



**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**

**CONTRACT OVERSIGHT OBSERVATION
(2011-O-0005)**

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

Date: January 18, 2012
To: Paul Schofield, City Manager, Village of Wellington
From: Sheryl G. Steckler, Inspector General
Subject: Wellington Patriot Memorial Project

The Office of Inspector General (OIG) staff received a complaint about the Village of Wellington's (Village) Patriot Memorial (Project) concerning the following: (1) original cost estimate vs. final cost estimate; and, (2) whether the original and revised plans were procured through a competitive process. As a result, we conducted a review of the procurement process through which this Project progressed from inception to dedication.

We found that the Project substantially increased in cost from an original construction estimate of \$70,000 to \$80,000 to a negotiated contract price of \$484,124. This was due primarily to two factors: 1) an original estimate (\$70,000 to \$80,000) by Village staff for all three design options presented to the Village Council (Council) that was not thoroughly developed and complete; and 2) a decision by the Council and Village staff to change the scope of the Project by obtaining a significantly larger World Trade Center artifact and including additional features. We determined through Village workshop and Council meeting minutes that the Council was continuously informed of and approved the changes to the Project scope and cost. According to the Village's finance department staff, the total capitalized cost was \$509,612. As of December 7, 2011, the Village had received donations of \$138,110 to offset Project costs.

In reviewing the Village's procurement process, we found that although the Architect/Engineer (A/E) contract for the design of the Project was not competitively bid, Village procurement policies and procedures were followed. The contract for the construction of the Project used a Construction Manager At Risk (CMAR) delivery method. The contractor, The Weitz Company, was selected from a previously established list of qualified companies and a guaranteed maximum price (GMP) was negotiated. This contract also complied with Village policies and procedures.

The following is a summary of our review.

On December 3, 2009, the Village entered into a no cost agreement with REG Architects, Inc. (REG) for conceptual architectural renderings and a site plan sketch for a proposed 9/11 Project at the entry to the Village Town Center on Forest Hill Boulevard. In the agreement, REG offered to donate their conceptual renderings valued at approximately \$5,000.

In January 2010, the Village requested an artifact recovered at the World Trade Center site from The Port Authority of New York & New Jersey (Port Authority). The Port Authority, as owner of the World Trade Center site, provided artifacts at no cost to municipalities contemplating 9/11 memorials. During the Council workshop meeting on January 19, 2010, Village Manager Paul Schofield, in response to Councilman Coates' inquiry as to the estimated cost to do the Project, said it would be "between \$70,000 to \$80,000". In response to a follow-on question by Councilman Coates regarding the funding, Mr. Schofield stated it was the intent to fund the Project through the Foundation donations and not Village resources. The Vice Mayor, Matt Willhite further informed the group that the drawings were conceptual and the artifact's actual size could vary between four and forty feet.

At the regular Council meeting on January 26, 2010, Village staff presented the three options for the Project: (1) a statue located at the center of the Project; (2) a statue known as the "obelisque" located at the center of the Project and the American flag to the left; or, (3) an "eternal flame" at the center of the Project. Each option contemplated a five to six foot artifact, on a limited footprint of pavers, requiring minimal site preparation. In the Council meeting, Rick Greene, former Village Director, Capital Improvements, informed the Council that the Project's estimated cost was between \$70,000 and \$80,000 and that, in his opinion, all three options would be similar in price. Council unanimously approved the "eternal flame" concept.

On February 18, 2010, the Village entered into a non-competitive professional services contract with REG in the amount of \$24,500 for the preparation of A/E construction documents related to the Project.¹

On March 17, 2010, after reviewing the proposed conceptual "eternal flame" rendering for the Project, REG provided the Village with an estimated Project cost between \$151,000 and \$203,000, with exclusions - one being the fountain (to be built by pool builder). In consultation with Village staff on April 20, 2010, REG submitted a revised estimate that reduced the Village's estimated Project cost downward to between \$124,000 and \$147,600. In addition to the "eternal flame" with a fountain, the estimated cost contemplated a five to six foot artifact, pavers, a flag pole, and a pergola.

¹ In accordance with Florida State Statute 287.055 and Village Policy, the Village is not required to competitively bid professional service contracts when the basic construction cost is estimated to be less than \$325,000 or when the fee for professional services is less than \$35,000.

On March 31, 2010, the Village sought approval from the Port Authority to secure an artifact of at least 25 feet. On May 20, 2010, the Port Authority provided the Village with a picture of an artifact salvaged from the World Trade Center they had selected for the Village. In response to the Port Authority's selection, the Village requested to view the artifact in person prior to making a final decision to ensure the artifact would work with the planned memorial. On June 30, 2010, a Council member and a Village staff member traveled to New York to inspect available artifacts with Port Authority officials in New York. During this visit, the Village representatives selected an artifact measuring 36 feet by 8 feet and weighing over 27,000 pounds. The artifact, substantially larger than planned, required structural support columns that were not contemplated in the original Project design. As a result, on September 13, 2010, the Council approved an \$8,000 consultant services authorization to REG for additional design services. Design changes included relocation of the flag pole; redesign of the structural support system with footing to support the artifact; and revision of the lighting design. Late November, 2010, Village representatives traveled to New York City to obtain the artifact for the Project.

Although the original construction documents contemplated engraving 9/11 victims' names into pavers, the Council in October 2010 instead decided to etch the names into glass panels. Village staff told the OIG this decision resulted in a cost savings.

On February 8, 2011, the Council approved the award of a CMAR contract for the Project to The Weitz Company (Weitz). On March 22, 2011, the Village entered into a contract with Weitz following negotiations for a guaranteed maximum price (GMP) of \$484,124. Weitz was chosen from a May 2009 Council approved list of CMAR contractors selected through an open competitive process where Weitz was determined to be the most qualified contractor from all the bidders. This was the first and only (to date) Village construction project to use a CMAR to oversee a project. Village staff stated they used a CMAR on this Project due to the short time constraint (six months) to complete the Project by September 11, 2011.

During the regular Council meeting on April 12, 2011, Council members discussed reducing the scope of the Project; however, by a 3-2 vote, it was decided the Village would proceed with the scope as contained in the March 22, 2011 CMAR contract.

Final closeout documents indicate construction costs for the Project were \$432,621; or \$51,503 less than the \$484,124 GMP. Moreover, Village staff anticipates the cost will be further reduced by \$14,101 due to Weitz's declaration to donate their construction fee. If Weitz donates their construction fee to the Village, external Village Project construction costs will be \$418,520; or \$65,604 less than the \$484,124 GMP.

However, in addition to the GMP, the Village performed various internal construction related activities totaling \$76,991. Therefore, the total capitalized cost of the Project is \$509,612. The Project's capitalized cost did not include any Village travel, per diem, fuel costs, or staff hours. It should be noted, the Village has received \$138,110 in cash

donations through December 7, 2011 to offset some of the cost of the Project and continues their fundraising activities toward further reducing the Village's expenditures.

In summary, the OIG reviewed the Village's policies and procedures governing the procurement of construction services. After reviewing the Village's local ordinance and procurement documents, the OIG found the Village followed their established policies and procedures as well as applicable state laws.

However, we also determined that the Village staff's original estimate of \$70,000 to \$80,000 presented to the Council at the January 26, 2010 meeting was not well developed. The first estimate from the design architect, REG, after the Council selected one of the three options was significantly higher (\$151,000 to \$203,000). In reviewing documentation we received from Village staff to support the \$70,000 to \$80,000 estimate, we noted that it did not include any cost estimates for a statue, obelisque or eternal flame as reflected in the conceptual drawings presented to the Council. In the future, Village staff needs to ensure that when capital projects of a significant scope and cost are presented to Village Council for approval, the cost estimate is well developed and as accurate as possible.

The Village needs to also be cognizant of accepting "in kind" donations for projects that are preliminary in nature. In this Project, REG (the A/E for the Village's Scott's Place) chose to "in kind" their \$5,000 services for the three conceptual designs. Subsequently, REG was awarded the non-competitive contract for the Project design for \$24,500, followed by an \$8,000 change order for the re-design of the Project due to the larger artifact and other changes to the original scope. Although the award of the contract and associated change order fell within the Village's policies and Florida State Statute 287.055, it gives the appearance that REG gained a competitive advantage for the Project through their in-kind donation.

A response to this Contract Oversight Observation is not required. If you have any questions or comments, please contact Alan Russell, Director of Contract Oversight at 233-2350.

The Office of Inspector General's Contract Oversight Unit is established to review an organization's procurement and contracting activity. When necessary, reports will be issued to: 1) identify areas and/or instances where activity conflicts with an organization's established policies and procedures, and; 2) recommend improvements that will result in more effective and consistent contracting practices.