the 90-day period stated in the contract. Tower claims that the contract specifically provides a 90-day cap on any delay-related damages. According to Tower, "such an assessment finds no support in the parties' Contract." In a response to the OIG, CUA stated, "delay damages will be assessed for all non-excusable delays until substantial completion."

Other Issues: CSBE Goals and Responsible Wages and Benefits

We also surveyed the contract's CSBE goals, and Tower and its subcontractors' compliance with the County's Wages and Benefits Ordinance. The County's Department of Small Business Development (SBD) monitors these activities. Based on the documentation provided to us by SBD, we found that Tower would not be able to achieve the project's CSBE goal of 19% on the Activities Building, Phase 2 of the project. This is because two of the original three CSBE subcontractors quit or were removed from the project.

According to SBD, Al Hill Plumbing Corp, (Al Hill) who was scheduled to meet 1.15% of the 19% CSBE goal, withdrew from the project soon after the contract was awarded. The other CSBE subcontractor, Gancedo Technologies, (Gancedo), who was expected to meet 12% of the 19% goal, was terminated more than a year later, by Tower,

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after it could not acquired bonding. Non-CSBE firms with SBD’s approval replaced both firms.¹⁷ According to SBD, the CSBE participation based on awarded contracts was 22%, which exceed the 19% goal; therefore, a replacement for Al Hill was not required. However, Tower could not locate a Level II CSBE firm to replace Gancedo.

Additionally, there were several occurrences of non-compliance with the County’s Responsible Wages and Benefits Ordinance. Through our survey process, we learned that there were six instances when subcontractors provided inaccurate payrolls and underpaid their employees. Specifically, these subcontractors either did not pay their employees the correct wage rate, failed to report the total hours that their employees worked and/or did not offer health benefits to their employees. As a result, more than 50 subcontractor employees were underpaid a total of approximately \$117,000. Table 4 provides details of each subcontractor, the amounts underpaid, the number of employees affected, and the status of each occurrence.

Table 4 Subcontractor Underpayments of Employee Wages

Instance	Subcontractor Name	Amount Underpaid	# of Employees Affected	Status of Underpayment
1	D.K.G & Associates, Ltd.	\$703.80	1	D.K.G complied and paid employee.
2	Edward General Steel/Aerotek Staffing, Inc.	\$77,614.96	23	Tower to locate and pay employees said amount.
3	Gancedo Technologies, Inc.	\$10,992.67	8	Tower submitted check to SBD for said amount.
4	Owen Industries, LLC	\$12,622.51	10	Tower paid employees for said amount.
5	SunTech Plumbing Contractors	\$9,128.53	3	SunTech complied and paid employees.
6	VDI Contractors of South Florida, Inc.	\$5,597.78	5	VDI complied and paid employees.
	Total underpayment	\$116,660.25	51	

For underpayments where subcontractors will issue checks or already have issued checks to SBD, SBD will make direct payment to each employee. According to SBD, the funds will be held for one year in its compliance trust fund for distribution to the employees. Afterwards, if there are unlocated workers, the remaining unpaid wages will be forwarded to the State of Florida.

¹⁷ SBD approved the removal of Al Hill Plumbing on June 16, 2006 and the removal of Gancedo on May 23, 2007. Al Hill was replaced by SunTech Plumbing and Gancedo was replaced by Bryant Electric.

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After our draft report was issued, we were informed by SBD that Tower was able to locate and pay \$59,440.69 to 17 Edward General Steel employees. Thus, to date, there remains six Edward General Steel employees who are underpaid a total of \$18,174.27.

* * * * *

CUA's response to the draft report is attached as Appendix A. The OIG did not receive written comments from either SBD or Tower. The OIG is committed to continual monitoring of the construction activity. We request to be provided with copies of all future progress reports from the CUA to the County Manager/Office of the Mayor, including any memoranda regarding extending the three A&E consultants' professional services agreement to the new projected substantial completion date. Lastly, we appreciate the cooperation and assistance afforded to us by CUA and Tower personnel involved in our review.

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APPENDIX A

**WRITTEN COMMENTS SUBMITTED BY
THE MIAMI-DADE CULTURAL AFFAIRS DEPARTMENT**

*Construction Concerns at the
South Miami-Dade Cultural Arts Center*

IG07-40A

January 5, 2009

Memorandum



Date: December 8, 2008

To: Christopher Mazzella
Inspector General

From: Michael Spring, Director
Department of Cultural Affairs

Subject: Response to Draft 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 from the end of the name.

We appreciate the opportunity to provide this response to the draft OIG Audit Report, IG07-40A, on the South Miami-Dade Cultural Arts Center. This memorandum contains an Executive Summary distilling the key elements of our response and addressing the three findings and two recommendations in the OIG Audit Report. The Executive Summary is followed by Background sections that provide more detail to update and/or clarify the OIG Audit Report findings.

I am proud of the pro-active and effective management by my staff for the construction of the South Miami-Dade Cultural Arts Center. Our response will underscore the facts that we are conscientiously enforcing the terms of our contract with the contractor, The Tower Group (TTG), managing the project within its approved budget, and working closely with other County Departments to ensure that we are in compliance with all requirements, and collaboratively are utilizing the full resources of the County to ensure the success of our project.

We are committed and well along the way to delivering a project that will be one of the finest performing arts complexes in the Southeastern United States. Its "campus" includes a 966-seat multi-purpose theater, a separate activities building for classes and small-scaled performances and an outdoor concert lawn. Its landmark design is by locally-based and internationally-renowned architectural firm Arquitectonica and its theater and acoustical consultants, Fisher Dachs Associates and Artec Consultants, are among the best in the world.

Executive Summary

The following sections provide the key elements of our response and address the three findings and two recommendations in the OIG Audit Report:

- **Strong and Collaborative Project Management Approach**

The Department has ensured that on-site activities are closely monitored and construction quality is maintained by:

- *Securing enhanced architectural services* from Arquitectonica and its consultants during construction;
- Providing full time on-site structural engineering representation during the concrete and steel portions of the construction work;
- Providing on-site Owner (Department staff) representation on a daily basis;
- *Scheduling periodic site visits from the project's acoustical and theater consultants* to review and comment on the progress of the work; and
- Procuring the services of specialty consultants and testing agencies to review/test specific areas of the work.

The Department has worked diligently to uphold the provisions of the construction contract, including, for example, the monitoring of the Contractor's submission of required schedule updates, contractual requirements for submitting project documentation, and assessing delay damages. The Department works closely with the County Attorney's Office in implementing all contractual provisions and seeking independent reviews of specific issues as necessary in an effort to reduce the possibility of litigation. In addition, the Department has a close working relationship with and strong support from the County Executive's Office, the Building Department, Small Business Affairs and the Building Code Compliance Office.

- Extensive Project Reporting

In addition to maintaining thorough documentation of our management of the project, the Department continues to provide monthly oral project updates to the Recreation and Cultural Affairs Committee (RCAC) of the Board of County Commissioners, which have been provided since the construction contract was awarded in mid-2005. Written reports have been submitted to the RCAC since July 2008, ensuring complete transparency of all issues encountered on the project. The Department also provides bi-weekly reports to County Manager George Burgess and schedules periodic site visits for the County Manager, Assistant County Manager Alex Muñoz, and staff to review project progress. We noted that the OIG Audit Report was facilitated by the availability of the extensive project documentation maintained and published by our Department.

- Finding No. 1- Construction Schedule / Resources Necessary to Complete the Project

- The OIG Audit Report summarizes the information that the Department has been submitting to the RCAC outlining that TTG's schedule updates project a substantial completion date which continues to slip on a monthly basis, and is therefore unreliable. In addition, the OIG Audit Report neglects to fully acknowledge but affirms the course of action that has been taken by the Department since the onset of the project. In summary, the Department has repeatedly notified the Contractor, both verbally and in writing, that the construction schedule should include logic ties for all work activities representing the Contractor's plan for the execution of the work, and that schedule updates should accurately reflect the work progress on site while affording the Contractor the opportunity to revise its plan for the work remaining to be completed. The Department has informed the Contractor of the contractual consequences of not providing a satisfactory schedule and is utilizing its contractual recourse of delay damages to recover expenses incurred due to the Contractor's exceeding the contractual substantial completion date. In addition, of the five Proposed Change Orders (PCOs) submitted by the Contractor requesting additional time, the Department has reviewed and rejected 2 PCOs, totaling 141 of the 343 days requested. The remaining 3 PCOs currently are under final review by the Department, its architect and scheduling consultant. The OIG had access to all PCOs, project work orders and Board

of County Commissioners items related to the contract; these documents verify that the Department has not added additional major work to the original project scope.

- It is important to emphasize that the percentage complete for the project is directly linked to the amount of work in place in the field as verified on a monthly basis by the project's architect and consultants and the Department's staff and appropriately stored materials. The 81% project completion represents the payment of \$28.3 million paid to TTG to date, leaving \$8.1 million balance to finish and \$3.1 million in retainage. Approximately \$15 million, or half of the costs paid to date, represents the completion of the concrete and steel portions of the project. The other half of the funds paid to date account for the procurement and partial installation of HVAC, electrical, plumbing, and fire protection systems, exterior cladding systems and roofing, stairs, drywall, etc. The total amount paid to date is an accurate representation of the work in place and materials stored per the terms of the contract.
- Recommendation No. 1 - Instructions to TTG Regarding the Schedule and Recommendation No. 2 - Collaboration with Other Departments

The Department had informed the OIG that these actions being recommended by the OIG Audit Report already were being implemented.

1. As noted above, the Department, Architect and scheduling consultant have often reiterated to TTG in writing and at weekly meetings that all known work activities, including the curtain wall activities, should be reflected in the schedule updates, including logic ties that are representative of the Contractor's plan for the work.
 2. The Department's project management staff continues to manage the evaluation of "potential claims, and paperwork" effectively. During the course of its inquiry, the OIG was informed that since the inception of the project, the Department has been working closely with other County departments, including the Building Department, Small Business Affairs, the Building Code Compliance Office and the County Executive's Office to take advantage of their expertise to address project issues. In addition, the OIG was invited to contact the Office of the County Attorney to verify that the Department is continuing to work closely with this office on claims analysis and claims mitigation. These activities do not "distract" the Department's project management team from completion of the project (as the OIG Audit Report recommendation contends); rather, the conscientious and effective management of potential claims and project paperwork are an essential job of the Department's staff who through their experience on the job are uniquely qualified to undertake these important tasks and who collaborate with other Departments as necessary and useful.
- Finding No.2 – Contractor's Unrealistic Substantial Completion Date

The OIG Audit Report Finding No. 2 confirms the Department's previously written and issued assessments of the Contractor's schedule and substantial completion dates.

For example, in our September 18, 2008 report to the County Manger, we emphasize, "As of the progress meeting on September 11, 2008, TTG maintains that the curtain wall activities have not impacted the critical path of the schedule and stands by the December 29, 2008 substantial completion date projected in their latest schedule update. The Department does not agree with TTG's assessment."

In our November 7, 2008 written report to the Recreation and Cultural Affairs Committee, we reiterate our ongoing questions about the feasibility of the schedules and substantial completion dates being provided by TTG:

"Because the curtain wall activities are not tied to other work activities in TTG's schedule update, they do not appear to be on the critical path of the project. The critical path of the project currently flows through the Activities Building, with emphasis on the completion of electrical and HVAC rough work, and the installation of drywall. According to ARQ's scheduling consultant, the schedule appears to be compressed, leaving only three months to complete the interior finishes and testing of systems."

In addition, the OIG Audit Report contains unsubstantiated speculation that "CUA should expect receiving additional PCOs asking for more time" and that the "OIG believes that CUA may approve some of Tower's requests for some amount of added money and/or time but we were unable to estimate the additional compensation needed or what time CUA may add to the contract duration." Regardless of this speculation, we must emphasize that all requests from the Contractor for additional compensation and/or time must be submitted pursuant to the terms of our contract, must include required substantiation and will continue to be evaluated rigorously and fairly by our staff. Through thorough and prudent project management, with the project at 81% completion, we have slightly more than 50% of the owner-controlled project contingency remaining (\$1,862,213.61).

- Finding No. 3 – Liquidated Damages

It is important to point out that the Department's implementation of delay damages is pursuant to the provisions of its contract with TTG. The OIG Audit Report speculates that the assessment of delay damages against the project's retainage may jeopardize payments to the subcontractors. OIG made this speculative assertion in spite of being made aware by our Department of the following factors:

- Delay damages are a contractual provision and the Department is implementing the contract thoroughly and responsibly;
- Delay damages are being assessed against retainage so that they do not affect monthly payments to the Contractor (and in turn, the Contractor's payments to its subcontractors);
- The Department informed the OIG that it will not release the project retainage to the Contractor at the end of the job until it has been provided with final releases of lien from subcontractors (i.e., confirmation that they have been paid fully); and

- The Department's is committed to analyzing outstanding PCOs fairly and pursuant to the terms of the contract and that by assessing delay damages against retainage, the Department leaves open the possibility that any satisfactorily substantiated claims may lessen the delay damages.

Table 3 in the OIG Audit Report is not a responsible nor substantiated projection of the potential duration of delay damages.

- CSBE Goals and Responsible Wages

The Department works closely with Small Business Affairs to rectify any deviations from the contract documents, including wage rate violations. Once deviations are identified, SBA provides formal notice to the Subcontractor, and copies TTG and the Department. If a violation is not resolved within the timeframe stipulated by SBA's notice, the Department withholds the dollar amount of the violation from TTG's payment application. Funds are released once the Department is notified by SBA that the violation has been satisfactorily resolved by the Subcontractor or Contractor. It is important to emphasize that the Department, SBA and TTG are continuing to work together to address these issues and the record reflects a successful track record in doing so.

- TTG's Renewed Commitment to the Project

In early 2007, The Tower Group was bought by OHL, a Spain-based construction firm with an extensive portfolio of international construction projects. Miami-Dade's contract for construction of the Center remains with The Tower Group. OHL has been addressing project issues from the previous TTG administration and has recently augmented its on-site project management team and field supervisory personnel. This new TTG management team has committed to responding by mid-December to the Department's ongoing request for an accurate schedule reflective of work in place and the sequence and durations of activities necessary to complete the project. OHL and the Department share the mutual goal of delivering a quality product to the community in South Miami-Dade County.

Background

The following sections provide more detail to update and/or clarify the OIG Audit Report findings:

- Project Overview

The South Miami-Dade Cultural Arts Center is a key component of the Moss Plan and designed to be a catalyst for the development of the 'Downtown' Cutler Bay area. The Center is comprised of two buildings, the Theater Building and the Activities Building, located on 6.39 acres of land along 211 Street, adjacent to the South Miami-Dade

Government Center in Cutler Bay. The 71,500 square foot Theater Building houses an over 70-foot high lobby space, a 966-seat theater on three levels, an orchestra pit, stage area with fly loft space, a multi-purpose room, ample restroom amenities, dressing rooms, administrative offices, and dramatic public artwork by Miami artist Robert Chambers. The 7,500 square foot Activities Building provides rehearsal, small-scale performance, and classroom spaces across a promenade that joins the two buildings. To the south of the two buildings, a lawn for hosting outdoor concerts, festivals, and art fairs slopes gently towards the Black Creek Canal. The Center's design is a collaboration of local, world-renowned architectural firm Arquitectonica International Inc., along with theater planning consultants Fisher Dachs Associates, and sound, communications, and acoustical designers Artec Consultants, Inc., resulting in a state of the art facility long awaited by the South Miami-Dade community.

Documents for the construction of the Center were issued to bidders requesting pricing for two phases (Phase I for the Theater Building (base bid) and Phase II for the Activities Building (add alternate)). The \$38 million construction contract for the Center was awarded to TTG in July 2005 after a 3-month period of mutual effort from TTG and its main sub-contractors, the project A/E team, and the Department to reduce the bid price by \$2 million in order to meet the project budget. With the achieved savings, the Department was able to award the concurrent construction of both buildings and all site improvements included in the documents. The Department issued the Notice to Proceed to TTG in December 2005. Delays early in the construction of the Center were attributed to unforeseen site conditions, which extended the original 22-month project duration an additional six months, resulting in a substantial completion date of February 11, 2008. The unforeseen site conditions used approximately 2/3 of the contract's original 5% contingency, and therefore, an additional 5% was added to the contract's Owner-Controlled Contingency Account. The now \$40 million construction project is approximately 81% complete and the Department expects to complete the project within the 10% contingency.

In early 2007, The Tower Group was bought by OHL, a Spain-based construction firm with an extensive portfolio of international construction projects. Miami-Dade's contract for construction of the Center remains with The Tower Group. OHL has been addressing issues from the previous administration and has recently augmented its on-site project management team and field supervisory personnel. OHL and the Department share the mutual goal of delivering a quality product to the community in South Miami-Dade County.

- Project Management Approach

The Department has managed the design and construction of the Center and will manage the operation of the facility once completed. The Department has a reputation for having a proactive management style that seeks to identify and mitigate potential problems. The Department has ensured that on-site activities are closely monitored and construction quality is maintained by:

- Securing enhanced architectural services from Arquitectonica and its consultants during construction;
- Providing full time on-site structural engineering representation during the concrete and steel portions of the construction work;
- Providing on-site Owner (Department staff) representation on a daily basis;
- Scheduling periodic site visits from the project's acoustical and theater consultants to review and comment on the progress of the work; and
- Procuring the services of specialty consultants and testing agencies to review/test specific areas of the work.

From the onset of construction, the Department has worked diligently to uphold the provisions of the construction Contract, including, for example, the monitoring of the Contractor's submission of required schedule updates, contractual requirements for submitting project documentation, and assessing delay damages. The Department works closely with the County Attorney's Office in implementing all contractual provisions and seeking independent reviews of specific issues as necessary in an effort to reduce the possibility of litigation.

The rate of progress of the work is the direct result of the Contractor's means and methods, including manpower levels, accuracy and efficiency of its plan, management of resources, etc. The Department works closely with the A/E team and specialty consultants to provide the information requested/needed by the Contractor to proceed with the work. In August 2008, the Building Department instructed the Contractor to stop all curtain wall installation activities due to lack of approved shop drawings, deficiencies in the installation, and the need to request a one-time product approval due to deviations between the product's Notice of Approval (NOA) and the project installation. In a continued effort to advance the work, the Department with the support of the County Executive's Office has facilitated the expedited review of the required documentation for the curtain wall from the Building Code Compliance Office and the Building Department. The recently augmented TTG on-site management team has committed to responding by mid-December to the Department's ongoing request for an accurate schedule reflective of work in place and the sequence and durations of activities necessary to complete the project.

- **Project Reporting**

The Department provides monthly oral project updates to the Recreation and Cultural Affairs Committee (RCAC) of the Board of County Commissioners since the construction contract was awarded in mid 2005. Written reports have been submitted to the RCAC since July 2008, ensuring complete transparency of all issues encountered on the project. The Department also provides bi-weekly reports to County Manager George Burgess and schedules periodic site visits for the County Manager, Assistant County Manager Alex Muñoz, and staff to review project progress.

We noted that the OIG Audit Report was facilitated by the availability of the extensive project documentation maintained and published by our Department. The Department has repeatedly notified the Contractor, both verbally and in writing, that the construction schedule should include logic ties for all work activities representing the Contractor's plan for the execution of the work, and that schedule updates should accurately reflect the work progress on site while affording the Contractor the opportunity to revise its plan for the work remaining to be completed. The Department has worked closely with the County Attorney's Office throughout bidding, award, and construction to insure that any arising issues are resolved promptly and fairly within the terms of the contract agreement.

- Construction Schedule

The OIG Audit Report summarizes the information that the Department has been submitting to the RCAC outlining that TTG's schedule updates project a substantial completion date which continues to slip on a monthly basis, and is therefore unreliable.

To date, the progress reporting provided in the schedule updates often does not match the progress evidenced on site, and actual construction progress often does not follow the planned sequence of activities reflected in the schedule updates. The Department questions the Contractor regarding these discrepancies during the monthly schedule update meetings and often provides written follow-up questions. The Contractor's schedule update narratives are comprised mainly of lists compiled from 'Claim Digger' reports, computer generated comparisons of the current schedule and the previous month's schedule update. This program identifies items such as activities added or deleted, duration changes, logic tie changes, etc. The narratives often fail to explain the cause for these changes, the reasons why activities planned to start or finish during the month did not start or finish as planned, and therefore, fail to explain reasons for delays. Rather than projecting and mitigating potential delays prior to their impacting the critical path, the Contractor often realizes that certain activities have been delayed during the schedule update meetings. The Department uses the Contractor's daily logs, weekly progress reports, meeting minutes, and projected work plans to accurately identify actual progress versus scheduled progress. The Department, Architect and scheduling consultant often have reiterated to TTG that all known work activities should be reflected in the schedule updates, including logic ties that are representative of the Contractor's plan for the work.

Progress reporting in the form of a schedule update is required by the contract to be submitted on a monthly basis. TTG includes a schedule update with each payment application. TTG has not provided the October and November 2008 schedule updates nor submitted the payment application for these respective months. The Department has notified the Contractor that the submittal of monthly schedule updates is a contractual requirement. TTG's newly added project management team has notified the Department that a project schedule document that accurately reflects the status of the project will be submitted in mid-December for the Department's review.

Due to the extended construction period, the Department forwarded items to the Board of County Commissioners (BCC) recommending extensions to the professional service agreements with Arquitectonica International, Fisher Dachs Associates and Artec Consultants. The BCC and Mayor approved these items in July 2008. Once the Department reviews TTG's submittal of its construction schedule update towards the end of the year, a determination will be made regarding whether any further extensions are necessary and if so, items will be submitted to the BCC substantiating and requesting the extensions.

- **Delay Damages**

The contractual substantial completion date is February 11, 2008. Pursuant to the terms of the County's contract with TTG, the Department has assessed liquidated damages in the amount of \$2893 per day for the first 90 days. Current delay damages have been calculated totaling \$3905 per day, and may be updated to include additional delay damages as they are incurred. A total of \$733,876 has been assessed against the Contractor's retainage through the end of September 2008.

Upon Final Acceptance and per the terms of the Contract, the Department will request that TTG submit Final Releases of Lien from all sub-contractors and suppliers before releasing retainage in order to ensure that all parties are properly and fairly compensated.

- **Resources Necessary to Complete the Project / Progress Payments**

TTG's monthly payment applications are reviewed by the Department and the Architect during a walk through of the project to ensure fair compensation for work in place and materials stored per the terms of the contract. The Department and Architect also consult with the engineering team and specialty consultants to verify quantities of work completed and remaining. Each payment application is certified by the Architect for general conformance with the progress of the work in the field. The percentage complete for the project is directly linked to the amount of work in place and appropriately stored materials. The 81% project completion represents the payment of \$28.3 million paid to TTG to date, leaving \$8.1 million balance to finish and \$3.1 million in retainage. Approximately \$15 million, or half of the costs paid to date, represents the completion of the concrete and steel portions of the project. The other half of the funds paid to date account for the procurement and partial installation of HVAC, electrical, plumbing, and fire protection systems, exterior cladding systems and roofing, stairs, drywall, etc. The total amount paid to date is an accurate representation of the work in place and materials stored per the terms of the contract, and the Department retains the contractual right to deduct funds from the next payment application for any portion of the work previously authorized for payment that may be discovered to be defective or should cause reasonable doubt regarding its integrity. No further payment will be authorized on such items until the noted deficiency is corrected by the Contractor.

- Proposed Change Orders (PCO)

Given the complexities of the structure and systems necessary in theater buildings, a percentage of changes in the work are a standard part of the process of transforming these facilities from drawings into built structures. These changes can occur for a variety of reasons but typically arise when the hundreds of pages of architectural and engineering drawings that describe these buildings are converted into shop drawings by the contractor and its subcontractors. Changes also can occur as a result of opportunities to improve the building and its systems during construction. In each case, the Department has the opportunity to review proposed changes to determine whether they are necessary and beneficial for the project. Some of these opportunities, for example, have resulted in changing the stained concrete floors in the theater lobby to terrazzo, which will result in savings for the flooring maintenance. Owner requested changes often substitute items in the contract for materials and/or equipment that improve the buildings' aesthetic, functional, and/or maintenance aspects. These changes do not add and have not added major work scope to the contract.

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

- (16) PCOs have been voided;
- (10) PCOs have been rejected by the Department and/or Architect;
- (31) PCOs have been reviewed and Work Orders have been issued to TTG;
- (26) PCOs are currently under review by the A/E and/or the Department;
- (10) PCOs have been reviewed and comments provided to TTG for resubmittal.

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. The remaining three PCOs with requests totaling 202 days are currently under review by the Department, A/E team, and the scheduling consultant. The Department does not agree with the OIG's assessment that it should be expected for TTG to submit additional PCOs requesting contract time extensions simply because the Contract time has been exceeded. Contract time extensions can only be granted if properly documented and verifiable delay claims are presented by TTG. If delays are not caused by the Owner, TTG should not be expected to request contract time extensions. The Department and consultants continue to fairly review all PCOs and contract time extension requests and to compensate the Contractor for additional costs and time.

All PCO's must be certified by TTG upon submittal, are then reviewed by the A/E team and by the Department. PCOs requesting a contract time extension are also reviewed by Arquitectonica's scheduling consultant. Depending on the specific content of the PCO, the Department may request a review from specialty consultants through the County Attorney's Office in anticipation of potential litigation.

- Owner Controlled Contingency Account

All undisputed costs and contract time extensions to date have been issued in thirty-one (31) Work Orders for a total of \$1.8 million from the \$3.6 million owner-controlled contingency account. The OIG had access to all PCOs, project work orders and Board of County Commissioners items related to the contract; these documents verify that the Department has not added additional major work to the original project scope.

The Work Orders issued to date can be summarized as follows and the contingency account total appears in the chart below.

- (3) totaling \$1.3 million for Unforeseen Conditions;
- (15) totaling \$286K for A/E requested changes;
- (11) totaling \$188K for Owner requested changes; and
- (2) totaling \$75K for Regulatory Agency requested changes.

Owner's Contingency Account	
5% Original Contract Contingency	\$ 1,811,900.00
C.O. #1 Added Contract Contingency (5%)	\$ 1,811,900.00
C.O. #2 Realized Sales Tax Savings	\$ 73,719.00
Total Contingency Amount	\$ 3,697,519.00
Amount of Executed Work Orders	\$ (1,835,305.39)
Contingency Account current balance	\$ 1,862,213.61

- Community Small Business Enterprise Goals

In their bid documents, The Tower Group exceeded the 19% Community Small Business Enterprise (CSBE) goals established for the project by utilizing five CSBE sub-contractors for the electrical, plumbing, mechanical, miscellaneous metals, and fire sprinkler trades. The CSBE plumbing sub-contractor identified by TTG in the bid documents was not able to participate in the project, but since TTG had exceeded the goal, the reduction did not affect the established project goal and was therefore approved by Small Business Affairs (SBA). The CSBE electrical subcontractor did begin the project but underperformed and was not able to secure a bond for the project amount. TTG had to replace this subcontractor with a non-CSBE electrical contractor. This replacement was approved by SBA after verification that no other CSBE firms were readily available to perform the work. Thermal Flow (mechanical), DKG (misc. metals), and Arfran II (fire sprinklers) remain on the project and are expected to continue through its successful completion.

Throughout the course of the construction, SBA has identified several instances of wage violations based on incorrect worker classifications from both CSBE and non-CSBE sub-contractors. The Department works closely with SBA to rectify any deviations from the contract documents, including wage rate violations. Once deviations are identified, SBA provides formal notice to the Subcontractor, and copies TTG and the Department. If a

violation is not resolved within the timeframe stipulated by SBA's notice, the Department withholds the dollar amount of the violation from TTG's payment application. Funds are released once the Department is notified by SBA that the violation has been satisfactorily resolved by the Subcontractor or Contractor. Following is a list of the amounts that have been withheld and released from TTG's payment applications due to wage violations.

SBA Wage Violation for Gancedo Tech. - pay app #20	(10,992.67)
SBA Wage Violation for Sun Tech Plumbing - pay app #25	(9,128.53)
SBA Wage Violation for Edward General - pay app #26	(38,009.47)
SBA Wage Violation CORRECTED for Gancedo - pay app #26	10,992.67
SBA Wage Violation CORRECTED for Suntech - pay app #30	9,128.53
SBA Wage Violation for Edward General - pay app #30	(39,605.49)
SBA Wage Violation for Suntech Plumbing - pay app #31	(93,587.02)

It should also be noted that this list does not include wage violations that have been resolved expeditiously by the subcontractor and/or contractor remedying the violations upon notice. The Department will continue to monitor these violations to ensure their satisfactory resolution.

c: Alex Muñoz, Assistant County Manager