

# THE NATIONAL CIVIC ART SOCIETY

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August 6, 2013

## VIA E-MAIL AND FIRST-CLASS MAIL

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CC: U.S. Representatives Darrell Issa and Rob Bishop; U.S. House Committee on Oversight & Government Reform; U.S. House Subcommittee on National Parks, Forests and Public Lands; GSA Inspector General

Re: *Freedom of Information Act Request*

Dear Ms. Slappy:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*

On March 31, 2009, the General Services Administration (“GSA”), in partnership with the Dwight D. Eisenhower Memorial Commission (“EMC” or “Commission”), announced that Gehry Partners LLP, led by architect Frank Gehry, had been selected by a competition (“Competition”) to design the Dwight D. Eisenhower Memorial (“Memorial”) to be constructed on the National Mall in Washington, D.C.<sup>1</sup>

EMC contracted with the General Service Administration’s Public Buildings Service to run the Competition under the Design Excellence Program.<sup>2</sup> The Competition solicited entries via a Request for Qualifications (RFQ) published by GSA at FedBizOpps.com.<sup>3</sup> The GSA solicitation number (a/k/a C-Architect-Engineer Services Reference Number) for the Competition is EMC-WPC-08-5019.

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<sup>1</sup> Dwight D. Eisenhower Memorial Commission, Frank Gehry Selected to Design Eisenhower National Memorial (March 31, 2009) *available at*

[https://www.fbo.gov/index?s=opportunity&mode=form&id=00371f8ac88abc8d271c00c341861504&tab=core&\\_cview=0&ccck=1&au=&ck=](https://www.fbo.gov/index?s=opportunity&mode=form&id=00371f8ac88abc8d271c00c341861504&tab=core&_cview=0&ccck=1&au=&ck=) (last visited Nov. 21, 2011).

<sup>2</sup> See the official guidelines at General Services Administration, *Design Excellence Policies and Procedures* (2004), available at [http://www.wbdg.org/ccb/GSAMAN/design\\_excellence\\_pp.pdf](http://www.wbdg.org/ccb/GSAMAN/design_excellence_pp.pdf).

<sup>3</sup> GSA’s Competition documents are available at [https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=00371f8ac88abc8d271c00c341861504&\\_cview=0](https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=00371f8ac88abc8d271c00c341861504&_cview=0). In particular, the RFQ is available at <https://www.fbo.gov/utills/view?id=25a4d7e08a72d42f85dbe50fab00dce>

The Competition diverged significantly from the standard Design Excellence process in the composition of the Evaluation Board and Jury. Indeed, **it did not follow the rules of GSA’s Acquisition Manual**. According to 536.602-2(c) of that manual: “Evaluation boards must not exceed five (5) voting members.” For the Eisenhower Competition, however, the Evaluation Board comprised *12 (twelve)* voting members. Furthermore, GSA’s manual states that *only 1 (one)* of the 5 (five) persons on the Evaluation Board may be a representative of the client.<sup>4</sup> By contrast, in the Eisenhower Competition, *3 (three)* representatives of the client (the Eisenhower Memorial Commission) sat on the Evaluation Board.<sup>5</sup> Thus, under GSA’s rules, the client comprises only 20% of Evaluation Board, whereas in the Eisenhower Competition, the client comprised 25% of that Board. In other words, the weight was shifted so as to increase the influence of the client.

In November 2011, Edward Feiner, the former chief architect of GSA who created Design Excellence, and who was involved in the early programming of the Eisenhower Competition, was asked how Design Excellence prevents conflicts of interest and cronyism. He replied:

It’s very simple ’cause they [the client] only have 1 vote out of 5. It’s very balanced. There’s only one private sector individual that has a vote on a five-person panel. The other four are government people.

Justin Shubow, president of the National Civic Art Society, subsequently asked Feiner about how the Eisenhower Competition compared with the National World War II Memorial competition, which Feiner helped run. The following exchange took place.

Feiner: There’s the political forces that led to that [the Eisenhower Memorial]—were very different. **This was a client that hired their own people to run it.** . . . The program was about that thick. [Indicates with fingers.] It was nothing.

Shubow: Then why did you say you wouldn’t have done it this way?

Feiner: I would have done the open competition. I recommended—it was just like World War II—20-inch-by-20-inch panels—

Shubow: It just seems so obvious to me that if you just open it up—

Feiner: [speaking with great deliberation] **The client. Wanted. An outcome.**

Shubow: Which means Gehry?

Feiner: I don’t know if it was Gehry, but they wanted an outcome. They did not want to take risk. They wanted—

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<sup>4</sup> GSAM 536.602-2(c)5.

<sup>5</sup> Those persons were EMC Chairman Rocco C. Siciliano, Commissioner David Eisenhower, and EMC Executive Architect Daniel Feil, who ran the Competition as EMC’s agent. General Carl Reddell, *Eisenhower Memorial Commission Response to QFRs Submitted by Chairman Bishop Subcommittee on National Parks, Forests and Public Lands hearing on “Proposed Dwight D. Eisenhower Memorial”* (March 20, 2012), available online at [http://www.eisenhowermemorial.net/docs/Eisenhower\\_Memorial\\_Commission\\_Response\\_to\\_QFRs\\_from\\_House\\_Subcommittee\\_on\\_National\\_Parks.pdf](http://www.eisenhowermemorial.net/docs/Eisenhower_Memorial_Commission_Response_to_QFRs_from_House_Subcommittee_on_National_Parks.pdf).

Shubow: This is the exact opposite of what your program stands for.

Feiner: It was.

Shubow: You know, I wish you would say something. I don't know—

Feiner: There's hardly anything—even today, when I spoke with them [GSA] about a solicitation I saw that was antithetical to the way the program should be evolving. You know, it's very hard because I am in private industry—for another couple of years. . . . If I'm still living after I finally do retire, I will probably be a little more outspoken.

[. . .]

Shubow: Do you know who was on the peer-review board for the Eisenhower?

Feiner: I have no idea. During that period, I left SOM [Skidmore, Owings & Merrill] just before the [Competition] program was published. And **Dan Feil is their consultant. He works with the Eisenhower Commission. He actually ran the whole operation.**

Shubow: Got it.

Feiner: And you can talk to him.

Shubow: I'd be curious—

Feiner: He doesn't talk to me anymore.

Shubow: Why is that?

Feiner: Because he doesn't like the—we had a lot of disagreements on program.

Shubow: For the Memorial?

Feiner: Yeah, we had a lot of disagreements on program.

Thus, the very creator of Design Excellence said that the Competition was run antithetical to the very spirit of Design Excellence. He stated that **the Eisenhower Competition was de facto run by the client as opposed to by GSA—a client that arranged the competition to avoid risk and to achieve a pre-determined result.** Further evidence that the client, via its executive architect Daniel Feil, ran the Competition comes from the American Institute of Architects' praise of Feil in a recent award ceremony:

The General Service Administration's Design Excellence Program guided the selection process for the [Eisenhower] memorial, and Gehry Partners was awarded the project . . . . Neither Cesar Pelli's firm [which won the contract for Reagan National Airport] nor Gehry's had worked with the federal government before they negotiated contracts with Feil, and neither had in their portfolio a project similar to the one they

were awarded. This made their selection somewhat unconventional, and **Feil is credited with having opened up the field of eligibility** by recognizing operational and aesthetic achievements as equivalent to experience with a particular building type. [emphasis added]<sup>6</sup>

Another GSA rule the Competition violated is: “A maximum of two (2) non-voting advisors may participate in all activities of the evaluation board except voting. The client organization(s) may have only one (1) non-voting advisor to the board. The GSA may also have one non-voting advisor.”<sup>7</sup> In the Eisenhower Competition, not 1 but 2 representatives of the client participated as non-voting advisors—namely, Alfred Geduldig and Susan Baner Harris.<sup>8</sup> It does not appear that there were any non-voting GSA advisors. Thus, of the 14 (fourteen) persons on or observing the Evaluation Board, 5 (five)—that is, 36%—were from the client.

In addition, according to the Design Excellence policies, “The [non-voting observer] advisors may *not* be present during the A/E Evaluation Board’s deliberations or voting [emphasis added].”<sup>9</sup> By contrast, in the Eisenhower Competition, both non-voting representatives from the client *were* in fact present during panel deliberations as well as the interviews of the competitors.<sup>10</sup>

Design Excellence policies mandate the following relative weights for the materials submitted in Stage I of a competition.

- 1) Lead Designer Portfolio (25%)
- 2) Philosophy and Design Intent (25%)
- 3) Past Performance on Design (35%)
- 4) Lead Designer Profile (15%)

By contrast, in the Eisenhower Competition, the weights were shifted as follows:

- 1) Lead Designer Portfolio (55%)
- 2) Philosophy and Design Intent (20%)
- 3) Past Performance on Design (15%)
- 4) Lead Designer Profile (10%)

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<sup>6</sup> <http://www.aia.org/practicing/awards/2012/thomas-jefferson-award/daniel-feil/index.htm>

<sup>7</sup> GSAM 536.602-2(d).

<sup>8</sup> General Carl Reddell, *Eisenhower Memorial Commission Response to QFRs*.

<sup>9</sup> Even GSA’s project manager is not permitted to be present during those deliberations.

<sup>10</sup> General Carl Reddell, *Eisenhower Memorial Commission Response to QFRs*.

Table: Relative Weights of Criteria in Standard Design Excellence Competitions Versus Those Used in the Eisenhower Memorial Competition

	<b>Standard Design Excellence</b>	<b>Eisenhower Competition</b>	<b>Shift in Weight</b>
<b>Lead Designer Portfolio</b>	25%	55%	+30%
<b>Philosophy and Design Intent</b>	25%	20%	-5%
<b>Past Performance on Design</b>	35%	15%	-20%
<b>Lead Designer Profile</b>	15%	10%	-5%

The Eisenhower Competition’s drastically higher emphasis on portfolio would be to the advantage of entrants with the most celebrated and famous recent works, such as Gehry. Similarly, the decrease in the importance of prior performance would be to the advantage of an architect, such as Gehry, who has a history of serious performance problems in his prior works (both in terms of design defects and cost overruns), and who has never built anything like a memorial, let alone a national memorial.<sup>11</sup>

To summarize the divergences of the Eisenhower Competition from standard Design Excellence competitions:

- 1) The client de facto ran the Competition, and in a manner antithetical to the spirit of Design Excellence.
- 2) The Evaluation Board had 12 (twelve) members instead of 5 (five).
- 3) The client had greater proportional representation on the Evaluation Board: 3 (three) out of 12 (twelve) members instead of 1 (one) out of 5 (five).
- 4) The client had 2 (two) non-voting observers of the Evaluation Board, instead of the permitted 1 (one).
- 5) The non-voting observers were present during the deliberations of the Evaluation Board and Design Jury.
- 6) The relative weights of entry criteria were drastically shifted in favor of portfolio, and substantially reduced with regard to past performance on design.

On February 29, 2012, in his capacity as Chairman of the House Committee on Oversight and Government Reform, Representative Darrell Issa sent a letter to GSA requesting:

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<sup>11</sup> Recall AIA’s quotation above regard Dan Feil’s “opening up the competition opened up the field of eligibility by recognizing operational and aesthetic achievements as equivalent to experience with a particular building type.”

1. A copy of all architectural designs concerning this memorial submitted to the Commission;

2. A detailed description of the process leading to acceptance of the Frank Gehry submission, including a breakdown of any and all votes taken pertaining to any submission.<sup>12</sup>

In an article titled “Eisenhower Memorial Complaints Reach Fever Pitch,” *Roll Call* reported, “Issa has requested correspondence from the General Services Administration to determine whether the selection of renowned architect Frank Gehry was handled properly. Some stakeholders have asked whether the GSA, which oversaw the selection of the architect in an open competition, was using a transparent and inclusive process.”<sup>13</sup> Rep. Issa requested that those materials be submitted to him by March 16, 2012. If in fact GSA has complied with this request fully or in part, those materials have *not* been made public.

To address any public concerns with the federal award process as it related to the Eisenhower Memorial, please respond to the following request within twenty (20) days. The time period for the request is from May 2008 through April 2009. Regarding the geographical scope of the request, the pertinent geographical area is GSA’s National Capital Region (NCR). We hereby request:

1. The identity of the 30 architects and landscape architects and/or their firms the GSA Contracting Officer approved to be recipients of letters, sent by the Eisenhower Memorial Commission, announcing the Competition.<sup>14</sup>
2. The number of the architects in (1) above whose firms are small, women-owned, minority-owned, and/or small disadvantaged firms as those terms are used in Public Law 95-507 (The Small Business Act), Executive Order 12138 (Women’s Business Enterprise Policy), and Executive Order 12432 (Minority Business Enterprise Policy).
3. The identity of all designers and firms who submitted entries in the Competition.
4. The number of entries from small, women-owned, minority-owned, and/or small disadvantaged firms as the terms are used in Public Law 95-507 (The Small Business Act), Executive Order 12138 (Women’s Business Enterprise Policy), and Executive Order 12432 (Minority Business Enterprise Policy).
5. The identity of all persons, including the capacity in which they served, who served on the 12-member A/E Evaluation Board and the 9-member Design Jury for the

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<sup>12</sup> [http://www.eisenhowermemorial.net/docs/Darrell\\_Issa\\_letter\\_to\\_Eisenhower\\_Memorial\\_Commission.pdf](http://www.eisenhowermemorial.net/docs/Darrell_Issa_letter_to_Eisenhower_Memorial_Commission.pdf)

<sup>13</sup> [http://www.rollcall.com/news/eisenhower\\_memorial\\_complaints\\_reach\\_fever\\_pitch-214991-1.html](http://www.rollcall.com/news/eisenhower_memorial_complaints_reach_fever_pitch-214991-1.html)

<sup>14</sup> According to EMC, “After the RFQ was published in FedBizOpps and published on other sites as noted previously, with the approval of the GSA Contracting Officer, letters were sent by the Eisenhower Memorial Commission Executive Architect [Daniel Feil] to thirty architects and landscape architects announcing the RFQ for design services for the Eisenhower Memorial. These were not a solicitation of any kind. This was another outreach effort to ensure the Commission received as broad a range of responses to the RFQ as possible. GSA did not analyze the question of whether any of the recipients of the letters in fact responded to the RFQ.” General Carl Reddell, *Eisenhower Memorial Commission Response to QFRs*.

Competition. This includes the names of the chairmen of the Evaluation Board and Design Jury.<sup>15</sup>

6. The name of all GSA Contracting Officers who oversaw the Competition, and the capacities in which they served.

Should a document have originated with a third-party agency and require referral, please notify us of the referral and identify the agency in question. If you deny all or part of this request, please cite the specific exemptions you believe justifies your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising or redacting material, please “black out” rather than “white out” or “cut out.”

Please note that the third statutory exemption pursuant to FOIA, 5 U.S.C. § 552(b)(3)—which prohibits the release of records that are specifically exempted from disclosure by statute—does *not* apply to the materials requested above. One specifically non-applicable statute is 41 U.S.C. § 4702, which reads in its entirety:

41 USC § 4702 - Prohibition on release of contractor proposals

(a) Definition.— In this section, the term “proposal” means a proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(b) Prohibition.— A proposal in the possession or control of an executive agency may not be made available to any person under section 552 of title 5.

(c) Nonapplication.— Subsection (b) does not apply to a proposal that is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

The prohibition in 41 U.S.C. § 4702(b) does *not* apply to any of the materials requested above since none of them consists in or is part of a “proposal” as defined by 41 USC § 4702(a). The Competition solicitation was a Request for *Qualifications*, not a Request for *Proposals*. Indeed, the solicitation explicitly stated, “This is not a request for Proposal.” GSA has an alternative procurement process that uses a Request for Proposals, but the agency did not use that alternative for the Competition. At no point in the Competition did any entrant submit a bid for any contract.

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<sup>15</sup> According to EMC, “[T]hree (3) of the twelve (12) member Evaluation Board were EMC Commissioners or staff. Only one (1) Commissioner (David Eisenhower) was a member of the nine [9] member Jury. The Evaluation Board was chaired by GSA and the jury was chaired by an architect in private practice. . . . GSA Central Office had to approve all panel members and invited all participants. . . . Additionally, EMC Commissioners Alfred Geduldig and Susan Banes Harris were both observers for the evaluation process. This allowed them to attend the interviews and the panel deliberations, but not to ask questions of the Panels during deliberations. They were non-voting.” General Carl Reddell, *Eisenhower Memorial Commission Response to QFRs*. We have been able to determine that one of the unnamed evaluators was Robert A. Ivy, currently the Executive Vice President and CEO the American Institute of Architects (AIA), the organization that in December 2011 announced that it had awarded Feil its 2012 Thomas Jefferson Award for Public Architecture. Gehry wrote one of Feil’s letters of recommendation. At the time of the competition, Ivy was the Editor-in-Chief of AIA’s *Architectural Record* and had interviewed and praised Gehry in print. See the disclaimer at C. J. Hughes, “Gehry Chosen to Design Eisenhower Memorial in D.C.,” *Architectural Record* (Apr. 16, 2009) <http://archrecord.construction.com/news/daily/archives/090416gehry.asp>.

Furthermore, the materials requested above do *not* fall under the exemptions pursuant to FOIA, 5 U.S.C. Sec. 552. In particular, no materials fall under the fourth exemption pursuant to 5 U.S.C. Sec. 552(b)(4), which permits an agency to withhold “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” No public disclosure of the information requested is likely to cause substantial competitive harm to business(es) or person(s) that furnished the information. For instance, the fact that a business was sent a GSA-authorized letter from EMC announcing the competition is unlikely to cause *any* competitive harm to the business. The same goes for the fact that a particular business entered the competition.

GSA’s Design Excellence policies state that the identities of Evaluation Board and Design Jury members must not be made public *prior* to final selection and contract.<sup>16</sup> The policies do *not* state that those identities are privileged, confidential, or trade secrets as such. The policies do not state that those identities may *never* be publicly disclosed.

Consider the precedent set by the competition for the National World War II Memorial, which was modeled on GSA’s Design Excellence Program, and which solicited entries via an RFQ. Like in the case of the Eisenhower Memorial, the client, the American Battle Monuments Commission (ABMC), engaged GSA’s Public Buildings Service to act as its agent to manage the competition. After the competition was completed, ABMC and GSA voluntarily made public the identities of the persons who sat on the Evaluation Board and Design Jury.<sup>17</sup> To the best of our knowledge, no business or person objected to the release of that information for any reason whatsoever.

Additionally, we are hereby requesting a waiver of all fees. The National Civic Art Society is a 501(c)(3) non-profit educational organization under the laws of the District of Columbia and has the ability to disseminate information on a wide scale—something we have already done regarding the Memorial.

In January 2012, we published *The Gehry Towers of Eisenhower: The National Civic Art Society Report on the Eisenhower Memorial*.<sup>18</sup> It is a meticulously researched and documented 150-page critique of the planning, competition, design, and agency approval of the Memorial. On February 7, 2012, the report was quoted in a front-page story in *The New York Times*.<sup>19</sup> According to the *Washington Post*, our report “has received a remarkable amount of attention, offering talking points for . . . columnists and critics.”<sup>20</sup> According to *Architect* magazine, in our report, “NCAS voices legitimate concerns—about the scale, materials, and durability of Gehry’s design, for instance, as well as about the selection process, which took the form of a limited request for qualifications instead of an open design

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<sup>16</sup> [http://www.gsa.gov/graphics/pbs/Design\\_Excellence\\_Policies\\_and\\_Procedures\\_Chapter6.pdf](http://www.gsa.gov/graphics/pbs/Design_Excellence_Policies_and_Procedures_Chapter6.pdf)

<sup>17</sup> See [http://www.wiimemorial.com/archives/factsheets/design\\_competition.htm?thispage=factsheet](http://www.wiimemorial.com/archives/factsheets/design_competition.htm?thispage=factsheet) .

<sup>18</sup> Latest edition available at

[http://www.eisenhowermemorial.net/docs/NCAS\\_Report\\_on\\_the\\_Eisenhower\\_Memorial.pdf](http://www.eisenhowermemorial.net/docs/NCAS_Report_on_the_Eisenhower_Memorial.pdf) .

<sup>19</sup> Robin Pogrebin, “Eisenhower as Barefoot Boy? Family Objects to a Memorial,” *The New York Times* (Feb. 7, 2012), available at <http://www.nytimes.com/2012/02/07/arts/design/eisenhower-memorial-by-frank-gehry-draws-objections-from-family.html?pagewanted=all>.

<sup>20</sup> [http://articles.washingtonpost.com/2012-03-20/entertainment/35449008\\_1\\_eisenhower-memorial-commission-memorial-design-gehry-design](http://articles.washingtonpost.com/2012-03-20/entertainment/35449008_1_eisenhower-memorial-commission-memorial-design-gehry-design)

competition.”<sup>21</sup> *Better! Cities and Towns*, a publication dedicated to urban planning, said our report contained “devastating pieces of information . . . extensively footnoted.”<sup>22</sup>

On March 20, 2012, we testified about the Memorial in front of the House Subcommittee on National Parks, Forests, and Public Lands.<sup>23</sup> On June 1, 2012, on a closely related subject, we testified about the future of the National Mall in front of the same Subcommittee.<sup>24</sup> In March 2013, we testified in front of the same Subcommittee regarding H.R. 1126, a bill “To facilitate the completion of an appropriate national memorial to Dwight D. Eisenhower.”<sup>25</sup>

Stories concerning our Memorial-related activities and advocacy have received prominent mention in many media outlets including, but not limited to, the official website of the Eisenhower Memorial Commission, *The Wall Street Journal*, *The New York Times*, *Vanity Fair*, *The Associated Press*, *United Press International*, *The Los Angeles Times*, *National Journal*, *Roll Call*, *Governing*, *Politico*, *Washingtonian*, *National Review*, *The Weekly Standard*, *The Daily Caller*, *The Huffington Post*, *The New Republic*, *The American Spectator*, *Human Events*, *Architectural Record*, *Architect*, *Landscape Architecture*, *Corriere della Sera* (Italy), *Der Standard* (Germany), as well as on radio and Fox News. Our highly trafficked Eisenhower Memorial-dedicated website, where information received through our FOIA request will be posted for all to review, can be accessed at <http://www.eisenhowermemorial.net>.

According to *Philanthropy* magazine, “In taking on Gehry, [the National Civic Art Society has] punched well above its weight class.”<sup>26</sup> According to the blog for *Traditional Building* magazine, “The most determined and articulate opponent of Gehry’s design has been Washington’s National Civic Art Society. This organization has created a website delineating not only the many, many problems with the design itself, but also raising pertinent questions about the closed architectural ‘competition’ that ended up selecting Frank Gehry as the winner.”<sup>27</sup> In his annual review, David Brussat, the architecture critic for the *Providence Journal*, announced “A rose for the National Civic Art Society, in Washington, for leading the opposition to Gehry’s proposed Eisenhower memorial.”<sup>28</sup> According to another media report, “The Civic Art Society has, Sherman-like, engaged in Total War against the Gehry design and the appearance of inevitability of its enshrinement as the newest monumental memorial on the Capital Mall.”<sup>29</sup>

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<sup>21</sup> <http://www.architectmagazine.com/architects/spike-eisenhower.aspx>

<sup>22</sup> Philip Langdon, “The trouble bedeviling the Eisenhower Memorial” *Better! Cities and Towns* (Feb. 8, 2012) <http://bettercities.net/news-opinion/blogs/philip-langdon/17460/trouble-bedeviling-eisenhower-memorial>.

<sup>23</sup> Written testimony available at [http://democrats.naturalresources.house.gov/content/files/2012-03-20Testimony\\_Segermark.pdf](http://democrats.naturalresources.house.gov/content/files/2012-03-20Testimony_Segermark.pdf).

<sup>24</sup> Written testimony available at <http://naturalresources.house.gov/uploadedfiles/shubowtestimony06-01-12.pdf>

<sup>25</sup> Written testimony available at <http://docs.house.gov/meetings/II/II10/20130319/100510/HHRG-113-II10-Wstate-ShubowJ-20130319.pdf>.

<sup>26</sup> [http://www.philanthropyroundtable.org/topic/excellence\\_in\\_philanthropy/from\\_driehaus\\_to\\_our\\_house](http://www.philanthropyroundtable.org/topic/excellence_in_philanthropy/from_driehaus_to_our_house)

<sup>27</sup> Clem Labine, “DC’s Stealth Monument,” *Traditional Building’s Civitas Chronicles* (Feb. 17, 2012)

[http://traditional-building.com/clem\\_labine/?p=717](http://traditional-building.com/clem_labine/?p=717). NCAS website located at <http://www.eisenhowermemorial.net>.

<sup>28</sup> David Brussat, “World roses and raspberries for 2011,” *Providence Journal’s Architecture Here and There Blog* (Jan. 12, 2012) <http://blogs.providencejournal.com/ri-talks/architecture-here-there/2012/01/column-world-roses-and-raspberries-for-2011.html#.T0fwZ3nO-Sp>.

<sup>29</sup> Joe Maty, “They Don’t Like Monument to Ike: Gehry Design Battered by Heavy Shelling” *Durability and Design* (Feb. 17, 2012) <http://www.durabilityanddesign.com/blog/?fuseaction=view&blogID=77>.

Furthermore, there can be no question that the information sought would contribute to the public's understanding of government operations or activities and is in the public interest and indeed the national public interest. Indeed, much of the information sought has also been requested by Rep. Issa for the same reasons. The Eisenhower Memorial is expected to cost at least \$142 million, 80% of which is planned to be taxpayer dollars. The Memorial will be only the seventh national memorial to a president in the nation's capital. The Memorial will occupy a four-acre site on the National Mall. Part of the site is on highly protected Area I of the District of Columbia (as defined by the Commemorative Works Act). The Memorial will have a permanent significant effect on the visual, cultural, and historical resources of the surrounding precinct, neighborhood, district, and city.

Already our investigations have uncovered suspicious facts relating to the Eisenhower Memorial Competition. As *Architect* magazine reported:

The National Civic Art Society—an organization . . . that has led the opposition to a design by Frank Gehry, FAIA, for the Dwight D. Eisenhower National Memorial—put out a release<sup>30</sup> questioning the procedures by which the Eisenhower Memorial Commission came by that design.

“In light of the recent abuses of the public trust and taxpayer funds by the General Services Administration (GSA), the National Civic Art Society encourages an exploration of whether the Eisenhower Memorial Commission followed all appropriate legal and ethical procedures in authorizing the use the GSA Design Excellence Program to select an architect for the Eisenhower Memorial,” says the statement, which was released yesterday. “The selection of the GSA Design Excellence Program for the Eisenhower Memorial created a de facto closed competition.”

Specifically, the National Civic Art Society alleges that decisions made between July 2007 and March 2009 were not recorded in official meeting minutes. The release speculates that the “missing minutes” concern important decisions regarding the memorial, including the approval of the GSA's Design Excellence Program as a rubric for selecting the design and the restriction of potential candidates to U.S. citizens, among other decisions.

“[I]f those 2008 meetings were not official, why are they even mentioned in the 2009 minutes?” asks the statement. “What was the procedural status of those meetings under the Commission's bylaws? Furthermore, was there due notice of those meetings? Were all Commissioners invited to attend them? The National Civic Art Society believes that these questions deserve careful scrutiny, particularly since the Eisenhower Memorial Commission and General Services Administration have already wasted millions of dollars of taxpayer money to get to this stage in the design process.”

The National Civic Art Society notes an exchange between House Subcommittee on National Parks, Forests and Public Lands chairman Rep. Rob Bishop (R-Utah) and retired Brig. Gen. Carl Reddel, who serves as the executive director of the Eisenhower

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<sup>30</sup> <http://www.eisenhowermemorial.net/ncas-calls-attention-conspicuous-gap-eisenhower-memorial-commissions-meeting-minutes.html>

Memorial Commission. Gen. Reddel testified before the House subcommittee at a March 20 hearing. During one exchange, Gen. Reddel noted that the Eisenhower Memorial Commission did not host a full meeting between July 2007 and March 2009.

Asked for a response, a spokesperson for the Eisenhower Memorial Commission said that the National Civic Art Society had its answer—there were no minutes from that period because there were no full meetings at the time.<sup>31</sup>

#### The National Civic Art Society Qualifies Under the Non-Commercial Fee Category

The National Civic Art Society requests a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II), 5 U.S.C. § 552(a)(4)(A)(iii) and 41 C.F.R. 105-60.305-13. The National Civic Art Society is a 501(c)(3) not-for-profit educational organization and has no commercial purpose in requesting information. The National Civic Art Society has no commercial, trade, or profit interests and is organized and operated to educate the general public. The National Civic Art Society will use its editorial skills to turn raw materials into a distinct work.

#### The National Civic Art Society Is Entitled to a Complete Waiver of Fees

The National Civic Art Society requests a waiver of fees as a non-profit educational organization under 5 U.S.C. § 552(a)(4)(A)(ii)(II). The disclosure of the requested information is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 41 C.F.R. 105-60.305-13. *See, e.g., Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 814 n.3 (2d Cir. 1994); *Prison Legal News v. Lappin*, 436 F. Supp. 2d 17, 27 n.5 (D.D.C. 2006).

The subject matter of the requested records specifically concerns identifiable “operations or activities of the government.” The disclosable portions of the requested information will be meaningfully informative in relation to this request. This disclosure will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. The National Civic Art Society has a dynamic and diverse Board of Directors and Board of Advisors whose range of expertise includes government oversight and leadership, investigative reporting, university teaching and scholarship, the practice of architecture, and public-interest litigation experience.

#### Production of Documents and Contact Information

We call your attention to President Obama’s January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. .

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<sup>31</sup> <http://www.architectmagazine.com/architecture/national-civic-art-society-blasts-eisenhower-memorial-commission.aspx>

. . The presumption of disclosure should be applied to all decisions involving FOIA.<sup>32</sup>

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

In an effort to facilitate record production within the statutory time limit, the National Civic Art Society prefers to accept documents in electronic format (e.g., e-mail, .PDF files). When necessary, the National Civic Art Society will accept the “rolling production” of documents. If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at [info@civkart.org](mailto:info@civkart.org) or (202) 670-1776.

Please note that, for purposes of responding to this request, the terms “records,” “communications,” and “referring or relating” should be interpreted consistently with the attached Definitions of Terms.

We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,

Justin Shubow, Esq.  
President

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<sup>32</sup> PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, Jan. 21, 2009, available at <http://www.whitehouse.gov/the-press-office/freedom-information-act>.

## Responding to Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the National Civic Art Society.
2. In the event that any entity, organization, or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The National Civic Art Society's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce documents, you should identify the paragraph in the National Civic Art Society's request to which the documents respond.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the National Civic Art Society to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all

documents which would be responsive as if the date or other descriptive detail were correct.

11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
12. All documents shall be Bates-stamped sequentially and produced sequentially.

### Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and

all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual’s business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.