

Biscayne Building
19 West Flagler Street, Suite 220
Miami, FL 33130
Phone (305) 375-1946
Fax (305) 579-2656
www.miamidadeig.org

Office of the Inspector General
Miami-Dade County

Memorandum

To: George M. Burgess, County Manager

Received by Date

From: Christopher Mazzella, Inspector General

CC: Bill Johnson, Assistant County Manager

Date: July 26, 2004

Re: OIG Comments on the PAC Restructuring

As part of its on-going oversight at the Performing Arts Center (PAC) project, the OIG has been aware of the County's efforts over the past 18 months to effect changes at the project to put a stop to the escalating project costs and increasing project duration. The most recent of such efforts began late in 2003 and, hopefully, will culminate shortly with the Board's acceptance of the proposed PAC restructuring plan submitted for its consideration. This package of proposals is collectively agenda items 11A4 to 11A10, 11B1 and 11B2 set on the Board of County Commissioners Agenda of July 27, 2004.

On June 18, 2004, the OIG issued a memorandum to you stating that we would be reviewing this PAC restructuring plan by meeting with key personnel and examining the proposed contract documents. We recognize and applaud the herculean efforts you and your staff have embarked upon to restructure the relationships among the various PAC parties and to establish a construction program that places control with the County. But even as you have stated, with this control comes risk, which, under the restructuring, will belong to the County. Assurances aside, the OIG believes that the actual contract provisions and attachments should clarify the County's position vis-à-vis the PAC parties (program manager, construction manager, and architect/engineer), and more precisely describe their respective functions vis-à-vis the contractors that are performing the actual construction work.

To this extent, the OIG wants to document some potential issues that we believe are not addressed clearly by the proposed documents. The OIG's observations and questions are grouped in the following areas:

- CONSTRUCTION SERVICES
- DIRECTOR OF CONSTRUCTION
- PROJECT SCHEDULE
- ORGANIZATION AND STAFFING
- QUALITY CONTROL/ASSURANCE

Collectively, the OIG has reviewed all the separate agenda items comprising the PAC re-structuring. Most important of these contracts being:

- Resolution for Proposed Change Order 73, *to the Amended Agreement Between Miami-Dade County and Construction Manager, Project No. 9501, Dated September 11, 2001 to Provide For Services As Agency Construction Manager.* Agenda Item No. 11(A)(5).
- Resolution for URS Consulting Services, *Miami-Dade County Performing Arts Center, Project No. 9501 Program Management For Phase 3 Proposal (June 2004).* Agenda Item No. 11(A)(9).
- *Proposed Fourth Amendment to Professional Services Agreement Between Miami-Dade County, Florida, and Cesar Pelli & Associates, Inc.* Agenda Item No. 11(A)(6).

CONSTRUCTION SERVICES

What will be the County's role under the collective impact of the proposed agreements? Who is the "Contractor" as referenced in the CP&A and URS (Program Manager) agreements?

PACB, under the proposed change order, will henceforth be the Construction Manager charged with performing mostly contract administration functions. The "At-Risk" label will be replaced by the term "Agency." The construction manager functions, as described in the contract documents, are altered to reflect the CM's agency status. A portion of the revised scope of work is described in Paragraph 2.1.3, *On-site Construction and Construction Phase Communication Procedures*, that states, in part: "The CM shall provide and maintain a competent, experienced management team on the Project site to provide contract administration as an agent of the OWNER, and the CM shall establish and implement coordination and communication procedures among the CM, OWNER, Program Manager, Architect and Subcontractors." (Emphasis added)

When compared to the current construction services provided by PACB, it is clear that duties related to supervision and direction of the sub-contractors' construction activities are no longer PACB's responsibilities. For example, Proposed Change Order Paragraph 2.2.2 *Construction Schedule Report*, in part, states, "The CM [PACB] shall advise and make recommendations to the OWNER concerning the alternative courses of action that the OWNER may take in its efforts to achieve Contract compliance by the Subcontractors." (Emphasis added) In addition, the proposed change order, Paragraph 8 *Subcontractor*

Relationship, in part, states, “CONSTRUCTION MANAGER shall follow and execute the instructions given by the OWNER through the Program Manager with respect to Subcontractor performance.” (Emphasis added)

In addition, the proposed URS agreement appears to give the same recognition to the Owner’s new responsibilities, by stating that URS, as the Program Manager will “assist County staff in the management of the execution of the construction contract” Notwithstanding the terminology of the subject change order, neither of the proposed CP&A and URS agreements refers to an entity labeled as the “Construction Manager.” Both agreements, however, refer to an entity and function called the “Contractor.” This title refers to the firm that will have the contract with the Owner for the construction of the project. Arguably, it would be the Contractor that would be performing construction services. PACB holds the subcontracts for construction but apparently will no longer be performing the earlier described construction services.

The proposed URS agreement provides that URS “shall have no responsibility for construction means, methods, sequences, techniques” If URS does not have these responsibilities, neither will its sub consultant Vital Management Solutions LLC/Ron Austin (see next section). So who will? The County must clarify the new relationships created by the proposed restructuring and clearly explain the contractual responsibilities of the parties.

DIRECTOR OF CONSTRUCTION

Who is Ron Austin and what will be his responsibilities and authority under the new restructure?

The County has stated that it intends to place Ron Austin, as the “Director of Construction.” Mr. Austin, who runs his own company (Vital Management Solutions LLC), has been under contract to PACB to provide consulting services in connection with the PAC project, since October 2003. PACB has already paid Mr. Austin over \$274,000 for his services and reimbursable expenses since he began working on the project. Mr. Austin’s future status will be as a URS sub-consultant.

We have perceptual issues related to Mr. Austin’s independence. Mr. Austin is now a highly paid PACB consultant and will become a highly paid URS consultant. Will Mr. Austin be able to direct his current and/or future employers to perform work that is reasonable and necessary to complete the project but which may require resources not contemplated specifically at this time; will Mr. Austin be able to hold his current or future employer responsible for scope and/or schedule “creep” when such is the case. (See next section “Project schedule” discussion about the four (4) days that have recently been added to the construction schedule.)

Under a worst-case scenario, will Mr. Austin be able to recommend that the County terminate PACB? While Mr. Austin will be retained as a sub-consultant to URS, he will

report directly to the County Manager. As a sub-consultant under the URS contract, would he be able to recommend that the County terminate URS?

Only one paragraph relates to the new Director of Construction. (See Proposed URS Agreement, Agenda Item No. 11(A)(9) handwritten page 24.)

URS shall contract with Vital Management Solutions for the services of Ron Austin, or other subconsultant as approved by the County, to act as Performing Arts Center Director of Construction. This position shall report to the County Manager or his designated representative. All provisions related to subcontracts as stated in the Agreement shall apply to this subcontract.

What concerns the OIG is a lack of job description for the Director of Construction. What decisions, on a daily basis, can be made by this individual? While URS, as program manager has no responsibility for “construction means, methods, sequences, techniques...” (as stated above) to what extent does its sub-consultant, who is the Director of Construction?

PROJECT SCHEDULE

The OIG believes that a resource-loaded work-to-complete construction schedule is the best means for ensuring that the project can be substantially completed by the established date. What do the parties know about the impacts of what is not scheduled?

The current project state of affairs is the result of many impacts to the original construction schedule that collectively have delayed project completion by some 600 days. Demanding completion date certainty may not be reasonable; however, demanding that project executives have a realistic, documented plan that will best show how they believe that they can achieve completion date certainty is not unreasonable.

We believe that there should be a resource-loaded work-to-complete construction schedule. This schedule would include all construction activities and the resources (e.g., manpower) necessary to complete the listed activities within the allotted time periods. Combining construction activities and construction resources into one schedule would more clearly show how the extended completion date could be met. Such a schedule would be a valuable tool in directing current construction activities and in aiding project personnel to predict and avoid future problems and delays.

This would seem to be a critical need. Already, schedule “creep” has begun—the project’s substantial completion date has recently slipped four (4) days, from May 31, 2006 to June 4, 2006. It appears, though, that the County just brought four (4) more days of construction.

Just how many more schedule extensions, no matter how short, will the County be expected to absorb throughout the remaining project duration?

Of particular importance will be the completeness and accuracy of the PACB-submitted schedules that comprise a number of the attachments to the proposed change order. These schedules depict or list settled items versus non-settled items, Requests for Information, Architect's Supplemental Information, Site Confirming Memos, and the like that are included in the settlement. What is as critical as their accuracy and completeness is what PACB, URS, CP&A and Ron Austin know, or at least can reasonably infer, is not contained in these schedules.

PACB, URS, CP&A and Ron Austin should address what they believe to be the likelihood of more delays and accompanying schedule and cost impacts about known project issues, such as the lack of quality construction documents, and what they can reasonably infer about other problems that may affect the project. We do not believe this to be an unreasonable expectation. Given the collective years of experience among the parties and intimate knowledge of the project, their respective disclosures should be most informative.

ORGANIZATION AND STAFFING COSTS

Who will be doing what and what costs may be avoided?

The OIG has not seen a project-wide organizational chart showing personnel from all parties—PACMO, PACB, URS, and CP&A—including names, position titles, and reporting relationships of the personnel comprising the on-site management teams. Such a chart would help to clarify who will be doing what for the project duration, in particular, the functions performed by PACB and URS. PACB's scope is described as "contract administration" whereas the URS scope is described as "administration of construction." Both companies will be providing project managers, estimators, schedulers, inspectors and the like. We are unable to discern the actual differences between and among the various similar titles/positions without more information. We expect that the County will thoroughly analyze all positions and eliminate any of them that are redundant or unnecessary.

With respect to staff costs, PACB could receive up to \$12.2 million for such costs over the project's remaining duration. This equates to an amount of over \$500,000 per month for PACB staff over the next 24 months, if the full amount were expended. PACB's general conditions will be paid out of a separate fund totaling \$4.065 million, or about \$170,000 per month over the next 24 months. A reference point regarding these amounts is that PACB currently is paid \$552,182 per month for both its staff and general conditions costs, under the Amended Agreement terms.

Notwithstanding that PACB's monthly staff and general conditions will be paid as reimbursable items, the estimated staff amount seems very high. The OIG is concerned that

once such high costs are included in the budget that they will not decrease and will by tendency increase.

Additionally, the County must also factor in URS's costs, including Mr. Austin, as the new Director of Construction. On its face, it would not appear that the proposed restructuring collectively saves the Project administrative and management costs. But, as explained to the OIG by senior project staff, the restructure takes steps towards costs avoidance by eliminating ancillary administrative PACB positions that will no longer be necessary under the restructure. Even after eliminating these positions, it still does not appear that PACB's staffing costs will be reduced.

QUALITY CONTROL/ASSURANCE

What will be the new Quality Control program?

The proposed PACB change order provides for new quality control/assurance measures. Section 2.1.8 of the proposed change order states:

The Director of Construction, the County/Program Manager, the CM and the Architect shall establish and implement new Quality Control/Quality Assurance measures to monitor the quality of the construction. These new QC/QA measures shall supercede existing Specification Sections 01405 and 01440. The purpose of the program shall be to assist in guarding the OWNER against work by the Subcontractors that does not conform to the requirements of the Contract Documents.

Section 01440, in particular, contains the various reporting and documentation standards that PACB was required to follow. PACB's compliance with these standards was the subject of an OIG audit report that was issued in November 2003. Because of the audit, PACB did take steps to enhance both its quality control resources and reporting/documentation compliance. What changes to PACB's current quality control/assurance functions, including personnel changes, are anticipated as part of the re-established and re-implemented quality control/assurance function? Who, on behalf of the Owner, will take the lead in establishing this new program?

Section 2.1.8 states: "The Director of Construction and the Program Manager will direct any special Quality Control initiative for the Project and appoint resources as required." Is there any difference between the "Quality Control/Quality Assurance measures" versus "special Quality Control initiatives"? If so, what are they? Where will the resources be drawn for "special initiatives," which may not be accounted for in the program manager or construction manager's staff/budget?

There is, of course, much more to the proposed restructuring than removing the at-risk provision from the construction manager's responsibilities. Besides the risk assumed by the County with respect to design-related issues, it appears that the Owner—Miami-Dade County—is expected to exercise contractor-like powers, hereinafter with PACB acting only as a conduit between the Owner and the subcontractors. The responsibility for directing daily construction activities (i.e. the means and methods) will lie with the County Manager's Office. This is an enormous personal undertaking by the County Manager's Office. We recognize that this may be the only realistic approach to overcoming the current difficulties, and we recognize your immediate need to surround yourself with qualified, experienced personnel to achieve the desired cost and schedule outcomes with flexibility. While our concerns are noted herein, we would hope that you would appreciate our observations as a constructive tool to help you fully discuss this matter during your presentation to the BCC.