



## **Committee on Natural Resources U.S. House of Representatives**

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Chairman Doc Hastings

# **A FIVE-STAR FOLLY: *An Investigation into the Cost Increases, Construction Delays, and Design Problems That Have Been a Disservice to the Effort to Memorialize Dwight D. Eisenhower***

**July 25, 2014**

Majority Staff Report  
Committee on Natural Resources  
Office of Oversight and Investigations  
Chairman Doc Hastings  
U.S. House of Representatives  
113<sup>th</sup> Congress

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This report has not been officially adopted by the Committee on Natural Resources  
and may not necessarily reflect the views of its Members.

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## Executive Summary

This staff report by the Committee on Natural Resources' Majority staff's Office of Oversight and Investigations has examined the activities of the Dwight D. Eisenhower Memorial Commission, the unprecedented process used to select the proposed memorial's design, the winning design's repeated failure to satisfy all legal requirements, and the unanticipated costs and delays due to controversial elements of the selected design, among other topics. While there is no question President and General Eisenhower is worthy of a memorial honoring his tremendous accomplishments, our oversight has identified significant questions that undermine the viability of the current design and the Memorial Commission's ability to see a memorial to completion. The Majority's investigation found:

- The design continues to fall short of the required design principles that were established in 2006 and the requirements of the Commemorative Works Act. Given these ongoing shortcomings, the design has not yet received the approvals necessary to begin construction.
- Approximately \$41 million has been spent or obligated so far, including almost \$16.4 million for the designer and more than \$13.3 million to the multiple parties responsible for managing the design process and providing administrative support.
- The process used to select Frank Gehry as the designer substantially deviated from the standard Design Excellence Program, and the factors used to select the designer were weighted in a way that benefited a well-known designer such as Gehry.
- The design jury that evaluated the proposals characterized the designs as "mediocre" and found "[n]one of the visions expressed the whole essence of Eisenhower." The jury's recommendation to do an additional round of submissions was ignored, and Gehry's design was still selected. The problems identified in 2009 by the jury remain in the current design proposal.
- The criteria necessary for any Memorial design to be approved were clearly laid out as early as 2006, yet the design Gehry continues to propose and the Commission supports fails to meet those required design principles.
- The Commission awarded several contracts for support services through sole source selection with no open competition.
- Almost every contract the Commission has entered into for work on the Memorial has been modified multiple times to reflect millions of dollars in additional costs.
- In 2011 the Commission authorized the Gehry design team to prepare construction documents for a design that had not been approved. According to the Commission's most recent budget request, those documents are now 95 percent complete for a design that had not been – and is still not – approved.
- The Commission's current fundraising firm was expected to raise as much as \$35 million in private funding, even though the Commission's prior consultant said that goal was not feasible. To date, the Commission has received less than \$500,000 in gifts and donations but has paid more than \$1.4 million to these fundraising companies.
- The proposed use of metal tapestries and electronic components has made it difficult to predict the future costs to maintain and operate the Memorial.

## Introduction

### **A Tribute to Dwight D. Eisenhower**

The people of the United States will be forever indebted to Dwight D. Eisenhower for his service as Supreme Commander of the Allied Forces in Europe during World War II and his leadership as the 34th President.<sup>1</sup>

President Eisenhower was born in Denison, Texas, in 1890 and raised in Abilene, Kansas, where he graduated from high school in 1909. Upon being nominated by Kansas Senator Joseph L. Bristow, Eisenhower attended the U.S. Military Academy at West Point, NY, graduating in 1915. He married the former Mamie Doud in 1916. As a young officer, Eisenhower served both stateside and overseas, including stints on the staff of the American Battle Monuments Commission in France under General John Pershing and in the Philippines under General Douglas MacArthur.

As Supreme Allied Commander in World War II, Eisenhower led the United States to victory in the largest armed conflict the world has experienced, overseeing the most complex amphibious assault to date.<sup>2</sup>

Eisenhower also served as President of Columbia University in New York City and Supreme Commander of the North Atlantic Treaty Organization before being elected the United States' 34<sup>th</sup> President in 1952.

In his role as President, he developed a strategy for the Cold War, created the National Interstate Highway System, the Federal Aeronautics Administration and the National Space Agency, promoted civil rights for all Americans, and oversaw the addition of Alaska and Hawaii as states.<sup>3</sup>

After his presidency, President and Mrs. Eisenhower retired to a farm outside of Gettysburg, Pennsylvania. President Eisenhower died in 1968 and is buried in Abilene, Kansas.

There is no question that President and General Eisenhower's many accomplishments should be recognized amidst the memorials of other outstanding Americans.

**Reflecting on the immense importance of President Eisenhower to the nation's history, Representative Rob Bishop, the Chairman of the Subcommittee on Public Lands and Environmental Regulation, has stated, "Everyone, critics and advocates alike, want a memorial, a monument, that truly honors President Eisenhower and helps future generations of Americans understand and appreciate his role in American history."**<sup>4</sup>

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<sup>1</sup> See Department of Defense Appropriations Act of 2000, Pub. L. No. 106-79, 113 Stat. 1274 (1999).

<sup>2</sup> U.S. Senate Committee on Energy and Natural Resources Bill Report on *President Dwight D. Eisenhower Commemorative Work Report*, S. Rep. No. 109-227 (2006).

<sup>3</sup> *Id.*

<sup>4</sup> *The Proposed Dwight D. Eisenhower Memorial Oversight Hearing before the Subcomm. on Nat'l Parks, Forests and Public Lands of the H. Comm. on Natural Resources*, 112th Cong., 1 (2012) [hereinafter *Eisenhower Oversight Hearing*] (statement of Rep. Bishop, Chairman, Subcomm. on Nat'l Parks, Forests and Public Lands).

## Establishment of an Eisenhower Memorial

Recognizing that “an appropriate memorial should be created to perpetuate [Eisenhower’s] memory and contributions to the United States,” Congress authorized development of the Dwight D. Eisenhower Memorial on October 25, 1999 as part of the Department of Defense Appropriations Act of 2000.<sup>5</sup>

This law authorized the establishment of the Dwight D. Eisenhower Memorial Commission (“Memorial Commission” or “Commission”) and tasked it with “consider[ing] and formulat[ing] plans for such a permanent memorial to Dwight D. Eisenhower, including its nature, design, construction, and location.”<sup>6</sup>

The Memorial Commission is composed of 12 commissioners<sup>7</sup> – four citizens appointed by the President, four members of the House of Representatives appointed by the Speaker of the House, and four Senators appointed by the President Pro Tempore of the Senate.<sup>8</sup> Rocco C. Siciliano, who served as Special Assistant to President Eisenhower among other appointments, is chairman of the Memorial Commission.

The day-to-day operations of the Memorial Commission are overseen by a nine-person executive staff that includes Executive Director Brig. General Carl W. Reddel, USAF (Ret.), who previously served as President and CEO of the Eisenhower World Affairs Institute and has been with the Commission since 2001, and Deputy Executive Director Victoria Tigwell, who previously served on the staff of Senator Norm Coleman of Minnesota and chaired the Metropolitan Airports Commission in Minneapolis.

The executive staff is complemented by several sole-source contractors, including Executive Architect Daniel J. Feil, FAIA, who previously oversaw the design of all public buildings at Ronald Reagan Washington National Airport and managed the proposed design and expansion of the John F. Kennedy Center for the Performing Arts. As discussed in more detail in the section “Overview of Eisenhower Memorial Contracts” beginning on page 20, Mr. Feil, in particular, has played a key role in overseeing the selection and development of the design for the Eisenhower Memorial since he was hired as a full-time contractor in 2005 as the Executive Architect.

## *Proposed Memorials Undergo Rigorous Scrutiny by Design*

The Eisenhower Memorial was the first presidential commemorative work to be authorized since Congress enacted the Commemorative Works Act (“CWA”) in 1986.

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<sup>5</sup> Pub. L. No. 106-79, 113 Stat. at 1274.

<sup>6</sup> *Id.* at 1275.

<sup>7</sup> Rocco Siciliano (chairman), Senator Jack Reed, Senator Pat Roberts, Senator Jerry Moran, Senator Joe Manchin, Congressman Mike Simpson, Congressman Mac Thornberry, Congressman Sanford D. Bishop, Jr., Congressman Mike Thompson, Alfred Geduldig, Susan Banes Harris, and Bruce Cole currently serve on the Commission.

<sup>8</sup> Pub. L. No. 106-79, 113 Stat. at 1274.

The CWA is intended to provide standards for the creation of commemorative works within the District of Columbia.<sup>9</sup> Prior to the CWA, Congress authorized each commemorative work and established individualized processes for how a commemorative work's site and design were approved.<sup>10</sup> One of the purposes of the CWA was to ensure that future commemorative works would "meet the appropriate tests of being of lasting national significance, and designed and constructed to be physically durable."<sup>11</sup>

The CWA tasks several entities with varying roles throughout the development of a commemorative work. The CWA process is intended to balance the need for diverse land use within the Nation's Capital. It requires that several procedural steps be taken in selecting the site and developing the design, as well as imposing several elements into the design itself.

The National Capital Memorial Advisory Commission ("NCMAC") advises the Secretary of the Interior and the Administrator of the General Services Administration ("GSA") on "policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia."<sup>12</sup> The NCMAC advises the sponsor<sup>13</sup> and must be consulted on the selection of alternative sites and design concepts before they may be submitted for formal review and approval.

Two entities are responsible for reviewing and approving site and design proposals. One, the Commission on Fine Arts ("CFA") was established in 1910 to advise on matters pertaining to the arts and on the architectural development of Washington, D.C.<sup>14</sup> The other entity, the National Capital Planning Commission ("NCPC"), was established by Congress in 1952 in the National Capital Planning Act.<sup>15</sup> The NCPC serves as "the central planning agency for the federal government in the National Capital Region."

The final step in the process falls to the Secretary of the Interior who, working through the National Park Service ("NPS" or "Park Service"), has the authority to issue the

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<sup>9</sup> H. Comm. on Interior and Insular Affairs Bill Report: *Governing the Establishment of Commemorative Works within the National Capital Region of the National Park System, and for Other Purposes*, H.R. Rep. No. 99-574, at 4 (1986).

<sup>10</sup> Jacob R. Straus, Cong. Research Serv., R41658, *Commemorative Works in the District of Columbia: Background and Practice*, 1, (2011).

<sup>11</sup> H.R. Rep. No. 99-574, at 4-5.

<sup>12</sup> See *National Capital Memorial Advisory Commission*, National Park Service, <http://parkplanning.nps.gov/projectHome.cfm?parkID=463&projectID=44217> (last visited June 13, 2014).

<sup>13</sup> Defined by the CWA, a commemorative work's sponsor is "a public agency, or an individual, group or [501(c)(3)] organization . . . which is authorized by Congress to establish a commemorative work in the District of Columbia and its environs." 40 U.S.C. § 8902(a)(4).

<sup>14</sup> See *About the Commission of Fine Arts*, U.S. Comm'n of Fine Arts, <http://www.cfa.gov/about/index.html> (last visited June 13, 2014). Seven presidentially appointed members with expertise in the arts comprise the CFA. *Members of the Commission of Fine Arts*, U.S. Comm'n of Fine Arts, <http://www.cfa.gov/about/bios/index.html> (last visited July 14, 2014).

<sup>15</sup> Twelve members make up the NCPC with three being appointed by the President, and two appointed by the Mayor of D.C. The remaining seven serve in an *ex officio* capacity and include the Secretaries of Defense and of the Interior, the Administrator of the General Services Administration ("GSA"), the Mayor of Washington, D.C., and the Chairmen of the Committees on Homeland Security and Governmental Affairs and Oversight and Government Reform. *Commission*, Nat'l Capital Planning Comm'n, [http://www.ncpc.gov/ncpc/Main\(T2\)/About Us\(tr2\)/About Us\(tr3\)/Commission.html](http://www.ncpc.gov/ncpc/Main(T2)/About%20Us(tr2)/About%20Us(tr3)/Commission.html) (last visited July 14, 2014).

construction permit once the sponsor fulfills the requirements of the CWA. The NPS also acts as a conduit between the sponsor and the other entities and is responsible for the long-term maintenance and operation of a memorial once constructed.

When considering sites, the sponsor and the entities responsible for approving site selection must consider “possible conflicts with other activities at that site, the visual impact of the commemorative work on adjacent commemorative works, and the effect on the adjacent parking, transportation and existing open space.”<sup>16</sup>

A further purpose of the CWA is “to preserve the integrity of the comprehensive design of the L’Enfant and McMillan plans for the Nation’s Capital.”<sup>17</sup> This requires an assessment as to whether the proposed commemorative work will have an adverse effect on the L’Enfant and McMillan plans.<sup>18</sup> Generally, this assessment will occur during the development of an Environmental Assessment in compliance with the National Environmental Policy Act (“NEPA”).<sup>19</sup> NEPA requires a federal proponent to analyze the effects a project would have on the surrounding environment. Under NEPA, additional criteria may be developed and required to be incorporated into the design of a specific project to ensure a project will not adversely affect the surrounding environment, or in the case of a memorial in the District of Columbia encroach on the L’Enfant and McMillan plans.<sup>20</sup>

As for a memorial, the CWA requires that the commemorative work be “constructed of durable material suitable to the outdoor environment.”<sup>21</sup>

The other criteria that affect the design approval process are the location of the work to relevant surroundings; whether the location interferes or encroaches on existing works; the protection of open space, existing public use, and cultural and natural resources; the compatibility of the landscape features with the climate; and the accommodation of any site-specific criteria developed by the NCPC and the CFA. The memorial also cannot include any acknowledgement for donor contributions.<sup>22</sup>

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<sup>16</sup> H.R. Rep. No. 99-574, at 6.

<sup>17</sup> 40 USC § 8901 (1).

<sup>18</sup> The L’Enfant plan – named after its designer, Pierre L’Enfant – was designed to create a grand and orderly capital. The circles, squares, road system and National Mall were all part of the initial plan. During the 19th century, the plan deteriorated but was restored in 1902 under the McMillan Plan. Since 1933, the land central to the design of the L’Enfant plan was transferred to the care of the National Park Service. See Jacob R. Straus, *supra* note 10, at 2-6.

<sup>19</sup> 42 USC § 4321 *et seq.*

<sup>20</sup> See e.g. Nat’l Capital Planning Comm’n, Finding of No Significant Impact: Dwight D. Eisenhower Memorial Approval of Site Selection and Design Principles, (2006), <http://www.ncpc.gov/files/projects/eisenhower/eisenhower-memorial-siteselection-fonsi.pdf> [hereinafter 2006 FONSI].

<sup>21</sup> 40 U.S.C. § 8905(b)(2).

<sup>22</sup> 40 U.S.C. § 8905(b)(7).



Under the CWA, a construction permit may be issued only after the Secretary of the Interior, the NCP, and the CFA have approved both the site and the design; knowledgeable individuals qualified in the field of preservation and maintenance have determined that the commemorative work meets the structural soundness and durability requirements of the CWA and otherwise is of high professional standards; construction documents have been finalized; and sufficient funds are on hand to complete the project construction.<sup>23</sup>

The sponsor must also set aside an additional 10 percent of the total estimated cost of construction for upkeep and maintenance, unless the commemorative work is constructed by a Department or Agency of the Federal Government and less than 50 percent of its funding is provided by private sources. Furthermore, if misrepresentation of fundraising efforts occurs, the Secretary may suspend any activity under the CWA.<sup>24</sup>

Once the sponsor satisfies these requirements, the Secretary of the Interior may issue a construction permit, as appropriate.<sup>25</sup>

### *Selection of a Memorial Location with High Visibility and Impact*

The authorizing statute for the Eisenhower Memorial placed only one requirement on what an appropriate Memorial would be – that the Memorial must “perpetuate [Eisenhower’s] memory and contributions to the United States.”<sup>26</sup>

Nowhere in the statutory language authorizing the Eisenhower Memorial is there a requirement that the Memorial be of a particular style or capture a particular historical event, be of the 20<sup>th</sup> Century or any other period of time, be limited to physical structures or be accompanied by a technological component.

Even before a Memorial site had been selected – and years before an architect or design had even been approved – the Commission staff was estimating that it would take between five and a half and six years to design and construct the Memorial at a total cost of \$100 million.<sup>27</sup>

Although Congress authorized the Memorial in 1999, it took the Commission until 2005 to select a location. Acting in collaboration with the NPS, the Commission considered several locations in the vicinity of the National Mall, including Freedom Plaza along Pennsylvania Avenue, N.W., in downtown Washington, D.C., before unanimously selecting in June 2005 the intersection of Maryland and Independence Avenues, between 4th and 6th Streets, S.W., as the intended site for the Eisenhower Memorial.<sup>28</sup>

The Commission was attracted to the location’s proximity to the National Mall and the Smithsonian National Air and Space Museum and the Department of Education’s Headquarters Building, its access to public transportation, and its “distinctive setting with a powerful view of the Capitol, which lends dignity to the site.”<sup>29</sup>

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<sup>23</sup> 40 U.S.C. § 8906(a).

<sup>24</sup> 40 U.S.C. § 8906 (b) and (c).

<sup>25</sup> 40 U.S.C. § 8906 (a).

<sup>26</sup> Department of Defense Appropriations Act of 2000, Pub. L. No. 106-79, 113 Stat. 1274 (1999).

<sup>27</sup> Eisenhower Memorial Comm’n, March 30, 2006 Meeting Minutes, at 2.

<sup>28</sup> Eisenhower Memorial Comm’n, June 20, 2005 Meeting Minutes, at 5.

<sup>29</sup> *Id.* at 2.



After consultations with the Commission, the NCMAC approved the Maryland Avenue, S.W., location in November 2005.

#### **Location of Planned Eisenhower Memorial**



On August 4, 2006, the Park Service, on behalf of the Commission, filed for approval of the selected site with the NCPC. The NCPC initiated review of the effects the proposed site would have on surrounding commemorative works and found that the proposed memorial location would have an adverse effect on several historic sites.

In response, the NCPC developed seven design principles that the Commission must incorporate into the memorial design, including preserving the reciprocal views of the Capitol along Maryland Avenue, reflecting the L'Enfant Plan principles, and respecting the architecture and building lines of the surrounding areas. The NCPC issued a finding of no significant impact conditioned on the Commission's agreement to implement those principles in the Memorial's design.<sup>30</sup>

<sup>30</sup> 2006 FONSI, *supra* note 20, at 9-11.

In September 2006, the Commission's selected site along Maryland Avenue, SW, received approval by the NCPC<sup>31</sup> and the CFA.<sup>32</sup> Unlike the NCPC, the CFA did not require the incorporation of any specific design principles for the Commission to gain the CFA's approval.

It has been clear since the beginning of the design phase of this project that the eventual design for the Eisenhower Memorial would need to satisfy the CWA requirements as well as the seven site-specific design principles established by the NCPC.

#### **NCPC's Memorial Design Principles from 2006**

1. Preserve reciprocal views to and from the U.S. Capitol along Maryland Ave., SW.
2. Enhance the nature of the site as one in a sequence of public spaces embellishing the Maryland Avenue vista.
3. Create a unified memorial site that integrates the disparate parcels into a meaningful and function public gathering place that also unifies the surrounding precinct.
4. Reflect L'Enfant Plan principles by shaping the Memorial site as a separate and distinct public space that complements the Department of Education Headquarters and other surrounding buildings.
5. Respect and complement the architecture of the surrounding precinct.
6. Respect the building lines of the surrounding rights-of-way and the alignment of trees along Maryland Avenue.
7. Incorporate significant green space into the design of the memorial.

In 2008, Congress amended the authorizing legislation in several important aspects, including directing the Commission to obtain administrative and support services from GSA on a reimbursable basis.<sup>33</sup> The amendments also authorized the Commission to hire staff to run the day-to-day operations of the Commission in addition to the bipartisan team of Commissioners and clarified that the Commission could appoint an architect to act as an agent on behalf of the Commission as well to obtain the help of temporary, part-time, and volunteer services.<sup>34</sup> There currently are nine full-time employees and six full-time or part-time contractors who help with a variety of tasks.<sup>35</sup>

The Memorial's authorizing legislation, as amended, also permitted the Commission to make expenditures for services and materials from appropriated funds or contributions; to solicit and accept contributions; to hold hearings and enter into contracts; and to enter

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<sup>31</sup> See Nat'l Capital Planning Comm'n, Commission Action: Dwight D. Eisenhower Memorial Approval of Site and Design Principles (Sept. 7, 2006) *available at* <http://www.ncpc.gov/files/projects/eisenhower/eisenhower-memorial-siteselection-action.pdf>.

<sup>32</sup> Letter from Thomas E. Luebke, CFA to Joseph Lawler, NPS (Sept. 29, 2006), *available at* [http://www.cfa.gov/meetings/2006/sep/20060921\\_01.html](http://www.cfa.gov/meetings/2006/sep/20060921_01.html).

<sup>33</sup> Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, 122 Stat. 754, 784 (2008).

<sup>34</sup> *Id.* at 783-784.

<sup>35</sup> Full time employees include the Director of Operations & Programs, Business Manager, Intergovernmental Affairs Specialist, Visual Information and Programs Manager, Office Manager and Outreach Coordinator, Program Support Assistant, Office & Administrative Assistant. The Commission's contractors include the Communications Director, Senior Consultant for International Affairs, Senior Advisor, Senior Writer, Senior Consultant for West Coast Donor Development, and a Senior Program Analyst.

into contracts for personal services and otherwise; and to take action as are necessary to carry out the requirements of the law.<sup>36</sup>

During this time, the Commission was operating under the CWA's requirements that sufficient construction funds would need to be secured before a construction permit could be issued.

### ***Congress Has Already Appropriated More Than \$65 Million for Memorial***

Prior to 2009, when the Memorial Commission selected Gehry Partners LLP as the designer for the Memorial, Congress had already appropriated the Commission \$8.35 million to cover operational expenses and the costs related to selecting the site and designer.

At the Commission's March 25, 2010 board meeting, Chairman Siciliano acknowledged that "the Commission must have all funding in hand before construction can begin."<sup>37</sup>

Between 2009 and 2012, Congress appropriated the Commission an additional \$53.9 million, of which \$45.9 million was designated for design and construction related costs. **A detailed list of appropriations can be found in Appendix A.**

However, before the design had been finalized or approved by the NCPC or the CFA, a provision was inserted into an appropriation bill in 2011 to remove the prohibition under the CWA against construction until after a project sponsor had secured sufficient funds to complete construction of the project and to authorize the Eisenhower Commission to enter

#### **Congressional Action**

Oct. 25, 1999 - The Commission is established and appropriated \$300,000.

Nov. 12, 2001 - The Commission is appropriated \$1,750,000.

Jan. 10, 2002 - The Commission is authorized to establish a permanent memorial and is appropriated \$2,600,000.

Dec. 30, 2005 - The Commission is appropriated \$1,700,000.

May 5, 2006 - The Commission is approved to build a memorial in Area I of the District.

Dec. 26, 2007 - The Commission is appropriated \$2,000,000.

May 8, 2008 - The Commission is granted powers to take actions as necessary to effect its goals and authorized to hire an executive architect to represent it in the designer selection process.

March 11, 2009 - The Commission is appropriated \$2,000,000.

Oct. 30, 2009 - The Commission is appropriated \$19,000,000.

Dec. 23, 2011 - The Commission is appropriated \$32,990,000, and is considered to have all funds necessary for construction to commence as required by the CWA.

Mar. 26, 2013 - The Commission is appropriated \$1,050,000 and is notified its statutory authorization will expire Sep. 30, 2013.

Oct. 17, 2013 - The Commission's construction authority is revoked through Jan. 15, 2014. An additional \$1,000,000 is appropriated for Commission salaries and expenses.

Jan. 17, 2014 - The Commission is appropriated \$1,000,000 for salaries and expenses and construction authority is further revoked through FY 2014.

#### **Pending Legislation**

H.R.1126: Dwight D. Eisenhower Memorial Completion Act - prohibits use of federal funds to construct the memorial and ensures consideration of an alternative design and limits the tenure of Commission members.

<sup>36</sup> Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, 122 Stat. 754, 782-784 (2008).

<sup>37</sup> Eisenhower Memorial Comm'n, March 25, 2010 Meeting Minutes, at 7.

into a contract to begin construction of the Eisenhower Memorial without having secured all the necessary funds.<sup>38</sup>

With this new authority but without an approved design in place, the Commission began moving forward with selecting a construction firm.

For FY 2014, the Commission requested Congress appropriate an additional \$49 million for construction expenses and \$2 million for Commission operations.<sup>39</sup> It estimated that an additional \$24 million would need to be appropriated in FY 2015 to complete construction of the Memorial. In other words, although it had already been appropriated almost \$46 million to pay for design and construction related expenses, the Commission in 2013 was estimating as much as \$73 million would still be needed to complete design and construction of the project.

However, Congress appropriated just over \$2 million in 2013 and an additional \$1 million in 2014 for Commission salary and expenses, including construction design expenses. It did not appropriate any money specifically for construction costs.

Congress has since suspended the exception it had enacted in 2011 that would have allowed the Commission to enter into construction contract before it had secured the necessary financial support for the Memorial.<sup>40</sup> The prohibition against construction has been renewed since and remains in place.<sup>41</sup>



**Congress agrees that General and President Dwight D. Eisenhower deserves a memorial in a prominent place to honor his life and his service to the country and to the world. Through the National Capital Memorial Advisory Commission, the Commission on Fine Arts, the National Capital Planning Commission, and the Commemorative Works Act, Congress has establish a path forward for the design and completion of such a memorial, and has provided \$65 million dollars for this task.**

**The Eisenhower Memorial Commission was established in 1999, and 15 years later there is still no memorial, or approved design for a memorial. Yet the Commission has continued to return each year to Congress to ask for additional funds. The purpose of the Committee's oversight on this issue is to attempt to understand the decisions that have already been made and continue to be made that prevent this Memorial from being built.**

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<sup>38</sup> Consolidated Appropriations Act 2012, Pub. L. No. 112-74, 125 Stat. 786, 1036-1037 (2011).

<sup>39</sup> Eisenhower Memorial Comm'n, Dwight D. Eisenhower Memorial Commission FY 2014 Budget Justification (Apr. 5, 2013).

<sup>40</sup> Continuing Appropriations Act 2014, Pub. L. No. 113-46, 127 Stat. 558, 564 (2013).

<sup>41</sup> Consolidated Appropriations Act 2014, Pub. L. No. 113-76, SEC. 137 (2014).

## Summary of Oversight Findings

The Committee has been conducting oversight of the Memorial Commission and the design of the Memorial since the 112<sup>th</sup> Congress. On March 20, 2012, an oversight hearing was held to hear concerns about the design selection process and durability of the design, including opposition from the Eisenhower family.<sup>42</sup>

In the 113<sup>th</sup> Congress, the Subcommittee on Public Lands and Environmental Regulation heard testimony from members of the Eisenhower family, the Memorial Commission, and the public concerning H.R. 1126 (“Dwight D. Eisenhower Memorial Completion Act”) and the status of the project itself.

Given concerns raised at these hearings, document request letters were sent by Full Committee Chairman Doc Hastings and Subcommittee Chairman Rob Bishop on May 15, 2013 to the Memorial Commission, the GSA, and the National Park Service. The letters requested details about the Commission’s activities, travel, fundraising, and expenses; copies of contracts and invoices with Gehry and other contractors; information about GSA’s involvement in the design process and overall project management; and the Park Service’s analysis of what it will cost to operate the Memorial.

Committee Majority oversight staff also conducted multiple interviews with Commission staff members, GSA employees, and contractors in the fall of 2013 and continued its fact-finding into early 2014.

## Longstanding Controversy Surrounding the Design Selection

One of the first major steps undertaken by the Memorial Commission was to consider what physical and narrative elements should be featured as part of the Eisenhower Memorial.

Early on, the Commission and its executive staff were considering a Memorial that would be visually iconic, innovative, and represent “out of the box” thinking.<sup>43</sup> Chairman Rocco Siciliano stated at the Commission’s March 30, 2006 meeting that “he had a discussion several years ago with architect Frank Gehry, who indicated an interest in a possible design of the Eisenhower Memorial.”<sup>44</sup>

Regarding the selection process, Chairman Siciliano added that “the process of selecting an architect will be a careful and deliberate process” in accordance with federal procurement law and other presidential memorials. Chairman Siciliano served as the Vice Chairman of the Los Angeles Philharmonic when Mr. Gehry was commissioned to design the Philharmonic’s Walt Disney Concert Hall. The Disney Hall, according to some accounts, dealt with delays in construction to allow for needed fundraising as the cost of construction exceeded the original budget. Both Mr. Gehry and Mr. Siciliano are Honorary Life Directors of the Los Angeles Philharmonic Association Board of Directors.

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<sup>42</sup> *Eisenhower Oversight Hearing*, *supra* note 4.

<sup>43</sup> Eisenhower Memorial Comm’n, March 30, 2006 Meeting Minutes, at 4.

<sup>44</sup> *Id.*



### *Modern Design Envisioned for Memorial*

The Commission contracted with the firm of Skidmore Owings and Merrill LLP (“SOM”) to create a Pre-Design Program in 2007.<sup>45</sup> The Pre-Design Program would be used to communicate to the prospective designers what the Memorial should be, including “goals, requirements, constraints, and opportunities.”<sup>46</sup>

According to Commission staff, SOM developed the Program materials with input gathered from interviews with Commissioners, scholars, authors, family members, and many others.<sup>47</sup>

While the authorizing legislation is direct and clear in its requirement to build “an appropriate permanent memorial to Dwight D. Eisenhower” that will “perpetuate his memory and his contributions to the United States,”<sup>48</sup> the Pre-Design Program calls for a “new paradigm for memorials” and a “new vision of memorialization.”<sup>49</sup> The Pre-Design Program was initiated almost a year after the NCPC had established the seven design principles that the Eisenhower Memorial must meet in order to receive approval for construction, including respecting the views of the Capitol along Maryland Avenue and surrounding architecture and building lines. Inexplicably, the Pre-Design Program materials do not mention the requirements of the CWA, or even the seven design principles required by the NCPC.

Instead, the Pre-Design Program materials prepared by SOM for the first time state that this Memorial should “look toward the future” and that the design selection must “embrace the widest possible range of innovative concepts and ideas.”<sup>50</sup>

With the pre-design concepts focused on innovation and modernity, the Commission then turned to the selection of a designer who embodied those ideals.

Rather than establish a design competition that would be open to all interested architects, artists, students, or designers regardless of professional stature or experience, as had been used for the Vietnam Veterans Memorial and others, the Commission chose to utilize GSA’s Design Excellence Program for the memorial design competition.

### *Deviations from Standard Design Excellence Program*

The GSA’s Design Excellence Program was established in 1994 and outlines a multi-step process for screening, evaluating, and selecting Architect/Engineer (“A/E”) candidates

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<sup>45</sup> The Gensler design and architecture firm had initially been consulted to assess the Maryland Avenue location and to validate the proposed project timeline and, according to the Minutes of the March 30, 2006 Meeting of the Eisenhower Memorial Commission, was also being considered for a Pre-Concept Design Architectural Study. Eisenhower Memorial Comm’n, March 30, 2006 Meeting Minutes, at 4.

<sup>46</sup> *Eisenhower Oversight Hearing*, *supra* note 4, at 38 (Statement of Brig. Gen. Carl W. Reddel, USAF (Ret.)).

<sup>47</sup> *Id.*

<sup>48</sup> Department of Defense Appropriations Act 2000, Pub. L. No. 106-79, 113 Stat. 1212, 1274 (1999).

<sup>49</sup> Eisenhower Memorial Comm’n, Eisenhower Square To Honor and Celebrate Ike: President General World Citizen, Volume 1, Pre-Design Program, at 3 (2008).

<sup>50</sup> *Id.*

for government building projects – like court houses and office buildings.<sup>51</sup> The process includes appointing an evaluation board, soliciting designers, evaluating interested designer candidates, and selecting the designer.

The first step under the Program, common to all projects, is the appointment of an evaluation board composed of GSA staff and technical experts.

The GSA's Design Excellence Program Manual has specific requirements for the creation of the evaluation board. The majority of an evaluation board's members must be GSA employees;<sup>52</sup> a board should have no more than five voting members and no more than two, non-voting members;<sup>53</sup> and only voting members may deliberate or cast votes to select an A/E.<sup>54</sup> Outside of these seven specified individuals, no others may participate in any official board activities.<sup>55</sup>

The A/E evaluation board then solicits interested designers to submit a portfolio and statement of qualifications. The board evaluates candidates based on the following criteria and weighting: Design Firm: Past Design Performance (35%); Philosophy and Design Intent (25%); Lead Designer's Portfolio (25%); and Lead Designer's Resume (15%).<sup>56</sup>

Once this initial review has been completed, the board selects the top three to six firms for interviews and further evaluation of their proposed design team.<sup>57</sup> This review evaluates the designers based on four further criteria and weighting: Team Design Performance (50%); Team Organization and Management Plan (30%); Professional Qualifications (15%); and Geographic Location (5%).<sup>58</sup>

The next step in the Design Excellence Program can vary – moving straight to final selection based on the information provided to date and rankings by the evaluation board or adding another round of information gathering and technical reviews. For this additional round, designers are asked to develop a “vision” for the project that will assist the board in understanding the A/E firm's design strategies and approach to design problems.

Each firm's vision is then critiqued by a “vision competition jury” which, according to the GSA Design Excellence Program Manual, should be composed of a “design educator,” “architectural critic,” and “practicing architect experienced in the facility type.”<sup>59</sup> For

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<sup>51</sup> U.S. Gen. Services Admin., Design Excellence: Policies and Procedures, 1, *available at* [http://www.gsa.gov/graphics/pbs/Design Excellence Policies and Procedures Chapter1.pdf](http://www.gsa.gov/graphics/pbs/Design%20Excellence%20Policies%20and%20Procedures%20Chapter1.pdf) (last reviewed Feb. 10, 2014).

<sup>52</sup> U.S. Gen. Services Admin., Design Excellence: Policies and Procedures, 76, *available at* [http://www.gsa.gov/graphics/pbs/Design Excellence Policies and Procedures Chapter6.pdf](http://www.gsa.gov/graphics/pbs/Design%20Excellence%20Policies%20and%20Procedures%20Chapter6.pdf) (last reviewed Feb. 10, 2014).

<sup>53</sup> U.S. General Services Administration, Acquisition Manual, 536.602-2 (c) and (d).

<sup>54</sup> *Id.* at (d).

<sup>55</sup> *Id.* at (e).

<sup>56</sup> U.S. Gen. Services Admin., Design Excellence: Policies and Procedures, 82-83, *available at* [http://www.gsa.gov/graphics/pbs/Design Excellence Policies and Procedures Chapter6.pdf](http://www.gsa.gov/graphics/pbs/Design%20Excellence%20Policies%20and%20Procedures%20Chapter6.pdf) (last reviewed Feb. 10, 2014).

<sup>57</sup> *Id.* at 83.

<sup>58</sup> *Id.* at 88.

<sup>59</sup> *Id.* at 95.



designers that undergo this additional scrutiny, the board will also seek to confirm the construction costs will be within the project's budget.<sup>60</sup> The jury's opinion is then submitted to the evaluation board, which ranks the vision along with the results of the earlier rounds of review, and identifies which designers to recommend for approval.<sup>61</sup>

For the Eisenhower Memorial, the Commission and GSA did seek additional information and a design vision from the prospective designers and the input of a competition jury, but the process used to select the winning designer deviated from one outlined in the GSA Design Excellence manual in several regards.

First, the A/E evaluation board was composed of 12 members total, including representatives from the Commission, GSA, the Eisenhower family, and private sector design peers.<sup>62</sup> Only two of the board members were from GSA, not the majority as required under the GSA Design Excellence manual.

Second, the evaluation board changed the weight of how the factors would be considered, giving more weight to a designer's portfolio of work and less to the designer's past performance. Indeed, the evaluation criteria used to screen the Eisenhower Memorial Design Excellence submissions were weighted such that the Lead Designer Portfolio and Lead Designer Profile were together worth 65 percent of the total score, and Past Design Performance was worth only 15 percent.<sup>63</sup>

The low weight given to "Past Design Performance" and the greater weight given to the designer's portfolio and profile may have assisted in the selection of Gehry, given criticism about previous notable Gehry projects coming in significantly over budget and allegations of leaks and other flaws in Gehry designed buildings (for example, the LA Philharmonic Disney Hall, the Ray and Maria Stata Center at the Massachusetts Institute of Technology, the Art Gallery of Ontario, and the Richard B. Fisher Center for the Performing Arts at Bard College).<sup>64</sup>

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<sup>60</sup> U.S. Gen. Services Admin., Design Excellence: Policies and Procedures, 22, available at [http://www.gsa.gov/graphics/pbs/Design Excellence Policies and Procedures Chapter5.pdf](http://www.gsa.gov/graphics/pbs/Design%20Excellence%20Policies%20and%20Procedures%20Chapter5.pdf) (last reviewed Feb. 10, 2014).

<sup>61</sup> U.S. Gen. Services Admin., Design Excellence: Policies and Procedures, 100, available at [http://www.gsa.gov/graphics/pbs/Design Excellence Policies and Procedures Chapter6.pdf](http://www.gsa.gov/graphics/pbs/Design%20Excellence%20Policies%20and%20Procedures%20Chapter6.pdf) (last reviewed Feb. 10, 2014).

<sup>62</sup> The Committee was composed of 12 members from the Commission, the GSA, the Eisenhower family, and private sector design peers. *Eisenhower Oversight Hearing*, *supra* note 4, at 28.

<sup>63</sup> U.S. Gen. Services Admin., EMC-WPC-08-5019, National Dwight D. Eisenhower Memorial, 4-5 (August 15, 2008), available at <https://www.fbo.gov/utills/view?id=25a4d7e08a72d42f85dbe50fab00dce>.

<sup>64</sup> See Mike Boehm, *Disney Hall Cost-Overrun Suit Settled*, LA Times, July 29, 2006; Philip Kennicott, *Frank Gehry's Complex Legacy*, Wash. Post, Nov. 30, 2008.

### Comparison of GSA's Design Excellence Program

	<b><u>Design Excellence Program Requirements</u></b> <sup>65</sup>	<b><u>Commission's Modified Program for Eisenhower Memorial</u></b>
<b>Total A/E Selection Board Members</b>	Maximum of 7 (including 2 non-voting members)	12 members
<b>GSA Employees on A/E Selection Board</b>	Majority of Board must be GSA Employees	2 GSA Employees
<b>Weighted Amounts for Selection of A/E</b>	Past Design Performance: 35% Philosophy and Design Intent: 25% Lead Designer's Portfolio: 25% Lead Designer's Resume: 15%	Past Design Performance: 15% Philosophy and Design Intent: 20% Lead Designer Portfolio: 55% Lead Designer Profile: 10%

GSA issued a Request for Qualifications ("RFQ") on August 15, 2008 to begin the process of recruiting and selecting a designer.<sup>66</sup> While the RFQ did not specify that designer submissions include an actual design, it did reference several specific elements that would need to be addressed in the eventual design for the memorial:

The National Eisenhower Memorial at Eisenhower Square will be the first national presidential memorial of the new century. No language currently exists for a 21<sup>st</sup> century memorial. Eisenhower Square is an opportunity to explore new avenues in memorialization. The competitive design and design team selection process will embrace the widest possible range of innovative connects and ideas. It is intended that the physical memorial will have a very significant electronic component. Thus there can be a strong visual statement about Eisenhower and also allow for a depth of information as wanted. The result will be a new vision of memorialization: a new paradigm for memorials . . . in the monumental core. It must be enduring both in message and materials.<sup>67</sup>

The RFQ also specified that "part of the memorial will be a canopy . . . to provide shelter from precipitation and extreme temperatures."<sup>68</sup>

<sup>65</sup> These amounts are based on the General Services Administration's policy book, *Design Excellence Policies and Procedures*, and the Federal Acquisition Regulation, subpart 36.6, *Architect-Engineer Services*.

<sup>66</sup> *A-E Design Services for the New National Dwight D. Eisenhower Memorial*, Wash., DC, U.S. Gen. Services Admin., (August 15, 2008), <https://www.fbo.gov/index?s=opportunity&mode=form&id=4697853e8595dbe89a2e88e0060c3a25&tab=core&cvview=1>.

<sup>67</sup> U.S. Gen. Services Admin., *supra* note 63, at 1.

<sup>68</sup> *Id.* at 2.

The RFQ stated that the project's anticipated budget for construction would be between \$55-75 million.<sup>69</sup>

Forty-four proposals were submitted in response to the RFQ, including one from Frank Gehry of Gehry Partners, LLP.

In his October 6, 2008 submission, Gehry explained that he “fe[lt] that [he] ha[d] the ability to express the values and character of this inspiring man in this significant public plaza.”<sup>70</sup> He proposed “collaborating with a visual artist who might create sculptural, graphic or media designs to be integrated into the architectural design of the memorial.” Furthermore, Gehry desired to “explore the use of new media” as “a powerful tool for the communication of complex ideas” and “engaging storytelling.”<sup>71</sup> Gehry's submission explained how one of his former works was “charged with emotion and conflict” and that his work in Washington, D.C. on the Corcoran Gallery had “received a standing ovation from the Fine Arts Commission when it was presented.”<sup>72</sup>

Out of the 44 firms that submitted their portfolios, only seven were selected by the evaluation board to advance to the next stage.

For this stage, designers were asked to provide a “lead designer's interpretation . . . in sketch form,” but not a formal design or even a design concept.<sup>73</sup>

On December 4, 2008, Gehry submitted the additional information to the EMC Chairman Siciliano about the team of consultants and technical experts he planned to use if selected, including theater designer Robert Wilson:

He has a warmth and humility in his representation of character that is apt to this memorial. Our hope in working with Bob and the biographers is to properly convey President Eisenhower's persona and achievements. I have asked him to join the team and help me to oversee the integration of the key design aspects of the project, including exhibition, lighting, and landscape design.

Gehry's supposed plan to use theatrical artists and his vision of the Eisenhower Memorial as a theatrical set piece would later be criticized.<sup>74</sup>

After reviewing these materials and interviewing the remaining firms in December 2008, the Design Excellence board selected four firms to advance to a final round of review where the remaining firms were required to “further develop their vision” and submit a

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<sup>69</sup> *Id.* at 1.

<sup>70</sup> Gehry Partners LLP, Qualification Information: National Dwight D. Eisenhower Memorial, (Oct. 8, 2008).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Eisenhower Oversight Hearing*, *supra* note 4, at 44.

<sup>74</sup> See U.S. Comm'n on Fine Arts, November 21, 2013 Meeting Minutes, *available at* <http://www.cfa.gov/meetings/2013/nov/20131121min.html> (“[Ms. Fernandez] said that she had been disposed to support this design but after seeing the models, she finds that the entire design relies on a vocabulary of theatricality: backdrop, curtains, plinths, and actors on states-all devises that present a phenomenon of flatness. From a sculptural point of view, she said that this design approach seems strange and confusing in that so much open space is used for an experience dealing with frontality”).

“detailed design vision.”<sup>75</sup> Each of the firms was paid a \$50,000 stipend to finance their submissions.<sup>76</sup>

Frank Gehry’s firm submitted a five minute video presentation for the third stage.

In his video submission, Gehry stated he “hope[d] to spend time with the Committee – with the family – to make sure the right images are developed and the right tenor of the project represents what people would be comfortable with.”<sup>77</sup> Gehry continued by explaining his vision for “show[ing] President Eisenhower as the normal guy.”<sup>78</sup>

The “main idea” presented in the video “was to make a translucent screen – like a tapestry – made out of metal *so that it required no maintenance*.”<sup>79</sup> This tapestry would be composed of “metal fibers that would depict the highlights of Eisenhower’s career.”<sup>80</sup>

### **Gehry Design Vision Submitted to Memorial Commission in March 2009**



This was not the first time Gehry had used the concept of a metal tapestry in one of his designs. Gehry’s design for a mall built in Santa Monica, California, in 1980 featured a chain-link screen wrapped around the exterior of the mall’s parking garage that depicted the words “SANTA MONICA PLACE” to advertise the mall.<sup>81</sup> The mall has since been redesigned and the metal screens removed.<sup>82</sup>

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<sup>75</sup> *Eisenhower Oversight Hearing*, *supra* note 4, at 29.

<sup>76</sup> Invoices provided by GSA.

<sup>77</sup> Video Submission: Dwight D. Eisenhower Memorial – Our thoughts on Eisenhower and his memorial, Gehry Partners, LLP, at 00:10 (March 2009) [hereinafter *Video Submission*].

<sup>78</sup> *Id.* at 00:33.

<sup>79</sup> *Id.* at 01:44 (emphasis added).

<sup>80</sup> *Id.* at 02:10.

<sup>81</sup> See Jorge Casuso, *The Rebirth of a Mall*, The LookOut news, April 20, 2008, available at [http://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2008/April-2008/04\\_20\\_08\\_The\\_Rebirth\\_of\\_a\\_Mall.htm](http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2008/April-2008/04_20_08_The_Rebirth_of_a_Mall.htm).

<sup>82</sup> See ArtDaily.org, *Frank Gehry’s Santa Monica Place Mall Deconstructed in a Green Renovation*, available at <http://artdaily.com/news/39766/Frank-Gehry-s-Santa-Monica-Place-Mall-Deconstructed-in-a-Green-Renovation#.U6sOH7FXj1o> (last accessed June 26, 2014).

The design vision video concluded by discussing how the Memorial would be adapted to “modern life.”<sup>83</sup> First it will have a “website that people – before they get to actually go to the memorial – can prepare themselves”<sup>84</sup> and second, “when [the visitors] get there using their cell phones and or mp3 players they can explore the site and walk through it and listen to speeches in many languages and or look at a guide of Washington communities.”<sup>85</sup>

The blind jury consisted of nine individuals, including three architects, two landscape architects, one urban designer, one information designer, one lighting designer, and an Eisenhower family representative. Two of the members of the blind jury also served as members of the evaluation board under the Design Excellence Program.<sup>86</sup> The jury met on March 17 and 18, 2009 in Washington, D.C. to evaluate the proposals.

### *Design Jury Questioned Gehry's Tapestry Design*

On March 18, 2009, the design jury issued its report to the evaluation board. It identified the strengths and weaknesses for each of the four finalists.

For the Gehry proposal, the design jury identified as strengths how the **“stainless steel screens expand the scale of the memorial,”** the **“scheme is very striking from a distance,”** and **“[m]any elements are questionable (ancient tree) but the attitude behind them all is worth further exploration.”**<sup>87</sup>

However, the design jury also noted several weaknesses, including how **“[t]he idea of the super sized screen is fascinating but if you can see the images from afar then you won't be able to read them up close which is the opposite of Eisenhower the man. Also the screen technically can't work, and without it what does the scheme have left?”**<sup>88</sup>

The design jury also found, **“The scheme turns its back on the LBJ building which isn't appropriate to Eisenhower's legacy and is problematic for the people working for the Department of Education in that building.”**<sup>89</sup> The jury also described the proposal as **“chaotic when viewed upclose,”** and the report described how it reminded **“one juror of a ‘ruin in advance’.”**<sup>90</sup> It also recommended that, **“The support team should be reconfigured with respect to information graphics and theatrics. Each consultant is a star in his own right and appears to be detracting from team cohesion.”**<sup>91</sup>

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<sup>83</sup> *Video Submission* at 04:20.

<sup>84</sup> *Id.* at 04:25.

<sup>85</sup> *Id.* at 04:33.

<sup>86</sup> Robert Ivy and David Eisenhower served on both the evaluation board and the design jury. James Polshek, Peter Bohlin, Maggie Ruddick, Mikyoung Kim, Maurice Cox, Richard Saul Wurman, Raymond Grenald also served on the design jury, with Amy Weinstein as the competition advisor. U.S. Gen. Services Admin., Dwight D. Eisenhower Memorial Design Competition Jury.

<sup>87</sup> U.S. Gen. Services Admin., JURY REPORT: Dwight D. Eisenhower Memorial, Stage III Design Vision, at 3 (Mar. 18, 2009).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

In summary, the design jury found:

**None of the visions expressed the whole essence of Eisenhower. The schemes as presented were mediocre for such an important memorial. This memorial will be in DC for a very long time and its [sic] about a great man, it may be well worth the time and expense to have the two best teams do another round of design before deciding between them.**<sup>92</sup>

Instead of asking for another round of submissions, the GSA evaluation board selected the first and second place candidates upon receipt of the jury report. It remains unclear based on the information provided by GSA and the Commission why these two firms were recommended to the Memorial Commission when the jury had suggested considering another round of submissions.

According to the minutes of the Commission's March 31, 2009 board meeting, Gehry Partners, LLP was identified as the first choice and Krueck & Sexton of Chicago the second choice. These candidates were then submitted to the Commission for consideration and debate. Commissioner Geduldig "elaborated that Frank Gehry is the world's most accomplished architect, the 'Frank Lloyd Wright of the modern era.'"<sup>93</sup> The Commission unanimously voted to approve Gehry as the Commission's designer of choice.

Nearly a year later, on March 25, 2010, the Commission held a further meeting to choose a preferred design scheme from three alternatives that had been submitted by Gehry. Of the different Gehry designs considered, the Commission approved the most expensive of the three design concepts submitted – the one that featured large, steel tapestries, and consequently was "represented by the largest architectural models on display in the meeting room."<sup>94</sup> In making its selection, the Commission was approving Gehry as the designer – with the tapestry feature a central part of his design vision – but it was not approving an actual design. That would come later – and remains unresolved.



**It should have come as no surprise, least of all to the selected designer, that the Memorial would need to be constructed of durable material suitable for the outdoor environment, preserve the views of the Capitol along Maryland Avenue, SW, incorporate green space, and respect and complement the surrounding buildings and environment. These were requirements established under the CWA and imposed by the NCPC in its review process. And yet, the design still has not satisfied these requirements.**

**The development of the Memorial design has centered on the selection of a world-renowned architect and the unprecedented use of materials and design elements that appear unsuitable for the outdoors and out of character with other monuments, memorials, and buildings in the surrounding area.**

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<sup>92</sup> *Id.* at 1.

<sup>93</sup> Eisenhower Memorial Comm'n, March 31, 2009 Meeting Minutes, at 5.

<sup>94</sup> Eisenhower Memorial Comm'n, March 25, 2010 Meeting Minutes, at 2.

## Overview of Eisenhower Memorial Contracts

As already mentioned, documents and information were received in response to the Committee's oversight requests from the National Park Service, General Services Administration, and the Eisenhower Memorial Commission, and interviews were conducted of several participants in the project. However, with the responses provided, it is still unclear how much money this Memorial has already cost the American people, how much the Commission intends to spend, and whether any party has established a firm budget that should not be exceeded.

Responses to requests for budget documents and the amount of total money expended and obligated revealed various answers from each responder, making the total cost of the project difficult to calculate and presented in this report only in a range rather than a finite number. This highlights one problem with having these multiple organizations and players charged with "managing" the contracts and project.

### *Gehry Design Contract*

The original contract with Gehry Partners was signed in January 2010 and was valued at approximately \$9,954,446, for the base contract and six options.<sup>95</sup> The original contract tasked Gehry to perform the Pre-Design and Preliminary Concept phases by December 2012.

Since then the Commission has also exercised Options 1B, 2, and 3 covering Final Concept Development, and Construction Document phases.

### **Gehry Contract with Original Cost Values**

<b>Contract Stage</b>	<b>Purpose</b>	<b>Amount</b>	<b>Date Exercised</b>
<b>Base</b>	Pre-Design Phase	\$1,030,782.46	1/8/2010
<b>Option 1A</b>	Preliminary Concepts	\$1,026,440.05	1/8/2010
<b>Option 1B</b>	Final Concept	\$1,744,633.54	5/20/2010
<b>Option 2</b>	Design Development	\$1,639,989.65	1/13/2011
<b>Option 3</b>	Construction Documents	\$2,098,299.64	9/20/2011
<b>Option 4</b>	PCCS	\$1,553,800.26	n/a
<b>Option 5</b>	Construction Support	\$707,655.57	n/a
<b>Option 6</b>	Record Documents	\$152,844.81	n/a

The Commission's decision to exercise Option 3 – for the creation of construction documents – in September 2011 raises significant questions about the work being performed under that task and the Commission's eagerness to move the Gehry design

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<sup>95</sup> Gehry subsequently entered into a Joint Venture Agreement with AECOM Design on February 2, 2010 to form "Gehry Partners-AECOM Eisenhower Memorial Design Team, A Joint Venture" to perform the services required under this contract.



forward at any cost. When the Commission committed to spending these funds for development of the construction documents, no design had been approved and the Commission had no reason to believe approval would be forthcoming. Indeed, the Commission is still waiting for design approval almost three years after this option was exercised. However, the Commission exercised the option for development of construction documents, and paid a nearly 24% upcharge from the originally contracted value. According to the Commission's fiscal year 2015 budget request, Gehry has completed 95 percent of the task under option 3 to develop the construction documents.

Although the original contract specified the values of each possible option, upcharges have been assessed each time an option has been exercised. For example, in the original contract, Options 1B, 2, and 3 were valued at \$5,482,922.83. However, when these options were exercised, the contract was modified to increase the costs. The chart below shows the original value of each option, the increase included in the modification, and the total cost for each.

#### **Gehry Contract with Exercised Options and Revised Cost Values**

<b>Contract Stage</b>	<b>Value in Original Contract</b>	<b>Upcharge in Modification</b>	<b>Total Cost</b>	<b>% Increase</b>
<b>Option 1b</b>	\$1,744,633.54	\$236,609.00	\$1,981,242.54	13.5
<b>Option 2</b>	\$1,639,989.65	\$444,786.35	\$2,084,776.00	27.1
<b>Option 3</b>	\$2,098,299.64	\$503,195.36	\$2,601,495.00	23.9
<b>TOTAL</b>	\$5,482,922.83	\$1,184,590.71	\$6,667,513.54	21.6

These three modifications alone have added \$1,184,590.71, or more than 21%, to the value of the contract. The original request for proposal informed interested designers that the Memorial would include a "significant electronic component," and Gehry's 2008 submission stated he desired to "explore the use of new media" as "a powerful tool for the communication of complex ideas" and "engaging storytelling." GSA's December 2012 Statement of Work for the contract included tasks for the development of both on-site and off-site electronic memorial features, and these were identified as an Option 9 for the contract. However, the signed contract deleted the off-site electronic memorial component from the Statement of Work under Option 9, and the remaining task for work on the on-site electronic memorial did not include a proposed cost.



**As of June 2013, the Gehry contract had been modified 23 times, increasing the total value of the contract by almost \$6.5 million, nearly 65 percent of the original contract's value. These additional costs cover the development and testing of the steel tapestry mockups, services required for multiple NCPD submissions, parking revenue studies, specimen tree procurement, and various other surveys and studies.**

**The Commission informed the Committee that as of May 2013 it already paid Gehry more than \$11 million with an additional \$3.3 million due on the contract for a total of \$14.3 million.<sup>96</sup> The contract documents that were provided by GSA, however, show the total cost of the Gehry contract is between \$16.4-19 million. A detailed list of the Gehry contract modifications/options can be found in Appendix B.**

### **Plethora of Other Contracts and Management Support Expenses**

While the Commission staff itself is moderately sized, there are significant costs associated with the contract and project management surrounding this Memorial. In addition to Gehry Partners having responsibility for cost and project management,<sup>97</sup> the Commission has contracted with an Executive Architect, GSA, and Gilbane Building Company (“Gilbane”) to help manage the project. Unfortunately, due to the variety of responses provided to basic questions about costs and expenses, it remains difficult to provide concise and accurate cost estimates of how much each entity has been paid.

As discussed above, the Commission has allowed upcharges in each option exercised for the Gehry contract, as well as other contract modifications. So, with all of this money spent in hiring entities to manage the contract, it is disappointing that no entity appears to be attempting to contain costs and bring the project in on budget – such that one exists.

The Commission engaged GSA’s Project Management Services in 2010 and has paid GSA almost \$4.4 million in the years since for a variety of services. GSA and the Commission selected Gilbane to “manage the design and construction” of the Eisenhower National Memorial in 2010, and the firm has been paid \$7.2 million for these management and administrative services as well.

In addition, the New York media design firm Local Projects has been contracted by Gilbane to develop and operate the Commission’s website, develop the electronic memorial components, and create a public relations campaign to increase the visibility of General and President Eisenhower’s accomplishments and support for the memorialization effort. The task of managing this contract has also fallen to Gilbane, accounting for a significant portion of the fees paid to Gilbane.

Finally, Executive Architect Feil was hired by the Commission originally in 2005 to provide “architectural and engineering design management services and construction management services.”<sup>98</sup> He has received more than \$1.7 million in compensation between 2005 and 2013, in addition to having his parking (\$250 per month) and broadband internet (\$67.15 per month) reimbursed by the taxpayers.

The total \$13.3 million paid to GSA, Gilbane, and Executive Architect Feil is in addition to and separate from the millions paid to Gehry Partners, whose contract also includes provisions to cover cost management work associated with being awarded the contract, as well as developing the design itself.

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<sup>96</sup> Total amount paid to Gehry Partners, LLP, received from Eisenhower Memorial Comm’n May 30, 2013.

<sup>97</sup> Cost Management and Project Management responsibilities are laid out in the original Statement of Work agreed to in January 2010.

<sup>98</sup> Job descriptions of full time employees and contractors, received from Eisenhower Memorial Comm’n May 30, 2013.

## GSA

In addition to its services in overseeing the design competition, GSA has continued to provide the Commission administrative and support services on a reimbursable basis as required by Congress.<sup>99</sup> For example, GSA has overseen the selection of a separate project management firm and assists the Commission with paying its contractors, including Gehry.

As described by Commission staff in response to document and information requests, the Commission pays three distinct GSA branches or divisions; the Agency Liaison Division, the External Services Branch, which are the administrative and support services proscribed by Congress, and GSA Project Management. The Commission pays GSA's Agency Liaison Division fees for support services, including Human Resources Management, Financial Management, Legal Services, Contracting/Acquisitions, and Space Management;<sup>100</sup> and pays GSA's External Services Branch for help with Financial and Payroll services including Accounting and Reporting Services, standard general ledger reconciliation, payment processing, regulatory and managerial reporting, payroll, and coordination with OPM.<sup>101</sup>

The bulk of the payments from the Commission to GSA appear to be for Project Management services, which consists of pre-design management, design management, construction management, management of post construction activities and project closeout. The numbers provided by the Commission only go back to 2010, and claim that GSA has been paid approximately \$822,195 in project management fees. However, documents provided by the GSA show that through May 2013 the Commission has paid GSA \$4,366,888 in fees for all services.

## Gilbane

GSA accepted Gilbane Building Company's proposal for Construction Management Support Services for the Eisenhower Memorial Project on January 8, 2010 after a full and open competition. Under the agreed upon revised Scope of Work dated March 2009, Gilbane – as construction manager – “shall assist the GSA in ensuring that the [Commission] and GSA requirements with regard to scope, schedule, budget, quality, and other aspects of the project are met.”<sup>102</sup> Gilbane's role was “as a facilitator and coordinator of the activities of all parties to ensure that the project execution proceeds according to plan.”<sup>103</sup>

The Scope of Work divides Gilbane's duty to oversee the Eisenhower Memorial project into multiple phases: the Pre-Design Stage, the Design Stage, the Construction Stage,

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<sup>99</sup> Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, 122 Stat. 754, 784 (2008). *See also*, Total amounts paid to GSA, received from Eisenhower Memorial Comm'n May 30, 2013.

<sup>100</sup> The records provided by the Commission show that beginning in Fiscal Year 2001; they paid the Agency Liaison Division an average of \$33,072 per year for a total through FY 2013 of \$429,935.00. Total amounts paid to GSA, received from Eisenhower Memorial Comm'n May 30, 2013.

<sup>101</sup> Commission records show that beginning FY 2001, the Commission paid the External Services Branch an average of \$8,761 per year for a total of \$113,899.00. Total amounts paid to GSA, received from Eisenhower Memorial Comm'n May 30, 2013.

<sup>102</sup> U.S. Gen. Services Admin., GS-11P-09-MK-C-0050, Request for Proposals: Construction Management Support Services for the National Dwight D. Eisenhower Memorial Project, Section C: Scope of the Construction Management Services, at 5.

<sup>103</sup> *Id.*

and the corresponding commissioning stages. While some of these stages were covered by the base contract, others were covered under options that could be exercised at that time or later.<sup>104</sup>

Under the base contract, Gilbane was required to provide management services for the Pre-Design Stage, the Design Stage (including the Design Concept Phase, the Design Development Phase, and the Construction Documents Phase), and Construction Procurement. The exercised options are also related to the design: Option 1 covers Design Stage Commissioning and Option 5 covers Design Stage e-PM (e-Project Manager). The total value of the original contract was \$1,327,890.<sup>105</sup>

Since Gilbane's proposal was accepted in January 2010, the contract has been modified 30 times at an additional cost of \$1,753,834 – more than doubling the value of the original contract as a whole. Specifically, most of the additional expenses fit into one of three categories: time-of-performance extensions, electronic memorial costs, and additional services and support needed to overcome the setbacks experienced during the design stages. According to the Commission's May 30, 2013 response, Gilbane was paid almost \$3.3 million. However documents from GSA indicate the total value of the Gilbane contract with options and modifications was actually \$7.2 million at that time. **A detailed list of the Gilbane contract modifications can be found in Appendix C.**



**More broadly, the numerous modifications reflect either an unanticipated expansion of the project or a failure to take into account the nature of the project from the outset. Many of the modifications cover increased project costs due to design choices, additional support for selecting an electronic memorial contractor, staff adjustments to handle the added workload associated with the approvals process, expenses for testing and mock ups of the design, and design phase time extensions.**

**As discussed above, the approval process and design extensions originate with selecting a design that from the beginning failed to meet the requirements under the Commemorative Works Act and the seven design principles established by the NCPC in 2006. From the documents and information provided, it is difficult to tell why multiple extensions were necessary or how the planned time frame became so unworkable given that the CWA requirements and design principles were well known at the time the contract was entered.**

**It is also unclear why certain modifications – such as those for mock ups and testing, which were referenced in the Scope of Work – were not covered by the original contract. These unanswered questions are especially worrisome since the costs for Gilbane to manage a stalled project continue to accrue.**

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<sup>104</sup> To date, the government has exercised only Options 1 and 5.

<sup>105</sup> Because Options 1 and 5 were exercised at the same time the base contract was executed, they are included in the original contract value.

## *Local Projects*

Although the original 2008 Request for Qualifications issued by GSA and the design vision submitted by Gehry both discuss including an electronic component in the Memorial design, the eventual contract Gehry negotiated did not include work to develop the off-site electronic memorial components. Instead, the Gilbane contract was modified in November 2010 to authorize it to solicit a subcontractor to develop the electronic memorial. The value of this modification was \$37,493, with \$5,294 designated for contract administration and the remaining \$32,199 for the procurement itself. Local Projects was hired as the vendor to construct the electronic memorial and to bolster the visibility of the memorial effort through social media.



As a result, the Gilbane contract was modified three more times between January 2011 and March 2012, at a total value of \$768,375, to authorize the funding necessary for Gilbane to pay Local Projects for its services. Of that amount, almost \$28,000 was designated for Gilbane's expenses with the rest available for Local Projects. For example, almost \$60,000 was earmarked for Local Projects to develop the #ILikeIke2012 Twitter campaign to publicize President Eisenhower. Local Projects also developed an "Ike2012" website to coincide with the launch of the electronic memorial component and the 60<sup>th</sup> anniversary of Eisenhower's election as president.

The Commission has advised Committee staff that, as of May 2013, Local Projects had been paid a total of \$506,827.25 with another \$239,762.48 obligated on the contract. Local Projects continues to develop multi-media features for an electronic memorial, including interactive features on the Eisenhower Memorial website exploring "pivotal moments" in Eisenhower's life. According to the Commission's fiscal year 2014 and 2015 budget justifications, the total anticipated cost for developing the electronic memorial would be \$2.43 million.

## *Executive Architect*

For his efforts, Mr. Feil (and Daniel Feil LLC) has thus far been paid about \$1.7 million.<sup>106</sup>

Mr. Feil was selected for this position by the Commission through a sole-source contract, meaning that there was no full and open competition for this position, but that Mr.

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<sup>106</sup> According to documents obtained from GSA and the Commission, the arrangement with Mr. Feil began in 2005 and has continued every year since. Congress amended the Commission's authorizing legislation in 2008 to specifically authorize the hiring of an architect to act as an agent on the Commission's behalf. Since 2009, Mr. Feil's yearly contract amount has exceeded \$230,000.

Feil was chosen by Commission staff to serve in this role. In conversations about the selection process, Commission staff merely stated that Mr. Feil was uniquely qualified for this position, and that they had to select someone who really wanted to do this job.

His scope of work includes providing architectural and engineering design management services; construction management services; and to act as a liaison with public agencies, the public, and the media.<sup>107</sup> While he is technically a full-time contractor, rather than an employee, Mr. Feil has been central to all aspects of the Commission's work to date, including the site selection, design competition, and interactions with various government and non-government agencies on behalf of the Commission.

As Mr. Feil was hired into the project in 2005, he was in the best position to shepherd the Commission through the process set forth by the Commemorative Works Act, and to ensure that any selected design adhere to the seven design principals established in 2006.



**The Commission's decision to hire and subsequently rely on three separate project management teams, costing more than \$9.2 million in fees alone, and having committed to a design that apparently cannot be approved under the existing guidelines raises grave concerns about the ability of the Commission staff to complete this project and be responsible fiduciaries of taxpayer dollars.**

### More Sole Source Selections

In addition to employing Executive Architect Feil through a sole-source contract, the Commission also selected a variety of other contractors, both full and part time, as sole-source selections without any competition or open selection process. These positions include the Communications Director, a Senior Consultant for International Affairs, a Senior Consultant for West Coast Donor Development and others. Not including Mr. Feil, these additional contractors have been paid more than \$450,000 between fiscal year 2010 and 2013.

### *Chris Kelley Cimko*

The Commission selected Chris Kelley Cimko as Communications Director and her company Cimko Strategies to provide "strategic communications and public affairs" to the Commission without open competition. It is unclear how Cimko Strategies was selected by the Commission, as there was no announcement or request for proposal sent out in an official capacity. Based on documents provided to the Committee, the Commission first selected Cimko Strategies as Communications Strategists and Media Liaison in March of 2012.

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<sup>107</sup> Job descriptions of full time employees and contractors, received from Eisenhower Memorial Comm'n May 30, 2013.

According to documents provided by the Commission, Ms. Cimko's qualifications include her "involvement with the World War II" memorial as the "daughter of former Chairman of the American Battle Monument Commission, General Paul X. Kelley, USMC (Ret.)". General Kelley currently serves as one of the co-chairs of the Eisenhower Memorial Commission Advisory Committee.<sup>108</sup> He spoke in favor of the Gehry design at the Commission's June 2013 board meeting<sup>109</sup> and has co-authored a letter to the editor in support of the Memorial.<sup>110</sup>

The Commission initially hired Cimko Strategies for a period of two months with an estimated compensation of \$12,500 per month for a total contract value of \$25,000. Following the original contract, the Commission signed at least three contract modifications extending the relationship with Cimko Strategies and increasing the contract value by \$178,000.

### *Colonel Donald Jordan*

Colonel Donald Jordan was selected as the Senior Consultant for International Affairs and, according to Commission documents, he provides "consultation in the areas of global and political-military affairs to fully develop and implement a strategy to garner international political and financial support for the memorial." Colonel Jordan previously served as Senior Defense Policy Advisor to the U.S. Ambassador at NATO Headquarters and as a military advisor to the U.S. Ambassador to the European Union, and as a Special Advisor for International Affairs to the Vice President of the United States. He was paid \$37,000 in fiscal year 2013.

### *Thomas E. Lorentzen*

Thomas E. Lorentzen was selected as Senior Consultant for West Coast Donor Development and provides consultant services in support of the Commission's private fundraising efforts. According to Commission documents Mr. Lorentzen served as an appointee in three U.S. Presidential Administrations and was appointed to serve on the National Board of the Institute of Museum & Library Services. It is unclear what fundraising experience he has.

Mr. Lorentzen's fundraising work is in addition to the work provided by the fundraising firm Odell, Simms, and Lynch and The Webster Group, which also conducted fundraising activities for the Commission.

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<sup>108</sup> The Advisory Committee is made up of 25 men and women with a variety of backgrounds who serve to provide counsel and guidance to the Commission. *Committees*, Eisenhower Memorial Comm'n, <http://eisenhowermemorial.gov/#/commission/committees> (last accessed July 14, 2014).

<sup>109</sup> Eisenhower Memorial Comm'n, June 19, 2013 Unofficial Meeting Minutes, at 3-4.

<sup>110</sup> General P.X. Kelley and Frank Fahrenkopf, *It's Time to Finish Ike's Memorial*, Roll Call, Feb. 24, 2014, available at <http://www.rollcall.com/news/its-time-to-finish-ikes-memorial-letter-to-the-editor-231024-1.html>.



### *Dr. Louis Galambos*

Dr. Louis Galambos was selected as “Senior Advisor” and provides “expert opinions on all matters related to the Eisenhower legacy and Chairs the Eisenhower Memorial Quotations Committee.” Dr. Galambos is the Editor of The Papers of Dwight David Eisenhower. He was paid almost \$139,000 between fiscal years 2003 and 2010.

### **Expensive Design Heightens Need for Fundraising**

The cost of the Eisenhower Memorial has been shrouded in uncertainty from the outset, and equally uncertain is where the money would come from to build the Memorial, with some on the Commission looking to Congress to fund the entire cost and others looking to the private sector to contribute a significant portion.

According to its fiscal year 2015 budget request, the Commission is currently estimating that the total construction costs will be about \$100 million.<sup>111</sup> Congress has already appropriated about \$44 million for design and construction of the Memorial and about \$65 million total.

**As of June 2013, the Commission reported to the Committee that it had about \$27.4 million in unobligated money remaining available.<sup>112</sup> In response to a request for updated information, the Commission informed the Committee’s Majority oversight staff in July 2014 that \$40.9 million has been obligated or spent so far and that \$25 million remains unobligated; however, the Commission explained that an undetermined amount of the unobligated money “will be expended for final design, construction management and approval processes.”<sup>113</sup> Committee staff has requested the Commission clarify the statement that a portion of the “unobligated” funds “will be expended.”**

Under the CWA, construction cannot commence until all necessary funding has been secured. Although that prohibition was suspended for a period of time, Congress reinstituted it in 2013 and it remains in place today. It has become increasingly clear that federal funding alone will not be enough to pay for the Memorial as currently envisioned by Gehry, and that the Memorial as currently designed will also need private funding if it is ever to be built. It had also become increasingly clear that the Commission’s fundraising efforts have fallen short of their own needs and expectations.

In its current budget request, the Commission is seeking an additional \$19 million in construction money from Congress, which when combined with the remaining available

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<sup>111</sup> Eisenhower Memorial Comm’n, Dwight D. Eisenhower Memorial Commission FY 2015 Budget Justification, at 20 (Mar. 4, 2014) *available at* <http://www.eisenhowermemorial.org/sites/default/files/public/budget/FY2015%20Budget%20Justification%200.pdf>.

<sup>112</sup> Total amounts unobligated and obligated received from Eisenhower Memorial Comm’n June 27, 2013.

<sup>113</sup> July 23, 2014 Memorandum from Andrew N. Cook, K&L Gates, on behalf of the Eisenhower Memorial Commission.

appropriations “will be sufficient to complete the first phase of the memorial’s construction.”<sup>114</sup> That means the Commission would need to receive considerable private sources of funding to construct the Memorial if it did not receive any additional federal appropriations.

### *Fundraising Needed but Goals Unrealistic*

Early on in the design process, members of the Memorial Commission identified the importance of private fundraising as a way to complement and offset the need for federal appropriations.

According to the minutes of the Commission’s July 26, 2007 board meeting, “Mr. Feil stated that federal funding is most efficient and appropriate for the design of the Eisenhower Memorial. Funding for the actual construction may be split through a public-private mix.”<sup>115</sup>

At the same meeting, Senator Inouye “cautioned that in the current appropriations environment funding cannot be guaranteed. . . . Senator Inouye stated that a fundraising plan was important since appropriations politics were difficult.”<sup>116</sup>

It appears that to at least some on the Commission that the success of the fundraising campaign would depend on the Memorial’s design. At the July 2007 board meeting, “Chairman Siciliano concurred [with Senator Inouye], but added that a fundraising campaign for *construction* will depend upon the EMC’s ability to show the public what the memorial will look like.”<sup>117</sup> (Emphasis in original)

The Commission, working through GSA, hired the Webster Group, Inc., in March 2008 to develop a preliminary fundraising feasibility study for the Eisenhower Memorial. The Webster Group was involved in fundraising for the September 11 Memorial at the Pentagon and the Air Force Memorial. The original contract was valued at \$23,904.64, with an option valued at \$41,965.76 to conduct a more detailed feasibility study.

The Webster Group submitted its Preliminary Fundraising Feasibility Study Report to the Eisenhower Commission on April 11, 2008, recommending for further study a preliminary fundraising goal of \$45 million, of which \$36 million would cover 45 percent of an assumed \$80 million in construction costs and \$9 million in fundraising expenses. Under this scenario, Congress would have been expected to appropriate \$44 million to cover the remaining construction costs.<sup>118</sup> The preliminary report also recommended the Commission establish a separate non-profit group with tax-exempt status to receive donations.

As part of its preliminary report, the Webster Group identified several potential obstacles to the fundraising goal that also warranted further study. For example, it

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<sup>114</sup> FY 2015 Budget Request, at 3.

<sup>115</sup> Eisenhower Memorial Comm’n, July 26, 2007 Meeting Minutes, at 3.

<sup>116</sup> *Id.* at 4.

<sup>117</sup> *Id.*

<sup>118</sup> As of April 2008, Congress had already appropriated \$8.35 million to the Commission.

suggested that a prohibition on donor recognition at the Memorial site “may dissuade potential donors. There may be ways to overcome this issue, such as electronic acknowledgement and other creative means of donor recognition.”<sup>119</sup> The preliminary report also questioned whether potential donors suffered from “fatigue” and that they may consider that that have already supported similar causes and memorials. It also suggested that the public was largely unaware of President Eisenhower and that a donor pool had yet to be established. The report also questioned whether fundraising for the Memorial would negatively impact fundraising by the Eisenhower legacy organizations.

In May 2008, Webster’s contract was modified to exercise the option for the more detailed feasibility study. The value of this modification was \$32,376. However, the contract was modified two more times in July 2008, increasing the value by another \$48,075.15. It was modified a fourth time in September 2008, increasing the value by \$21,328.26 to a total of \$125,684.05. The more detailed study, called the Phase II report, was based on interviews with more 35 individuals with a connection to the Eisenhower family or expertise in history, business, or philanthropy and updated the findings and recommendations in its preliminary study.

In the two intervening years between the initial feasibility study and when the second one was prepared, the American economy faltered and the Commission selected Frank Gehry as the designer. In October 2009, Congress also appropriated \$16 million for design and construction of the Memorial and \$3 million for Commission expenses and design costs.

**On March 17, 2010, the Webster Group submitted its Fundraising Feasibility Study-Phase II to the Commission. The report’s key recommended was that the fundraising target needed to be lowered: “The current economic downturn was a key factor in the attitudes of potential donors for this study, particularly in regard to the proposed \$50 million goal, which seems excessive to many. . . . Given the constraints now faced by the Eisenhower Memorial Commission, including leadership and economic climate, \$10 to \$15 million is recommended as an achievable goal.”<sup>120</sup>**

**In discussing the Memorial’s costs and fundraising goals, the Phase II report noted, “Individuals interviewed feel the price tag was much too high for the memorial, and there is concern that the architect chosen will result in even higher costs. Generally, in projects like this, the cost escalates because people start to embellish the design and/or plan, which further exacerbates the budget and time frame.”<sup>121</sup>**

The Phase II report also recommended stronger leadership to coordinate the fundraising campaign, more coordination with the existing legacy organizations, and an international component.

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<sup>119</sup> The Webster Group, Inc., Preliminary Fundraising Feasibility Study Report for the Dwight D. Eisenhower Memorial Commission, at 4 (Apr. 11, 2008).

<sup>120</sup> The Webster Group, Inc., Fundraising Feasibility Study-Phase II for the Dwight D. Eisenhower Memorial Commission, at 2 (Mar. 17, 2010).

<sup>121</sup> *Id.* at 24.

At the Commission's board meeting a week later, Chairman Siciliano stated that he "hopes for maximum federal support, that precedent exists for 100 percent federal funding of presidential memorials" and that "it had been the Commission's historic intention to seek 100 percent federal funding, though planning for private-sector fundraising is already under way."<sup>122</sup>

According to the minutes for the March 25, 2010 board meeting, the revised fundraising goal apparently was not discussed. It is unclear whether the other board members were aware that the fundraising consultant was now advising that they could expect private donations to contribute only between \$10 and \$15 million, meaning even more federal resources would need to be secured to make up the difference.

After the Phase II study was submitted, Webster Group's contract was extended and modified in July 2010, at a cost of \$96,426, to provide the Commission with "interim donor and leadership development" services.<sup>123</sup>

**In the meantime, GSA acting on behalf of the Commission issued a request for proposal for a fundraising consultant "to manage, develop, and implement a national and international strategic, realistic, dynamic, and all-inclusive capital campaign in order to raise \$30-35 million in private financing for a memorial to Dwight D. Eisenhower across the street from the National Mall."<sup>124</sup> It is unclear from the information that has been provided to the Committee why GSA's request for proposal listed the fundraising target at \$30 to \$35 million, not the \$10 to \$15 million the Webster Group had determined was realistic.**

Under a section entitled "constraints," GSA's request for proposal informed the interested firms that, under the CWA, "the project must have all funds available before construction may begin. The EMC is exploring alternative financing options that would enable the campaign to continue raising funds during construction."<sup>125</sup> It also warns that the "EMC is not geared for a fast-paced fundraising campaign and may have some difficulty adjusting to the new activities."<sup>126</sup> In terms of the fundraising goal, the request for proposal states private donations "cannot exceed more than 49 percent of the total construction costs due to the federal regulations governing federal and non-federal projects. A final construction estimate has not yet been completed."<sup>127</sup> Three firms submitted proposals on January 20, 2011, but the Webster Group was not among them.<sup>128</sup>

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<sup>122</sup> Eisenhower Memorial Comm'n, Mar. 25, 2010 Meeting Minutes, at 7.

<sup>123</sup> In June 2012, the contract with the Webster Group was modified a final time to de-obligate \$52,060.83 that had previously been approved, bringing to total contract value to \$170,049.22.

<sup>124</sup> U.S. Gen. Services Admin., GS11P11MKC0010, Request for Proposal, Section j, Attachment A, part 2.0, at 3 (revised Dec. 21, 2010).

<sup>125</sup> *Id.* at 5.

<sup>126</sup> *Id.* at 6.

<sup>127</sup> *Id.*

<sup>128</sup> U.S. Gen. Services Admin., GS11P11MKC00100, Fundraising Consultant for a Capital Campaign National Dwight D. Eisenhower Memorial Project, Washington, DC, *provided by* Eisenhower Memorial Commission June 27, 2013.

On March 4, 2011, GSA awarded the fundraising contract to Odell, Simms & Lynch, Inc. (“OSL”). The base contract was worth \$182,500 with options worth an additional \$3.15 million. Under the base contract, OSL was required to develop a fundraising campaign within three months. Under the first contract option (referred to as Task 2 in the contract), OSL would then launch the fundraising campaign with a goal of raising \$7 million over 10 months. The value of this task was originally listed as \$615,000. Under the second option (referred to as Task 3 in the contract), valued at \$375,000, OSL was to raise another \$4 million over the following six months. Under the remaining options (referred to as Tasks 4 to 7), which would kick in over the next 35 months and be worth almost \$2.2 million, OSL was to raise \$24 million – for a total of \$35 million by spring 2015.

In June 2011, OSL prepared a report of its campaign strategy for the Commission, finding the goal of the Memorial’s completion by Memorial Day 2015 was “realistic and tangible.”<sup>129</sup> It identified that the project costs would total approximately \$154 million – with \$119 coming from the federal government and \$35 million from fundraising. Breaking down the costs, OSL estimated the design would cost \$19 million, construction \$112.5 million,<sup>130</sup> and post-construction operations would cost \$22.5 million.

**OSL advised the Commission, “Some prospects will want to know why costs are this high for a memorial structure without an indoor components as museums would have. Some prospects may also question if this project is a good use of Federal funds at a time when political fights over budget cuts saturate the news.”<sup>131</sup> It also praised the Commission as “a strong organization as evidenced by its longevity, the amount of Federal funding secured to date, and progress on the memorial’s design. The project’s association with high profile Congressional Commissioners and Frank Gehry furthers the organization’s credibility.”<sup>132</sup>**

OSL proposed that the Commission establish a separate fundraising committee and an honorary committee who would be dedicated to increasing the visibility of and raising money for the project. OSL also noted that the inability to recognize donors at the Memorial may limit fundraising from some individuals but that the electronic memorial may provide a mechanism for publicizing donors. As for its fundraising strategy, OSL advised that it initially would target high net-worth individuals for seed money and then work to expand the donor pool through direct-mail and other strategies. The minutes for the Commission’s July 12, 2011 board meeting do not discuss the fundraising strategy or indicate that the board approved it, but “Chairman Siciliano shared his hope that the pending \$30 million of partial public funding would be approved.”<sup>133</sup>

In July 2011, the OSL contract’s scope of work was modified for Task 2. The purpose of the change was to focus early fundraising efforts on receipt of leadership gifts and seed

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<sup>129</sup> Odell, Simms & Lynch, Inc., Eisenhower Memorial Fundraising Campaign Primary Challenges, at 6 (June 4, 2011).

<sup>130</sup> *Id.* In an interview with Committee Majority Oversight staff, Dan Feil stated he did not know where OSL obtained its estimates for Memorial’s costs, saying that he considered the construction cost estimate to be between \$65 to \$75 million, not \$112.5 million. Committee staff interview with Dan Feil in DC (Sept. 6, 2013).

<sup>131</sup> Odell, Simms & Lynch, Inc., *supra* note 129, at 6.

<sup>132</sup> *Id.*

<sup>133</sup> Eisenhower Memorial Comm’n, July 12, 2011 Meeting Minutes, at 6.

money. However, the fundraising goal was also lowered from \$7 million to \$4.2 million in commitments, which would still allow the Commission to reach its goal of raising \$13 million by September 2012. Under the modification, \$279,000 was added to the contract (rather than the full \$615,000 authorized in the base contract for this task). The OSL contract was modified in December 2011 to extend the deadline for performing Task 2 by two months to February 16, 2012.

On February 17, 2012, the OSL contract was modified a third time, exercising the option for a revised Task 3 so OSL could continue its fundraising work through the end of 2012. The value of this modification was listed at \$482,000 – a \$107,000 increase over the value for this task in the base contract. Under the revised Task 3, OSL stated its current goal was to raise \$11 million by the end of 2012.

During this time, OSL reached out to a number of high net-worth individuals and helped to organize fundraising events in Georgia and California, among other activities. According to invoices GSA provided, OSL put on hold a number of its activities in response to the design delays and concerns raised by a member of the Commission and the Eisenhower family.<sup>134</sup> OSL also served as a liaison between the Commission and the Eisenhower family and turned its fundraising efforts to the Midwest and West Coast to address these concerns.<sup>135</sup>

In December 2012, the OSL contract was modified to extend the deadline for performance for another 6 months to July 3, 2013.

#### October 2012 Event in San Francisco with Diane Disney Miller and Rocco Siciliano



<sup>134</sup> Odell, Simms & Lynch, April 2012 Invoice (June 1, 2012).

<sup>135</sup> *Id.*

Between December 2010 and March 2013, the Commission's executive staff went on nine trips to locales in Georgia, Kansas, California, and Florida in support of its fundraising goals. These trips cost the Commission more than \$15,000 in airfare and hotel expenses, in addition to the fees paid to OSL, and the Commission is attributing \$91,000 in donations to the outreach prior, during, and after these trips.

In January 2013, OSL submitted an international fundraising strategy that identified foreign embassies and individuals who could be solicited as potential fundraisers and donors. As discussed on page 27, the Commission has hired an additional part-time contractor to assist with its international fundraising efforts.

According to invoices GSA provided to the Committee, the Webster Group was paid a total of \$170,049.22 between 2008 and June 2012. In addition, OSL was paid a total of \$787,790.20 for work performed, with approximately \$155,000 remaining unspent and available, bringing the total value of OSL's contract to \$943,500 as of April 2013.

The Commission's fiscal year 2015 budget justification indicates that it spent no money on fundraising in fiscal years 2013 or 2014, but obligated \$275,000 for fundraising costs.<sup>136</sup> Information provided by the Commission in June 2013 in response to the Committee's document request indicates OSL alone was paid \$179,933 in fiscal year 2013 and received a total of \$1,123,433 between fiscal years 2011 and 2013.<sup>137</sup>

As of June 2013, the Commission reports it had received \$498,987 in pledges and \$121,013 in gifts since fundraising began in 2012, and had approximately \$4.35 million in outstanding asks for a total of \$4.97 million toward its goal.<sup>138</sup> As part of the fundraising process, OSL had built a fundraising pipeline of 23 prospects with a giving capacity of more than \$13 million.

In August 2013, the Commission revised the amount of pledges and commitments it had received upward to approximately \$525,000 and cash gifts received to date to \$120,000.<sup>139</sup> In July 2014, the Commission informed the Committee that it had received \$320,000 in donations in fiscal year 2014, bringing its total contribution amount to \$448,164, and had paid OSL an additional \$95,067 in fiscal year 2014 for a total of \$1,218,500 to date.<sup>140</sup>

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<sup>136</sup> Eisenhower Memorial Comm'n, Dwight D. Eisenhower Memorial Commission FY 2014 Budget Justification, at 34 (Apr. 5, 2013).

<sup>137</sup> Eisenhower Memorial Comm'n, Fundraising Expense to Date by Fiscal Year, *provided by* Eisenhower Memorial Comm'n June 27, 2013.

<sup>138</sup> Odell, Simms & Lynch, Eisenhower Memorial Fundraising Plan Status June 2013, *provided by* Eisenhower Memorial Comm'n June 27, 2013.

<sup>139</sup> August 16, 2013 Memorandum from Andrew N. Cook, K&L Gates, on behalf of the Eisenhower Memorial Commission.

<sup>140</sup> July 23, 2014 Memorandum from Andrew N. Cook, K&L Gates, on behalf of the Eisenhower Memorial Commission.



**Odell Simms & Lynch Fundraising Proposal**

Date	Amount Paid	Original Fundraising Goal	Amount Raised
2010	\$0	\$0	\$3,010 (FY10)
2011	\$461,000	\$7 Million	\$21,355 (FY11)
2012	\$482,000	\$9 Million	\$62,080 (FY12)
2013	\$179,933	\$6 Million	\$41,373 (FY13)
2014	\$95,067	\$7 Million	\$320,346 (FY14)
2015		\$6 Million	
<b>Total</b>	<b>\$1,218,500</b>	<b>\$35 Million</b>	<b>\$448,164</b>

The Commission's website has information about its capital campaign for prospective donors and advises that donors can contribute by check or online through the Pay.gov website. It lists the fundraising goal as \$25 million in one place<sup>141</sup> and \$35 million in another<sup>142</sup> and states the goal is to dedicate the Memorial in 2017.<sup>143</sup> The Commission's operations director is listed as the point of contact for donors.

The Commission attributes its fundraising delays to external factors: "When political and design issues arose in 2012, OSL was forced to adjust public and private sector initiatives accordingly. Given the expectations of final design approval this year and the launching of new fundraising strategies . . . we project securing a significant amount of funds by the end of 2014."<sup>144</sup>

The Commission also reports in its fiscal year 2015 budget justification that OSL had recently begun working with the Commission's Advisory Board, led by General P.X. Kelley and Frank Fahrenkopf, to assist in identifying and recruiting potential high net-worth donors.<sup>145</sup> The Webster Group actually recommended engaging high-profile supporters, not existing Commission members or staff, to serve in fundraising leadership roles in its 2010 feasibility study, and GSA's 2010 request for proposal specifically identified the Advisory Committee as a possible resource for fundraising.

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<sup>141</sup> Eisenhower Memorial Comm'n, Capital Campaign, at 1 (May 2013) available at [http://emc.media.s3.amazonaws.com/public/misc/EMC\\_Capital\\_Campaign.pdf](http://emc.media.s3.amazonaws.com/public/misc/EMC_Capital_Campaign.pdf).

<sup>142</sup> *Join Us*, Eisenhower Memorial Comm'n, <http://www.eisenhowermemorial.org/#/joinus> (last visited June 13, 2014).

<sup>143</sup> Eisenhower Memorial Comm'n, Capital Campaign, at 1 (May 2013) available at [http://emc.media.s3.amazonaws.com/public/misc/EMC\\_Capital\\_Campaign.pdf](http://emc.media.s3.amazonaws.com/public/misc/EMC_Capital_Campaign.pdf).

<sup>144</sup> Eisenhower Memorial Comm'n, Dwight D. Eisenhower Memorial Commission FY 2015 Budget Justification, at 30 (Mar. 4, 2014) available at [http://www.eisenhowermemorial.org/sites/default/files/public/budget/FY2015%20Budget%20Justification\\_0.pdf](http://www.eisenhowermemorial.org/sites/default/files/public/budget/FY2015%20Budget%20Justification_0.pdf).

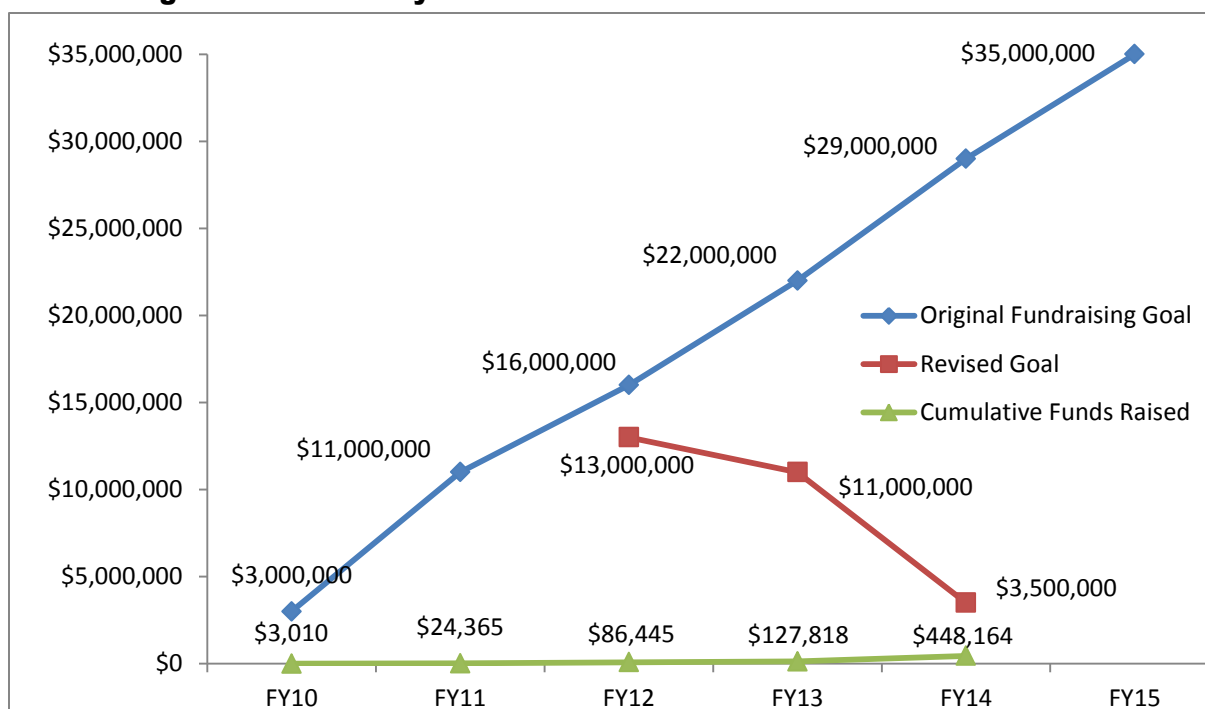
<sup>145</sup> *Id.* at 32.

According to the budget justification, OSL has focused on friends and admirers of Frank Gehry: “Another approach OSL has pursued is to individuals with a strong personal connection to Frank Gehry. Once the Commission has been awarded agency approvals in 2014, they anticipate that they will be able to reinstate this strategy.”



Although actual donations may have picked up in the past year, they remain far short of the original \$11 million goal for 2012 and the \$35 million target for 2015. According to its fiscal year 2015 budget justification, submitted to Congress in March 2014, the Commission said it has secured approximately \$1.7 million in gifts and pledges and had approximately \$3 million in outstanding asks for a total of \$4.7 million toward its goal. That actually represents a decrease of \$300,000 from the approximately \$5 million total in donations received and outstanding asks the Commission reported in June 2013 to the Committee.

#### Fundraising Goals vs. Reality



In sum, the Commission has received less than \$500,000 in actual donations to date, and has paid more than \$1.4 million to fundraising firms. Given the uncertainty and disapproval of the design, it remains unclear how Gehry’s association with the Memorial and delays in receiving the necessary design approvals are affecting the fundraising efforts.

## Ongoing Controversy and Uncertainty about Tapestry Design

Although Gehry contemplated the use of metal tapestries as early as 2009, when he submitted his design vision as part of the GSA selection process, the specific designs, durability, and related costs for these elements of the tapestries have been moving targets for nearly as long. In addition to the irregularities in the process that led to Gehry's selection as designer, significant questions and uncertainties have dogged the development of the design itself with much of the focus resting on the proposal to use metal tapestries.

The metal tapestry feature would be composed of multiple 3-foot-by-15-foot panels featuring twisted, bent, and welded stainless steel wiring. The panels would be suspended from steel cables strung between the 80-foot high stone and steel columns along the perimeter of the Memorial and that when hung together depict barren trees that are intended to "depict the plains of Kansas, representing Eisenhower's humble beginnings,"<sup>146</sup> not the historical events from Eisenhower's life as originally envisioned.

The Eisenhower family and others have noted that the tapestries would be a literal "iron curtain" and are evocative Cold War era Communist iconography.<sup>147</sup>

The original contract that Gehry entered into with GSA in January 2010 included a final Statement of Work ("SOW") and Contract Clauses incorporated by reference. This SOW discusses "mockup allowance" for development of the tapestries and places a value of \$75,000 on this part of the process. The Gehry SOW provides, "The A-E shall have an allowance for GSA-approved mock-ups in the amount of \$75,000. . . . The A-E shall provide

### Tapestry Mock Up



<sup>146</sup> See *Memorial Design*, Eisenhower Memorial Comm'n, <http://eisenhowermemorial.gov/#memorial/design?p=4> (last visited June 13, 2014).

<sup>147</sup> *Eisenhower Oversight Hearing*, *supra* note 4, at 11.

a description of mock-ups, which mock-ups will be produced or constructed, as appropriate, by others.”<sup>148</sup>

The Gehry contract was modified in September 2010 to authorize the \$75,000 in funding for the mock-up allowance. In interviews with Committee oversight staff, Commission staff explained these contract modifications occurred because the durability of the scrims was not something the designer (Gehry) had considered. That was consistent with his statements in the design vision video submitted in the selection process, where Gehry said he liked the idea of using the metal tapestries because they would require no maintenance. In contrast, the contract with Gilbane mentions “mockups” and “mockup testing” in no fewer than four separate sections in the Construction Management (“CM”) Work Statement.<sup>149</sup>

In the CM Work Statement, the mockups are discussed as work necessary for the Design Development Phase (“assist in identifying and defining requirement for physical and virtual mockups as necessary to facilitate design state systems testing”); and the Construction Delivery Phase (“assist . . . in coordinating the scheduling of additional off-site testing . . . and mockups and preparing special testing reports, as appropriate, for building diagnostics tests of critical components and systems”).

Rather than cover these expenses through the fees it had already contracted to receive, Gilbane sought and EMC approved a contract modification for \$150,000 for “an allowance for the provision of GSA-approved mockups.”<sup>150</sup>

The Gehry contract was modified again on January 4, 2011 to increase the mock up allowance by \$100,000. It was modified again in May 2011 to increase it by another \$700,000. An additional \$650,000 was added to the contract in September 2012 for “tapestry development” and the contract was modified again in January 2013 to increase the mock up allowance another \$200,000. As shown in the chart below, the mock-up and tapestry modifications alone have added \$1.65 million to the Gehry contract.

#### **Gehry Contract Tapestry Modifications**

<b>Modification</b>	<b>Date</b>	<b>Amount</b>	<b>Source</b>
PO05	September 7, 2010	\$75,000	Original Cost
PC09	January 4, 2011	\$100,000	Increase
PC12	May 26, 2011	\$700,000	Increase
PC25	September 12, 2012	\$650,000	Increase
PS29	January 17, 2013	\$200,000	Increase
		<b>Total: \$1,725,000</b>	<b>\$1,650,000 increase</b>

<sup>148</sup> U.S. Gen. Services Admin., Architect-Engineer Statement of Work, Dwight D. Eisenhower Memorial, at 72 (revised Dec. 18, 2009).

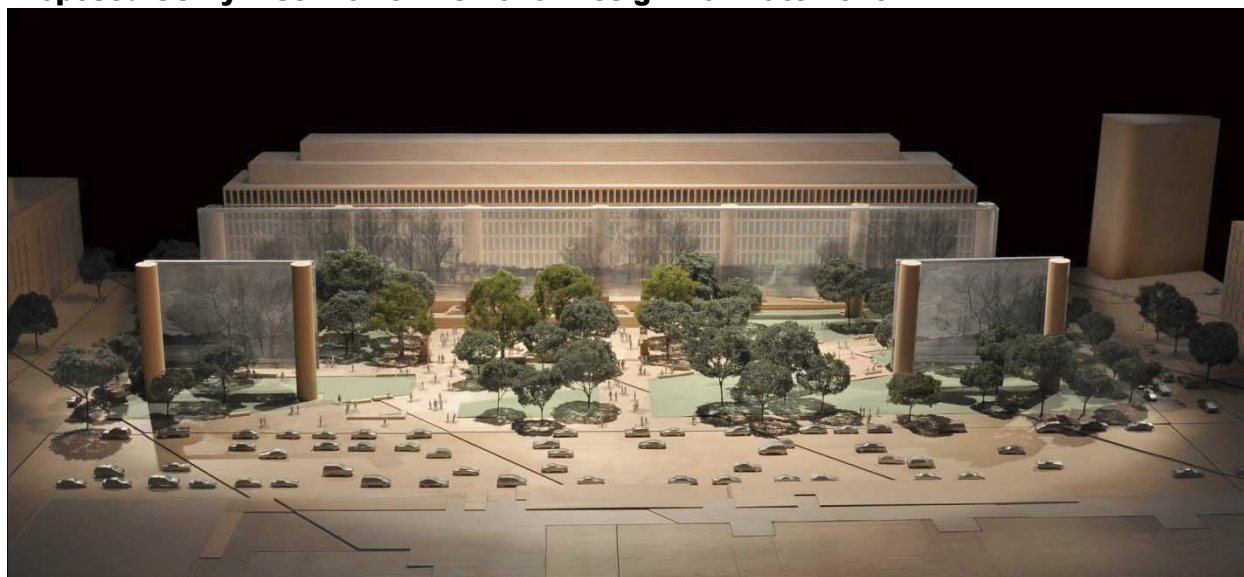
<sup>149</sup> See U.S. Gen. Services Admin, *supra* note 102, at 31, 45-46, 52, 58.

<sup>150</sup> Amendment of Solicitation/Modification of Contract issued by GSA, PBS, NCR to Gilbane Building Co. signed June 28, 2011.

The cost under the Gehry contract to create “mockups” of the steel tapestries that form the border of the Memorial has thus far increased by 2300 percent.

In January 2011, the Commission submitted three Gehry designed memorial concepts to both the CFA and the NCPD to obtain “comments on concept design alternatives, pursuant to . . . the Commemorative Works Act.”<sup>151</sup> Two of the designs consisted of a circular colonnade composed of eight large columns and accompanying stone blocks that would contain sculptures of scenes from President Eisenhower’s life – the only difference between the two was whether the Memorial would be open to pedestrian or vehicular traffic. The third concept, which was similar to the design the Commission had approved in March 2010, took a “different approach” by incorporating three large memorial tapestries of woven stainless steel wire along the north and south edges of the site to create a “proscenium stage when viewed from Independence Avenue.”<sup>152</sup>

#### **Proposed Gehry Eisenhower Memorial Design from late 2010**



*Source: NCPD, Staff Recommendation: Eisenhower Memorial, January 27, 2011*

In its review of the three concepts, the CFA supported the Commission’s “preferred alternative.” Particularly, the CFA strongly approved of the proposed rows of colossal columns. However, the CFA “questioned the presence and character of the . . . metal tapestries” and compared the display to “commercial advertising as seen on billboards.”<sup>153</sup>

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<sup>151</sup> Nat’l Capital Planning Comm’n, Staff Recommendation: Dwight D. Eisenhower Memorial, at 1 (Jan. 27, 2011) *available at* [http://www.ncpc.gov/DocumentDepot/Actions\\_Recommendations/2011Feb/Eisenhower\\_Memorial\\_Concept\\_Recommendation\\_6694\\_February2011\\_.pdf](http://www.ncpc.gov/DocumentDepot/Actions_Recommendations/2011Feb/Eisenhower_Memorial_Concept_Recommendation_6694_February2011_.pdf) (emphasis in original).

<sup>152</sup> *Id.* at 12.

<sup>153</sup> Letter from Thomas E. Luebke, CFA, to Margaret O’Dell, NPS, (Jan. 27, 2011) *available at* [http://www.cfa.gov/meetings/2011/jan/20110120\\_01.html](http://www.cfa.gov/meetings/2011/jan/20110120_01.html).



To that extent, the CFA “strongly suggested consideration of eliminating the tapestries altogether.”<sup>154</sup>

Meanwhile, the NCPC executive director, accounting for the NCPC staff’s review of the proposed designs, commented that none of the three proposed concepts fully satisfied the seven design principles, and reminded the Commission that the 2006 approval of the site was still “subject to the development and implementation of appropriate mitigation through adherence to the adopted design principles.”<sup>155</sup>

The NCPC found the tapestry proposal most problematic in that it adhered to only two of the design principles. NCPC staff commented that the tapestries “read more like an extension of the street wall similar to what would occur if a building was constructed” and that the design “turns its back on the surrounding precinct . . . rather than creating a common space which the surrounding buildings help define.”<sup>156</sup>

Despite the CFA’s and NCPC’s concerns, the Commission proceeded with its previously approved design incorporating the steel tapestries and presented a revised concept at two separate meetings to the CFA and NCPC in September and October 2011, respectively. The primary revision for the design was the rotation of the two smaller tapestries to be perpendicular to Independence Avenue along the east and west edges of the memorial site. The positioning along the edges was “slightly offset to frame the diagonal alignment of Maryland Avenue, SW.”<sup>157</sup>

The CFA was generally receptive to the revised concept, but remarked on the lack of focus in the memorial’s design and “raised concern about the literal translation of photography into art . . . and encouraged further development” of the tapestries.<sup>158</sup>

The commissioners of the NCPC, however, criticized a number of elements of the revised concept. One commissioner compared the lack of intimacy in the design to an “outdoor airport.”<sup>159</sup> While another commissioner expressed frustration with the absence of a “connection to Eisenhower” and how he did not see “the celebration of the man and his contribution.”<sup>160</sup>

Again, NCPC highlighted the importance of the seven design principles, with one other commissioner noting that the revision still failed to address four of the design principles and expressing reservations about whether the design would ever be able to fulfill all principles.<sup>161</sup>

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<sup>154</sup> *Id.*

<sup>155</sup> Nat’l Capital Planning Comm’n, *supra* note 151, at 4 (emphasis in original).

<sup>156</sup> *Id.* at 24-25.

<sup>157</sup> U.S. Comm’n on Fine Arts, September 15, 2011 Meeting Minutes, *available at* <http://www.cfa.gov/meetings/2011/sep/20110915min.html>.

<sup>158</sup> Letter from Thomas E. Luebke, CFA, to Steve Whitesell, NPS (Sept. 22, 2011), *available at* [http://www.cfa.gov/meetings/2011/sep/20110915\\_01.html](http://www.cfa.gov/meetings/2011/sep/20110915_01.html).

<sup>159</sup> Nat’l Capital Planning Comm’n, Oct. 6, 2011 Meeting Transcript, at 94-95, *available at*: [http://www.ncpc.gov/DocumentDepot/Open\\_Gov\\_%20files/Commission\\_transcripts/2011/2011\\_10\\_06\\_NC\\_PC.pdf](http://www.ncpc.gov/DocumentDepot/Open_Gov_%20files/Commission_transcripts/2011/2011_10_06_NC_PC.pdf).

<sup>160</sup> *Id.* at 75.

<sup>161</sup> *See id.* at 85-86.



It was only after the design was well underway – and questions had been raised by the NCPC and others about the durability of the tapestries – that Gehry decided to develop mockups and subject them to the significant testing. That testing remains ongoing.<sup>162</sup>



**Considering the CWA, the authorizing statute and subsequent amendment, and the request for qualifications all discussed that memorials are to be durable, the idea that this central element of the design would not have to be tested shows significant lack of planning and a devil may care attitude by the design team, project managers, and the contracting officers who continued to approve modifications to a contract for something that has been anticipated since day one of this project.**

### **Costs for Upkeep of Metal Tapestries Also Unclear**

The Park Service will be responsible for the management and upkeep of the Eisenhower Memorial upon its completion. In addition to the tens of millions of dollars needed to construct the Memorial, the National Park Service will need millions more to maintain and repair the Memorial over its lifetime.

The exact costs and nature of this work are uncertain, given the assumptions used to develop the cost estimates and ongoing questions surrounding the Memorial's design and unprecedented use of the stainless steel tapestries.

In 2012, Park Service requested Booz Allen Hamilton ("Booz Allen") submit a proposal for conducting a study of the costs for operation, upkeep, and maintenance of the Eisenhower Memorial. The work was to be done under an existing government contract for consulting services between GSA and Booz Allen.<sup>163</sup>

In its July 20, 2012 submission, Booz Allen touted its experience conducting similar facility ownership cost studies for the World War II Memorial, the Martin Luther King Jr. Memorial, and others on behalf of the National Park Service. It estimated that the Total Cost of Facility Ownership study for the Eisenhower Memorial could be completed for a price of \$34,899.49.

On August 28, 2012, the Park Service issued a work order to Booz Allen, valued at \$34,899.49, to submit the completed cost study within 90 days. For the study, Booz Allen was to conduct a comprehensive inventory of all physical elements of the Memorial down to each individual light bulb, plant, and brick and to estimate the cost to maintain and, as necessary, replace each element during a period of 50 years.

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<sup>162</sup> Nat'l Capital Planning Comm'n, Executive Director's Recommendation: Dwight D. Eisenhower Memorial, at 5 (Apr. 3, 2014), *available at* [http://www.ncpc.gov/DocumentDepot/Actions\\_Recommendations/2014April/Dwight\\_D\\_Eisenhower\\_Memorial\\_Recommendation\\_6694\\_April2014\\_.pdf](http://www.ncpc.gov/DocumentDepot/Actions_Recommendations/2014April/Dwight_D_Eisenhower_Memorial_Recommendation_6694_April2014_.pdf).

<sup>163</sup> The existing government contract was GSA MOBIS Schedule GS-23F-9755H. See Booz Allen Hamilton, Booz Allen Proposal for Eisenhower Memorial TCFO (July 12, 2012).

Over the course of the next two months, the Booz Allen team consulted on several occasions with representatives from the National Park Service, Gilbane, and the EMC, including Executive Architect Dan Feil, to better understand the design components.

In an early draft of the study, dated September 18, 2012, Booz Allen initially estimated that the Park Service would need to spend almost \$32.4 million over 50 years (an average of almost \$650,000 per year) to maintain and repair the Memorial. Of that amount, about \$2.96 million would need to be spent for the tapestries over the 50-year period, \$11.3 million on the information center, \$15.6 million on the grounds, and almost \$2.5 million on the sculpture and other features.

On October 26, 2012, Booz Allen met with representatives of the Park Service, from Gilbane, and Executive Architect Dan Feil to focus on the costs associated with the metal tapestries. At that meeting, and in the weeks that followed, Booz Allen prepared more refined equipment inventories and cost estimates and drafts of the study began to isolate the cost of replacing individual tapestry panels from all other aspects of maintaining and repairing the tapestry elements. This would allow Booz Allen to minimize the costs associated with the metal tapestries themselves relative to costs for the other elements, especially the lighting for the tapestries. The Gehry design features LED lights shining from the bottom and tops of the tapestries.

*Tapestry related costs expected to account for about 25% of total costs to operate Memorial.*

In a November 9, 2012 email to Booz Allen, Executive Architect Feil requested that the study's executive summary be revised to highlight how the costs for maintaining and replacing the tapestry panels are small compared to the costs for illuminating the tapestries with LED lights: "This breakout should help people understand that the tapestry itself is not considered not only not costly to maintain relative to the other major components of the memorial [grounds and building now comprising 89% of the costs] but that the tapestry itself is a small component of the overall tapestry number [9%]." <sup>164</sup>

Although questions about the durability and maintenance costs for the tapestries had been asked – if not answered early on in the design process – it was through the development of the Booz Allen study that the questions and costs associated with LED lights that would be used to illuminate the metal tapestries also started to add up.

In a draft of the study dated November 15, 2012, a week after Feil's email, Booz Allen increased the estimated overall total cost of facility ownership for the Eisenhower Memorial to just under \$35.07 million over 50 years – a \$2.7 million increase over figures in the September draft. The \$2.7 million increase in maintenance costs is attributable to higher cost estimates associated with the tapestries, in particular the LED lighting.

Compared to the September draft, Booz Allen revised its estimate for the information center maintenance costs downward more than \$655,000 to \$10.68 million;

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<sup>164</sup> Email from Dan Feil to Jeremy Sewall, copies to Ned Wallace, Tom Stokes, Matthew Tetreault, and David Humm (Nov. 9, 2012, 6:08 EST).

the grounds costs decreased by about \$1 million to \$14.93 million, and the maintenance costs for the sculptural elements decreased by about \$465,000 to \$2.01 million.

According to the November 15 draft, Booz Allen estimated the total tapestry maintenance and replacement costs would be more than \$7.7 million. Booz Allen pulled out the LED lighting costs into a separate line item, as Feil had requested, and estimated lighting costs alone to be more than \$4.9 million over 50 years. The other tapestry related costs were almost \$2.79 million – a decrease of about \$170,000 from what was in the original September 18 draft.

The trend upward in overall maintenance costs – especially for tapestry lighting – did not end there.

The final Total Cost of Facility Ownership study was issued by Booz Allen on November 28, 2012.<sup>165</sup> Overall, the final study estimated the Park Service would need to spend more than \$37.1 million in maintenance and repair costs for Eisenhower Memorial over a 50-year period, or an average of \$740,000 each year.

The tapestry related costs were again higher than what was in the draft two weeks prior.

**In the final study, the tapestry-related costs accounted for 24.9 percent of all operations costs, or more than \$9.2 million over 50 years. Breaking down the tapestry costs further, Booz Allen estimated that the tapestry lighting alone would cost more than \$6.4 million over 50 years – a \$1.5 million increase over the previous draft – whereas the other tapestry elements remained about the same at \$2.7 million total.**

The cost estimates for the other memorial features increased slightly, with the information center costs increasing \$155,000 to \$10.8 million, the grounds costs increasing \$314,000, and other sculptural and other elements increasing \$111,000 to \$2.1 million.

It is understandable that the costs for LED lighting increased as Booz Allen refined its study and obtained more current information about LED lighting currently in use. It is expected that the costs for elements like vegetation, the information center, and the stone work would remain relatively constant throughout the study process as they are common elements in other memorials and their costs already well-understood.

What remains troubling from a budgeting perspective are the unknowns surrounding the maintenance and durability of the tapestry elements themselves.

Booz Allen developed the costs estimates using assumptions from the professional experience of the people involved in the Eisenhower Memorial and the costs for maintaining other memorials. However, the unprecedented use of the metal tapestries for the Eisenhower Memorial complicated the exercise, as there were no equivalent memorials or materials that could ground the cost estimates in reality.<sup>166</sup>

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<sup>165</sup> Between October 10, 2012 and December 16, 2012, Booz Allen submitted three invoices totaling \$34,783.71 for its work on the study.

<sup>166</sup> “The results of this discussion were incorporated into unique cost build-ups created for the Eisenhower Memorial.” National Park Service, Total Cost of Facility Ownership: Dwight D. Eisenhower Memorial, at 5 (Nov. 28, 2012).

For example, Booz Allen assumed that the metal tapestries would need to be cleaned and the metal support wires tightened once a year; the tapestry panels removed and repaired (off site) every five years; the stone masonry columns from which the tapestries would be suspended cleaned every six years and repaired every 50 years; and the LED lighting fixtures replaced every eight years. It also assumed that when a tapestry panel would need to be replaced, it would take two hours for two workers to remove a single metal tapestry panel, weighing 40 pounds each, and that it would require similar time and cost to return a panel to its place. It also assumed that it would take 30 minutes to remove a support cable from which the tapestry panel was suspended, and 1 hour to replace it. These assumptions remained consistent throughout the study.

In contrast, the costs associated with the Memorial lighting increased significantly through the development of the Booz Allen study. For example, Booz Allen initially assumed it would cost only \$30 to replace a single linear foot of LED lighting used to illuminate the tapestry feature; however, after further review and comparison to other installations of LED lights, the assumption was eventually increased to \$555 per linear foot – an 18 fold increase.

The tapestry related costs of facility ownership seem unrealistically low – in terms of the frequency and complexity of the maintenance that will be needed and overall costs involved with operation of this Memorial for decades to come.

As said, Booz Allen estimates the costs for operating, maintaining, and repairing the steel tapestry component of the Memorial will be 25 percent of the total cost, or approximately \$9.2 million, over 50 years. The largest share of the tapestry costs will go to cover repair and replacement of the LED lighting fixtures every eight years, not maintenance of the tapestries themselves. In contrast, Booz Allen estimates that annual inspection and washing of the metal tapestries will cost only \$36,000 per year, or \$1.8 million over a 50-year period.

The durability of the tapestries has been a central part of the analysis, and questions have arisen whether the cleaning, maintenance, and repair levels assumed by Booz Allen will be sufficient to ensure the Memorial's durability or whether increased or decreased levels of maintenance will do damage and undermine the Memorial's durability. For example, questions have arisen whether additional cleaning and maintenance could degrade the materials and impact the tapestries' durability.

To address these concerns, Gehry submitted a technical analysis of the tapestries to the NCPC on February 1, 2013, based on tests of small samples that were fabricated and displayed and proposed cleaning protocols.<sup>167</sup> The analysis recommended that the tapestries undergo a soap and water cleaning once a year in order to prevent corrosion. This appears consistent with cleaning and inspection on an annual basis that Booz Allen assumed in the Total Cost of Facility Ownership study.

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<sup>167</sup> Gehry Partners LLP, Submission to the Nat'l Capital Planning Comm'n: Eisenhower Memorial Tapestry Engineering and Technical Data Summary (Feb. 1, 2013).

The Gehry analysis also recognized that wind-blown debris could become stuck in the tapestries and may need to be removed using leaf blowers and pressure washers as needed. The Gehry analysis was based on a study performed by Gale Associates, Inc. in May 2012 that tested the likelihood of debris getting caught in mock-ups of the stainless steel tapestries and methods for removing the debris.<sup>168</sup> The Gale study found that plastic bags could get caught on the tapestries' metal wiring.<sup>169</sup> The plastic bags generally could be removed with a leaf blower but a pressure washer would be needed to remove ones that had become embedded in the metal wiring.<sup>170</sup> However, the Gale study also recognized a concern with wetted toilet paper being thrown and becoming embedded into the tapestry, which could be removed only with a pressure washer.

## Gale Associates Tapestry Study

Dwight D. Eisenhower Memorial  
Stainless Steel Tapestry Mock-up Testing for Debris



### PHOTOGRAPHIC DOCUMENTATION



Photo 3: Overall view of tapestry prior to windblown debris testing.



Photo 4: Debris being introduced to the tapestry.

In addition, a conservator with the Smithsonian Institution who reviewed the proposed cleaning protocols commented that “soiling is likely to be a significant maintenance problem for the tapestry given the many layers of cable and wire. . . . Not only will dirt contribute to poor appearance, but it will increase corrosion of the stainless steel. Guano may also disfigure the tapestry, since I expect the boxbeam at the top will be an appealing perch for birds, and nesting may also occur.”<sup>171</sup>

<sup>168</sup> However, Executive Architect Feil has questioned the likelihood of plastic bags and other debris getting caught in the upper parts of the metal tapestry and needing to be removed with any great frequency: “But do you see debris flying around at 30 feet? I don’t see what debris people are talking about.” Committee staff interview with Dan Feil in DC (Sept. 6, 2013).

<sup>169</sup> Letter from Gale Associates, Inc. to Gilbane Building Co., (May 15, 2012) *included in* Gehry Partners LLP, *supra* note 167, at 729-734.

<sup>170</sup> *Id.*

<sup>171</sup> Letter from Carol A. Grissom, Smithsonian Institution to Nat’l Capital Planning Comm’n (Oct. 19, 2012) [hereinafter *Smithsonian letter*] *included in* Gehry Partners LLP, *supra* note 167, at 39-40.

She advised that cleaning on an annual basis “is likely to be too infrequent” and would likely require the use of a large lift to reach the top of the tapestries.<sup>172</sup> The lift would need access to the Memorial if not kept on site and would need a stable and secure footing near the tapestries on which to operate. She also noted that given their placement, the tapestries would also be in partial shade and would not completely dry out after becoming wet.<sup>173</sup> This would likely lead to additional soiling and fungus growth, requiring even more frequent cleaning and maintenance.

The methods required for cleaning the metal tapestries could themselves also compromise their longevity and aesthetic qualities. The Gehry analysis also stated, “The use of a high pressure spray is not recommended as it could potentially compromise” the corrosion resistance of the stainless steel cables.”<sup>174</sup>

The Smithsonian conservator also suggested in her comments constructing “a complete second set of panels that could be used for replacement, although obviously storage and cost would be an issue.”<sup>175</sup>

The Gehry analysis noted in its response:

While duplicate set of tapestry panels would have its advantages as noted, creating a duplicate set of tapestry panels would likely be cost prohibitive. The Architectural design and Engineering approach is to create a lasting and durable element and confirmed with a series of tests and analysis. The tapestry panels will be fabricated from automated equipment that utilizes computer controlled technology for welding the wires based on computer files. The computer files for each panel will be archived, along with the equipment developed for fabrication and could be utilized to reproduce another tapestry panel, should that be required in the future.<sup>176</sup>

As detailed as it is, the Booz Allen study is silent on several points that could significantly increase the costs that the Park Service would need to take on.

**For example, the study is silent on the costs associated with maintaining the electronic memorial component, and it is unclear what kind of additional technical and financial support those features would require over a 50- or 100-year time frame. Of particular concern is whether the NPS will be responsible for maintaining the electronic memorial’s legacy system and developing replacements as the current technology becomes obsolete in the coming years and decades. It is also unclear whether any analysis has been conducted about how the visitor experience will be impacted if visitors do not have or cannot afford mobile devices that can access the electronic memorial or when the current technology becomes out of date.**

The study also does not include cost estimates for fabricating, storing, or installing a duplicate set of tapestries – either in the present or at some future date, using archived

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<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> Gehry Partners LLP, *supra* note 167, at 709-710.

<sup>175</sup> *Smithsonian Letter.*

<sup>176</sup> Gehry Partners LLP, *supra* note 167, at 29.



equipment and computer programs used for the original tapestries – and whether this would be a cost associated with ownership and operation of the Memorial to be borne by the Park Service during the next 50 years or beyond.

Gehry has completed testing of the materials intended to be used in the Memorial and submitted its findings to the NCPC in February 2014. The design team has identified a stainless steel alloy that has satisfied the corrosion tests, and tests of the full-scale mock-ups remain to be completed. However, Gehry is continuing to assume that the tapestries will need to undergo routine cleaning only once a year, consistent with the assumptions in the Booz Allen study, even though it seems more realistic that they will need to be cleaned and serviced on a monthly or weekly basis to remove debris and soiling.

The Booz Allen study estimates that the National Park Service will need to spend \$36,000 on the annual inspection and washing of the tapestries, but these cleaning costs could easily rise to \$430,000 (for monthly cleaning) or \$1.8 million per year (for weekly cleaning).



**It is possible that the Booz Allen study underestimates the total cost of facility ownership significantly, and that the actual costs over a 50 year period could increase by \$21.5 million to \$93 million if more frequent cleaning occurs than the one-a-year-cleaning Booz Allen estimated.**

**In other words, the costs for cleaning and maintaining the tapestries alone could dwarf the other costs associated designing, constructing, or operating the Memorial. Removing the tapestry elements and related LED lighting features could save more than \$9.2 million in operations costs over 50 years, based on the Booz Allen study, and possibly tens of millions more if additional cleaning and maintenance are needed.**

## **Conclusion**

According to its fiscal year 2015 budget justification and the capital campaign documents on its website, the Commission expects to receive the necessary approvals to break ground in December 2014 and to dedicate the Memorial in 2017. However, the Commission is still not authorized to commence construction until the design is approved and it secures funding to complete the Memorial. Efforts to line up a construction firm have been halted.

In November 2011, GSA released a notice on behalf of the Commission announcing the intent to issue a Request for Qualifications for a fixed price contract to construct the Eisenhower Memorial.<sup>177</sup> In March 2012, GSA released the Request for Qualifications to identify interested firms, estimating that the estimated construction costs would be between \$65 and \$75 million.

In February 2013, GSA issued a public notice identifying four construction firms or joint ventures as qualified to compete for the contract and stated that the release of the request for proposal would be delayed until about April 7, 2013 due to extended agency approval process and the anticipated construction start date would be pushed back to December 2013, pending design approval and completion of the design documents.

GSA has not publicly announced any further action to procure the construction firm. The Commission's fiscal year 2015 budget justification states that the task of procuring a construction firm is 40 percent complete.

## **Viability of Memorial Design Remains in Question**

The Commission held its most recent board meeting on June 19, 2013.<sup>178</sup> There, Gehry presented a further revised version of his design, which had been adjusted according to the comments received from prior meetings with the CFA and NCPC, and noted that in the future "only minor refinements to the sculptural elements were anticipated."<sup>179</sup> John Bowers, a partner at Gehry Partners, LLP, described the revisions that had occurred. He noted that the "presidential image of Eisenhower posing with a large globe [had been replaced] with the image of Ike signing the Civil Rights Act" and that the sculpture of young Eisenhower had been changed to now depict him "sitting casually on the memorial overlook wall . . . dreaming about his future."<sup>180</sup>

After the presentation by Mr. Bowers, Representative Simpson read a letter by Susan and Anne Eisenhower that expressed their opposition to the Gehry memorial.<sup>181</sup>

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<sup>177</sup> *Construct the New National Dwight D. Eisenhower Memorial in Washington, DC*, U.S. Gen. Services Admin. (May 5, 2012), <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=8ca8ad25667727c4242062a498b00001&cvview=0>.

<sup>178</sup> Eisenhower Memorial Comm'n, June 19, 2013 Unofficial Meeting Minutes.

<sup>179</sup> *Id.* at 7.

<sup>180</sup> *Id.* at 6.

<sup>181</sup> *Id.*

Chairman Siciliano dismissed this criticism, stating “the family does not have to be obeyed.”<sup>182</sup> The Commission then voted and approved the revised Gehry design.<sup>183</sup>

The Commission then presented this revised design to the CFA in July 2013, with the hopes of meeting the CWA’s requirement of obtaining CFA approval for the design. Only four of the seven voting members – Elizabeth Plater-Zyberk, Philip Freelon, Alex Krieger, and Elizabeth Meyer – of the CFA attended that meeting. Yet, the CFA pursued a motion to adopt and approve the Commission’s revised concept, even though three of the members would be absent for the vote.<sup>184</sup>

The motion garnered the support of three of the four present members and was passed. The sole dissenting vote, Ms. Meyer, noted her objection to the motion and stated that the Memorial’s “landscape plan has not been developed sufficiently” and that a project should only be brought to the CFA for approval when everything had been “developed to the same level.”<sup>185</sup>

The Commission was to meet with the NCPC in September 2013, but the Commission requested the revised design proposal be withdrawn from the NCPC’s meeting agenda. In preparation for the meeting, the executive director of the NCPC had released a recommendation against the Commission’s request for approval of the building plans and provided comments on what still needed to be addressed before the Commission would receive NCPC approval.<sup>186</sup> Particularly, the NCPC’s executive director recommended that the Commission continue to revise the proposed concept to incorporate the seven design principles and to continue to test the durability of the untested complexity of the memorial.<sup>187</sup> The Commission explained at the time that it would “forego appearing before [the] NCPC . . . in the belief that the next few months would be better spent satisfying the concerns addressed in the [executive director’s recommendation].”<sup>188</sup>

Specifically, the Commission would address: (1) whether the memorial would meet the material durability criteria of the CWA, and (2) the satisfaction of the seven design principles, three of which were highlighted in the executive director’s recommendation as not yet met.<sup>189</sup>

Since that time, the Commission has met with the CFA in November 2013 and February 2014 to apprise the CFA of revisions and adjustments being made to the design. At the November CFA meeting, “strong concerns” were raised “about the lack of conceptual

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<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 8.

<sup>184</sup> See U.S. Comm’n of Fine Arts, July 18, 2013 Meeting Minutes, *available at* <http://www.cfa.gov/meetings/2013/jul/20130718min.html>.

<sup>185</sup> *Id.*

<sup>186</sup> See Nat’l Capital Planning Comm’n, Executive Director’s Recommendation for Dwight D. Eisenhower Memorial (Sept. 12, 2013).

<sup>187</sup> *Id.* at 3-4.

<sup>188</sup> Lonnae O’Neal Parker, *Proposed Eisenhower memorial hits snag*, Wash. Post, Sept. 10, 2013.

<sup>189</sup> Nat’l Capital Planning Comm’n, *supra* note 186, at 3.

clarity in the site design.”<sup>190</sup> Furthermore, other CFA members echoed Ms. Meyer’s earlier concerns about the landscape plan, stating it was “underdeveloped and cryptic.”<sup>191</sup>

In February 2014, the CFA acknowledged that there is a “fundamental challenge” with the Memorial’s site design and that the “design must be developed to balance successfully the memorial’s natural and artificial elements.”<sup>192</sup> The CFA further suggested several alterations to landscape features the Commission could adopt to assist in meeting the challenge of the site.<sup>193</sup> The Chairman of the CFA recognized that the Commission did not have to take any action on the current submission as it had already been approved, but that it could provide comments on the various aspects.<sup>194</sup>

### **Current Proposed Design for Eisenhower Memorial**



Source: *Eisenhower Memorial Design Booklet*, Submitted by Gehry Partners to NCPC on February 28, 2014, at 6.

On March 4, 2014, the Commission submitted its fiscal year 2015 budget justification to Congress, seeking \$19.3 million for construction of the Memorial and an additional \$2 million for Commission expenses. After taking several months in an attempt to assuage the NCPC’s September 2013 concerns, the Commission submitted to the NCPC a modified design with the hope of obtaining approval of the site and building plans.

However, at its April 3, 2014 meeting, the NCPC disapproved the updated concept, finding the tapestries, as presented, “render the design inconsistent with specific design principles.”<sup>195</sup> The NCPC’s executive director concluded that the modified proposal still

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<sup>190</sup> Letter from Thomas E. Luebke, CFA, to Steve Whitesell, NPS (Dec. 2, 2013) available at [http://www.cfa.gov/meetings/2013/nov/20131121\\_01.html](http://www.cfa.gov/meetings/2013/nov/20131121_01.html).

<sup>191</sup> *Id.*

<sup>192</sup> Letter from Thomas E. Luebke, CFA, to Steve Whitesell, NPS (Feb. 27, 2014) available at [http://www.cfa.gov/meetings/2014/feb/20140220\\_02.html](http://www.cfa.gov/meetings/2014/feb/20140220_02.html).

<sup>193</sup> *Id.*

<sup>194</sup> U.S. Comm’n on Fine Arts, February 20, 2014 Meeting Minutes, available at <http://www.cfa.gov/meetings/2014/feb/20140220min.html>.

<sup>195</sup> Nat’l Capital Planning Comm’n, Executive Director’s Recommendation for Dwight D. Eisenhower Memorial, at 27 (April 3, 2014), available at [http://www.ncpc.gov/DocumentDepot/Actions\\_Recommendations/2014April/Dwight\\_D\\_Eisenhower\\_Memorial\\_Recommendation\\_6694\\_April2014.pdf](http://www.ncpc.gov/DocumentDepot/Actions_Recommendations/2014April/Dwight_D_Eisenhower_Memorial_Recommendation_6694_April2014.pdf).

failed to satisfy the same three design principles that it had failed to meet in September 2013 for exactly the same reasons.<sup>196</sup>

In a statement issued June 6, 2014, the Commission's Executive Director Reddel stated, "While continuing to explore multiple options, the design team has given particular attention to the three design principles found lacking by the NCPC. As noted in the report, the design team has not yet reached a consensus but is preparing to respond to NCPC at its July 10<sup>th</sup> meeting." On July 2, 2014, Executive Director Reddel announced that the Memorial Commission and design team were still considering possible revisions to the design, based on the NCPC's comments, and that it would not attend the NCPC's July 10 meeting or hold a public board meeting in July as had been anticipated.

On July 15, 2014, the House Committee on Appropriations voted 29-19 to strip the Commission of funding for salaries and expenses and directed the Commission to "cease all expenditures relating to the current memorial design" and to limit all future monthly expenditures to "payroll, rent, utilities and other fixed costs."<sup>197</sup>

The Commission has not held a board meeting since June 2013, and it currently does not plan to meet next until September 2014.

### Current Design Still Does Not Satisfy Legal Requirements

The Gehry design and the Commission have failed to address the following design principles established by the NCPC eight years ago:

First, the tapestries fail to preserve reciprocal views to and from the U.S. Capitol along Maryland Ave., SW, by narrowing the historical viewshed "from 160 [feet] to 95 [feet]" leading to a "substantial diminution of what is intended to be one of the L'Enfant Plan's most symbolic and monumental views."<sup>198</sup>

Second, the tapestries unsuccessfully shape the Memorial site as a separate and distinct public space that complements the Department of Education Headquarters and other surrounding buildings. The NCPC concluded that the tapestries, as currently proposed, take away "from the success of the urban park as a unifying element within the precinct," and that "the spatial relationship is established more between the adjacent buildings and the tapestries as opposed to the Memorial Core and the surrounding park."<sup>199</sup>

Third, the tapestry placement does not respect the building lines of the surrounding rights-of-way and the alignment of trees along Maryland Avenue. NCPC belabored the point that while a clear record existed on this design principle and "had been well established since the 2006 site selection process," the proposed configuration of columns

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<sup>196</sup> *Id.* at 4.

<sup>197</sup> H. Comm. on Appropriations Bill Report: *Department of the Interior, Environment, and Related Agencies Appropriations Bill, 2015*, at 96-97, available at <http://appropriations.house.gov/uploadedfiles/hrpt-113-hr-fy2015-interior.pdf>.

<sup>198</sup> Nat'l Capital Planning Comm'n, *supra* note 195, at 33.

<sup>199</sup> *Id.* at 35.

extended beyond the building line creating “a visual intrusion into the existing view along Independence Avenue.”<sup>200</sup>

**The Commission has had ample time to develop and support a Memorial fulfilling the requirements of the CWA. In particular, the Gehry design has not yet demonstrated the durability necessary for a memorial as required under CWA. The Commission’s failure to secure a timely design approval over the past four years based on Gehry’s adherence to the tapestry design has resulted in unnecessary costs at the taxpayers’ expense.**

**In the 15 years since Congress authorized the Memorial, more than \$65 million in taxpayer money has already been appropriated to the effort. In July 2014, the Commission informed Committee Majority oversight staff that \$40.9 million had been obligated or spent so far and that \$25 million remains unobligated; however, the Commission states that an undetermined amount of the unobligated money “will be expended for final design, construction management and approval processes.”<sup>201</sup>**

**Although a designer has been selected and qualified construction contractors identified, the design itself has still not received the necessary approvals and ground has still not been broken.**

### **Costly Exercise and Still no Worthy Tribute**

The National Park Service, General Services Administration, and the Eisenhower Memorial Commission have together provided several hundred documents that were reviewed for the compilation of this report. This report has discussed several concerning elements with how the Commission has managed the worthy task of creating a memorial to General and President Eisenhower. Unfortunately, due to the multiple contracts with dozens of options, upcharges, and contract modifications, it is very difficult to pin down exactly how much money has been spent at each point in this process.

**However, there are a few things that are clear: Congress has appropriated \$65.4 million dollars and private individuals have donated almost \$500,000 to create the Eisenhower Memorial.**

**With that money, the Commission reports it has already paid Frank Gehry and Gehry Partners \$11 million and is due to pay another \$3.3. million for a design that does not meet the requirements outlined by the Commemorative Works Act, or the National Capital Planning Commission eight years ago. The total cost of the Gehry contract that has already been exercised is \$16.4 million and potentially up to \$19 million, depending on unexercised options, according to contract documents provided to the Committee by GSA.**

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<sup>200</sup> *Id.* at 36-37.

<sup>201</sup> July 23, 2014 Memorandum from Andrew N. Cook, K&L Gates, on behalf of the Eisenhower Memorial Commission.

**According to documents provided by GSA, the Commission has paid Gilbane Building Company \$7,223,564 to manage the design and construction of the memorial; GSA \$4,366,888 for pre-design management, administrative support, and design management; and Executive Architect Daniel Feil almost \$1.7 million for design management services – all for a design that does not satisfy the approval criteria.**

These are not all the costs and do not include the millions spent to pay the executive staff of the Commission, the hundreds of thousands spent on rent and support, and office supplies for the Commission's office on K Street NW, or the dozens of other contractors and consultants who have had small responsibilities over the past 12 years.

With millions spent, there is no memorial, and not even a memorial design that can be approved for construction.



### **Appendix A: Appropriated Monies**

<i><b>Fiscal Year</b></i>	<i><b>Appropriations</b></i>	
<b>2000</b>	PL 106-79 (10/1999)	\$300,000
<b>2001</b>	None	-
<b>2002</b>	PL 107-67 (11/2001) PL 107-177 (1/2002)	\$1,750,000 \$2,600,000
<b>2003</b>	None	-
<b>2004</b>	None	-
<b>2005</b>	PL 109-148 (12/2005)	\$1,700,000
<b>2006</b>	None	-
<b>2007</b>	PL 110-161 (12/2007)	\$2,000,000
<b>2008</b>	None	-
<b>2009</b>	PL 111-8 (3/2009)	\$2,000,000
<b>2010</b>	PL 111-88 (10/2009)	\$19,000,000
<b>2011</b>	None	-
<b>2012</b>	PL 113-74 (12/2011)	\$32,990,000
<b>2013</b>	PL 113-6 (3/2013) PL 113-46 (10/2013)	\$1,050,000 \$1,050,000
<b>2014</b>	PL 113-76 (1/2014)	\$1,000,000
<b>Total</b>		<b>\$65,440,000</b>

## Appendix B: Gehry Contract and Modifications

Contract/Option/Mod	Services	Amount Added
Base Contract	Pre-Design Phase	\$1,030,782.46
Option 1a	Preliminary Concepts	\$1,026,440.05
Option 1b	Final Concepts	\$1,744,633.54
Option 2	Design Development	\$1,639,989.65
Option 3	Construction Documents	\$2,098,299.64
Option 4	PCCS – Not Exercised	[\$1,553,800.26]
Option 5	Construction Support – Not Exercised	[\$707,655.57]
Option 6	Record Documents – Not Exercised	[\$152,844.81]
Option 7	Sound and Light Presentation	\$0.00
Option 8	Food Vendor Carts	\$0.00
Option 9	Delete Off-Site e-Memorial	\$0.00
PC03	Exercised Option 3	\$0.00
PS03	Surcharge for Option 1b	\$236,609.00
PO10	Surcharge for Option 2	\$444,786.35
PC04	Determinations of Eligibility for LBJ and FAA Buildings	\$47,994.00
PO05	Mockup Allowance	\$75,000.00
PS06	Parking Revenue Study	\$28,878.00
PS08	Determination of Eligibility (DOE) of LBJ Building Plaza	\$15,000.00
PC09	Mockup Allowance Increase	\$100,000.00
PC12	Mockup Allowance Increase	\$700,000.00
PO16	Exercise Option 3/Surcharge for Option 3	\$503,195.36
PS13	Archaeological Study	\$33,982.00
PS18	Large Tree Specimen Procurement	\$273,027.00
PS19	Phasing of Construction Documents	\$431,674.00
PS20	Transportation of Model to Disney Concert Hall	\$1,206.00
PS22	Increased Costs due to Multiple NCPC Submissions	\$533,310.00
PC25	Tapestry Development	\$650,000.00
PS21	Time Extension of Option 3	(see PS27)
PS27	Costs for PS21 (Time Extension of Option 3)	\$2,031,472.49
PS24	Identify Utility Connection Points	\$107,123.00
PS26	Survey for Test Holes at LBJ Building Plaza	\$28,793.00
PS29	Mockup Allowance Increase	\$200,000.00
PS30	Changes to the Durations of the Construction Options and SBU Information for the Memorial	\$23,401.00
PS31	Additional Surveys of LBJ Building	\$18,344.00
<b>TOTAL</b>		<b>\$16,438,241.18</b>

## Appendix C: Gilbane Contract and Modifications

Contract/Option/Mod	Services	Amount
<b>Base Contract</b>	Pre-Design and Design Stage Services	\$1,286,390.00
<b>Option 1</b>	Design Commissioning Services	\$18,000.00
<b>Option 2</b>	Construction Stage Services	\$3,383,600.00
<b>Option 3</b>	Construction Stage Commissioning Services	\$45,000.00
<b>Option 4</b>	Memorial Operation and Turnover	\$354,240.00
<b>Option 5</b>	e-PM System – Design Stage and Construction Procurement Stage	\$23,500.00
<b>Option 6</b>	e-PM System – Construction Stage	\$16,500.00
<b>Option A</b>	Supplemental Services: Pre-Design and Design Phase Services	\$55,000.00
<b>Option B</b>	Supplemental Services: Construction Phase Services	\$125,000.00
<b>Option C</b>	Memorial Operation and Turnover	\$62,500.00
<b>Option D</b>	Supplemental Services: Commissioning During Pre-Design and Design Stage	\$50,000.00
<b>Option E</b>	Supplemental Services: Commissioning During Construction Stage	\$50,000.00
<b>PS01</b>	Credit for Services Performed Under Base Contract	(\$61,015.00)
<b>PO04</b>	Fund Travel Allowance	\$10,000.00
<b>PS02</b>	Additional Staffing	\$200,000.00
<b>PS03</b>	Administrative Services for Webster Group Feasibility Study	\$0.00
<b>PO02</b>	Increased ECCA and Additional Sub-Consultant Services	\$15,558.00
<b>PS06</b>	e-Memorial Administration and Support Services	\$37,493.00
<b>PS05</b>	Fundraising Contract Management and Administration Support Services	\$42,055.00
<b>PS10</b>	Additional Technical Support for Selection of e-Memorial Subcontractor	\$4,807.00
<b>PS07</b>	Determination of Eligibility of LBJ Building	\$1,129.00
<b>PS08</b>	Management and Administration of e-Memorial Concept Services	\$3,780.00
<b>PS09</b>	Final Concept Phase Time Extension to Bring Gilbane Contract into Alignment with Gehry Contract)	\$45,972.00
<b>PS11</b>	Additional Services to Support Peer Review/Design Charette for LBJ Building	\$4,750.00
<b>PS14</b>	Clean Up Scope Issues	\$0.00
<b>PS13</b>	Additional Scope of Work	\$700.00
<b>PC12</b>	Mock Up Allowance	\$150,000.00
<b>PS17</b>	Design Development Phase Time Extension	\$93,945.00
<b>PS16</b>	Time Extension for e-Memorial Services	\$0.00
<b>PS18</b>	Production of Media and Core Functionality for e-Memorial	\$515,568.00
<b>PS19</b>	Study on Testing and Maintenance of Tapestries	\$11,500.00
<b>PS20</b>	Time Extension	\$60,532.00
<b>PS21</b>	Staff Adjustments	\$55,721.00
<b>PS23</b>	Landscape and Soils Review	\$3,762.00
<b>PS22</b>	Time Extension	\$425,705.00
<b>PS24</b>	Estimates of CD Packages	\$15,645.00
<b>PS25</b>	Support Services at LBJ Plaza	\$24,000.00
<b>PS26</b>	Additional Design Review Services (due to Design Changes)	\$27,738.00
<b>PS28</b>	Landscape Architecture Design Review	\$14,542.00
<b>PC27</b>	Mockup Allowance Increase	\$25,000.00
<b>PS29</b>	Additional Holes at LBJ Plaza	\$24,947.00
<b>Total</b>		<b>\$7,223,564.00</b>