



Office of Inspector General
Washington, DC 20546-0001

April 28, 2008

TO: Associate Administrator for Program Analysis and Evaluation
Chief Engineer
General Counsel
Assistant Administrator for External Relations

FROM: Assistant Inspector General for Auditing

SUBJECT: Final Memorandum on the Standing Review Board for the Orion Crew
Exploration Vehicle Project (Report No. IG-08-018; Assignment
No. A-07-011-00)

During the Office of Inspector General (OIG) audit of the Orion Crew Exploration Vehicle (Orion) Project, we identified an issue concerning the establishment of the Orion Standing Review Board (SRB), which was tasked to provide independent assessments of the Project during its life cycle. (See Enclosure 1 for details on this report's scope and methodology.)

Executive Summary

NASA did not establish the Orion SRB in accordance with Federal law or NASA guidance. The Orion SRB meets the Federal Advisory Committee Act¹ (FACA) definition of an advisory committee. Although FACA committees must be established in accordance with FACA and NASA Policy Directive (NPD) 1150.11, "Federal Advisory Committee Act Committees," September 22, 2004, the Orion SRB was not. Had NASA initially recognized the Orion SRB as an advisory committee subject to FACA, NASA's ethics process associated with advisory committee participation would have been triggered, resulting in a focus on board member independence and conflict of interest resolution. Aside from these considerations, independence is a requirement for SRB participation; however, of the 19 members of the Orion SRB, 6 (32 percent) were not independent of the Orion Project as required by NASA Procedural Requirements (NPR) 7120.5D, "NASA Space Flight Program and Project Management Requirements," March 6, 2007.

The Orion SRB's purpose, responsibilities, and membership met the definition and characteristics of a committee that should be established under FACA. FACA generally applies to committees that (1) are established by a Federal official, (2) include at least one

¹ Title 5, United States Code (5 U.S.C.) Appendix, Sections 1-16, the Federal Advisory Committee Act (1972), as amended.

non-Federal Government employee, and (3) are responsible for providing advice and recommendations to the agency. Because the Orion SRB established by NASA included 15 non-Federal Government employees, and its primary responsibility was to provide NASA management an advisory opinion of the Orion Project's success in meeting technical, schedule, and cost-related milestones, we conducted further analysis of FACA and FACA-related case law to consider FACA's applicability to the Orion SRB. Based on that analysis, we believe that FACA did apply to the Orion SRB; therefore, the SRB should have been established and operated in accordance with FACA. NPD 1150.11 requires that NASA employees coordinate with the Office of the General Counsel (OGC) when committees or teams involving non-NASA personnel are established to ensure that the Agency complies with FACA if it is applicable. There was no coordination with the OGC when the Orion SRB was established.

We determined that six of the Orion SRB members, including the Chair, were not independent of the Orion Project, as required by NPR 7120.5D. The NPR requires independence to ensure that the SRB can provide an impartial, unbiased opinion of the Project's success. Those six Orion SRB members were employees (and in four cases were also stockholders) of companies having contracts for Orion work. Because of the employee/stockholder status, those members had a vested interest in the Project's success, making them unsuited to serve on an advisory board that emphasizes "objectivity and independence." In addition, the employee/stockholder status created an organizational conflict of interest (as defined in the Federal Acquisition Regulation [FAR]) between the members' employers and NASA.

The issue of independence and conflict of interest is key to our concerns. Had the OGC been coordinated with, as required by NPD 1150.11, we believe that the Orion SRB would have been initially recognized as an advisory committee subject to FACA. For the SRB to proceed consistent with requirements, NASA's ethics process, as associated with advisory committee participation, would have been triggered with a focus on board member independence and conflict of interest resolution. The SRB members, pursuant to NASA practice, would likely have been deemed to be Special Government Employees (SGEs). As such, the Orion SRB members would have been subject to more robust financial disclosure and the criminal conflict of interest provisions of Title 18, United States Code, Section 208 (18 U.S.C. 208).

Under the ethics regime for Federal employees, conflicts of interest are identified and resolved, sometimes through waivers that examine the extent of the conflicts and, in the case of SGEs, by weighing the conflict against the Government's need for the services of the particular SGE. Without the rigorous and definitive conflict of interest resolution process provided under the ethics regime for Federal employees, the Agency examined the conflicts of interests of the SRB members in the context of NPR 7120.5D and without the advice of Agency counsel.

Our February 29, 2008, draft of this memorandum recommended that the Associate Administrator for Program Analysis and Evaluation (PA&E), in coordination with the OGC and the Office of the Chief Engineer, suspend the involvement of the six SRB

members that we found to be not independent of the Project from further SRB activities until an evaluation of the legality and propriety of the participation of these individuals in the SRB is concluded. That evaluation should include an analysis of whether the Orion SRB should be reorganized under FACA and whether the ethical rules for SGEs are implicated. To ensure that the lessons from the issues associated with the establishment of the Orion SRB are incorporated into NASA practice more generally, we recommended that the Agency evaluate the purpose, roles, responsibilities, and membership of SRBs to determine the optimum approach for accomplishing the SRB mission while ensuring compliance with all applicable Federal laws and NASA guidance. Based on the evaluation results, the Agency should revise NPR 7120.5D and NASA's draft SRB Handbook to reflect any revised SRB roles, responsibilities, and membership requirements. Lastly, to ensure that the Agency is aware of committees that may be required to comply with FACA, we recommended that the Assistant Administrator for External Relations have NASA organizations annually identify any new committees that include non-NASA personnel and ensure that, if FACA applies, those committees comply with its requirements.

Management's Comments and OIG Response. Management submitted two sets of comments in response to the draft of this memorandum. In the first set of comments (see Enclosure 4), the Associate Administrator for PA&E requested that we revise several statements concerning the participation of the Independent Program Assessment Office (IPAO) in nominating the SRB members, IPAO's authority to revise SRB reports, and the IPAO Director's position on NPD 1150.11 applicability. Although we did not specifically state in the draft memorandum that IPAO had the authority to revise an SRB report, we deleted our statement concerning IPAO involvement in the SRB reporting process because it did not affect our finding. We made no additional revisions as we had significant support for our statements.

In the second set of comments (see Enclosure 5), the Associate Administrator for PA&E did not find it necessary to suspend the six SRB members in response to our recommendation, given that steps had been taken to ensure the legality and propriety of the SRB membership. In response to our recommendation that the Agency analyze whether the SRB should be reorganized under FACA and its members subject to the ethical rules for SGEs, the Associate Administrator stated that the analysis was complete and that the Orion SRB would not be subject to FACA nor would its members be subject to SGE ethical rules because the members had been advised to render individual as opposed to consensus advice. Regarding our recommendation to conduct a rigorous analysis of the SRB members' independence, the Associate Administrator stated that analysis is ongoing and that SRB activities are being redirected in order to follow the new Agency plan for conducting independent assessments. The Agency will reevaluate the independence status of each Orion SRB member once the Office of PA&E completes its revision of the SRB independence standards.

We consider management's comments on these recommendations to be nonresponsive. We understand that the SRB independence standards are under revision and that the Orion SRB members will be subject to those revised standards; however, the Associate

Administrator for PA&E did not provide specific information concerning the six Orion SRB members and the efforts taken to ensure the “legality and propriety of their membership.” Until such information is provided and organizational conflicts of interest are adequately mitigated, the six Orion SRB members should be suspended from participating in SRB activities. Regarding FACA applicability to the Orion SRB, while rendering individual rather than consensus advice is an important factor, it is not the only factor considered in determining FACA applicability. The formality and structure of the SRB, the interaction of its members, and the political legitimacy of the advice are all factors in that determination. To ensure that the Agency is FACA-compliant, management needs to provide additional information as to how the Orion SRB will be structured, organized, and managed. The comments should also address the potential impact of not having the SRB provide a consensus opinion. We request that the Associate Administrator for PA&E provide additional comments in response to our final memorandum by May 28, 2008.

The Associate Administrator concurred with our recommendations to conduct an evaluation to determine the optimum approach for accomplishing the SRB mission while ensuring compliance with all applicable Federal laws and NASA guidance and, based on the evaluation results, to update NPR 7120.5D and the SRB Handbook to reflect any revised SRB roles, responsibilities, and membership requirements. The Associate Administrator stated that the Agency is defining SRB implementation approaches to ensure compliance with Federal and NASA guidance and that NPR 7120.5D and the SRB Handbook would be revised to reflect any changes concerning the SRB. He also stated that the Orion SRB would be operated in compliance with that revised guidance. The Assistant Administrator for External Relations concurred with our recommendation to identify NASA committees that may meet the definition of a FACA advisory committee, stating that he will work with Agency officials to identify NASA-sponsored committees and ensure that the committees comply with FACA, if required.

We consider management’s comments responsive to these recommendations. The recommendations are resolved and will be closed upon completion and verification of management’s corrective action.

In response to the draft of this report, the Associate Administrator for PA&E stated that the memorandum and management comments were predecisional and, therefore, should be subject to exemption (b)(5) of the Freedom of Information Act. However, our audit report is a final document representing a final decision of this office. Management’s response, in our view, reflects firm commitments (decisions) toward future action. Specific options and positions for how the future action will be executed are not specified in these documents. We declined to invoke the deliberate process privilege and, therefore, under the authority of Title 14, Code of Federal Regulations, Section 1206.504, “Inspector General,” this report, and management’s response, is publicly available in its entirety.

Background

NPR 7120.5D requires NASA space flight projects to establish an SRB, whose role is to conduct a series of independent reviews throughout a project's life cycle. During the reviews, the SRB assesses and reports on the adequacy and credibility of the project's technical and management approach, schedule, resources, cost, and risk; the project's compliance with Agency management and systems engineering guidance; and the project's readiness to proceed to the next life-cycle phase. (See Enclosure 2 for a space flight project's life cycle.)

Orion SRB members were nominated by NASA's IPAO and appointed by the project's convening authority.² According to NPR 7120.5D, SRB members are chosen based on their management, technical, and safety and mission assurance expertise; their objectivity; and their ability to make a broad assessment of space flight projects. To ensure the objectivity of the SRB, NPR 7120.5D requires that the members be independent of the project under review; that is, none of the members should have a stake in the outcome of any of the life-cycle reviews or in the project itself. The number of SRB members differs based on a project's complexity, but each SRB has a single chairperson and a NASA Review Manager, who assists the chairperson in interfacing with the NASA project manager. Although IPAO may augment a particular SRB with specialized reviewers when needed, the concept is to have the same core membership for the duration of the project. Because the SRB is solely an advisory board, NASA management is not required to act on the SRB's findings and recommendations; however, NASA management must consider the SRB report when deciding whether the project should proceed to the next life-cycle phase.

NPR 7120.5D is NASA's primary guidance concerning SRB roles and responsibilities, and IPAO developed a draft SRB Handbook (version 1.0, August 1, 2007) to supplement that guidance. The Handbook contains guidelines for SRBs, such as their setup, roles, and responsibilities, and the processes and products needed to support the Agency's implementation of its integrated independent life-cycle review process. As of April 2008, the draft SRB Handbook was undergoing Agency review and will be released once that review is completed and the Handbook is approved for release.

Orion SRB Not Compliant with FACA

Although the Orion SRB met the definition of a committee that should be established and operated in accordance with FACA, the Agency did not require the SRB to comply with FACA requirements. FACA generally applies to committees that (1) are established by a Federal official, (2) include at least one non-Federal Government employee, and (3) are responsible for providing advice and recommendations to the agency.

² Convening authorities vary with the significance of the program or project under review. For the Orion Project, the convening authority included the NASA Associate Administrator; the NASA Chief Engineer; the Associate Administrator for Exploration Systems; the Associate Administrator for PA&E; and the Director, Johnson Space Center.

FACA. FACA was enacted in 1972 to formalize the process for establishing, operating, and terminating advisory committees that are formed to provide expert advice to Executive Branch agencies concerning Federal policies and programs. The membership of these advisory committees includes non-Federal Government employees, which provides a unique opportunity for the public to participate actively in the Federal Government's decision-making process. Under FACA, an advisory committee can be created only when it is essential to an agency's performance and is approved by high-level agency officials.³ Once approved by the agency, the committee must prepare a charter outlining the committee's mission and specific duties, which is forwarded to the General Services Administration⁴ for final review. Following a required public notification period, and filing of the charter with Congress, the committee may begin operation. To maintain transparency, an advisory committee must publish a notice of its meetings in the Federal Register, open its meetings to the public, and keep detailed minutes of each meeting. FACA also requires that a designated officer or employee of the Federal Government call or approve meetings, chair or attend each of the committee's meetings, and make detailed transcripts of the meetings available to the public.

To ensure that FACA applicability is appropriately considered for NASA committees, NPD 1150.11 requires NASA personnel to coordinate with the OGC prior to establishing committees that will include non-NASA personnel. Once the OGC renders the opinion that FACA is applicable, the advisory committee must operate in a manner fully consistent with the provisions of the Act.

Applicability of FACA to the Orion SRB. To determine whether FACA was applicable to the Orion SRB, we compared FACA criteria as stated in the Act with specifications for an SRB stated in NPR 7120.5D, as shown in the following table.

³ As of April 2008, NASA had four approved advisory committees: the Aerospace Safety Advisory Panel (congressionally mandated); the NASA Advisory Council (Agency-initiated); the International Space Station Advisory Committee (Agency-initiated); and the National Space-Based Positioning, Navigation, and Timing Advisory Board (Presidential mandate).

⁴ The General Services Administration is responsible for governmental oversight of advisory committees. As part of that responsibility, the General Services Administration issues administrative guidelines for the committees and assists other agencies in implementing and interpreting FACA.

FACA Applicability to the Orion SRB		
FACA Criteria	SRB Specification	Meets FACA Criteria?
Board is advisory, not operational, in nature.	NPR 7120.5D identifies the SRB's role as advisory to projects. The SRB does not make or implement decisions, nor does it have authority over project content. The board provides recommendations to the decision authority.	Yes
Board includes at least one non-Federal employee.	Of the 19 SRB members, 15 were non-Federal employees.	Yes
Board was established by the Agency.	The SRB members were nominated by IPAO and approved by the NASA convening authorities.	Yes
Agency utilizes the board.	The convening authorities set the terms for the board's reviews and reporting.	Yes
Board is not exempt by the Act. Specifically, the board should not be established or utilized by the Central Intelligence Agency or the Federal Reserve System. Nor can it be a State or local social board.	SRB was established by NASA and is used solely by NASA.	Yes

The results of our comparison indicated that the Orion SRB was subject to FACA. To further support FACA applicability, we reviewed applicable case law, specifically,

- 5 Op. Off. Legal Counsel 283, 285 (1981);
- *Sofamor Danek Group v. Gaus*, 61 F.3d 929 (D.C. Cir. 1995);
- *Public Citizen v. United States Department of Justice*, 109 S.Ct. 2558 (1989);
- *Food Chemical News v. Young*, 900 F.2d 328 (D.C. Cir. 1990); and
- *Byrd v. EPA*, 174 F. 3d. 239 (D.C. Cir. 1999).

The facts indicate that the Orion SRB was “established or utilized” as prescribed by case law, and the SRB arguably fits the definition of a board operating in such a manner amenable to the strict management of NASA officials. As such, the facts and circumstances surrounding the establishment of the Orion SRB indicate that it is in violation of FACA.

OGC Coordination. The Orion SRB was not identified as an advisory committee subject to FACA because IPAO convened the SRB without first coordinating with the OGC as required by NPD 1150.11. The IPAO Director stated that since the Orion SRB was established in accordance with NPR 7120.5D, the IPAO determined that

NPD 1150.11 was not a “necessary reference” and, therefore, did not comply with its requirements. We disagree with the IPAO determination because the applicability of NPR 7120.5D to a project does not make that project exempt from other NPD or NPR requirements. NPD 1150.11 states that “all employees are responsible for coordinating with the Office of the General Counsel regarding the establishment of committees or teams involving non-NASA personnel.” At a minimum, the IPAO Director should have discussed the issue with the OGC, which would have provided the OGC an opportunity to render a decision concerning FACA’s applicability to the Orion SRB.

SRB Members Not Independent of the Orion Project

Of the Orion SRB’s 19 members, we determined that 6 (32 percent) were not independent of the Orion Project, as required by NPR 7120.5D and the draft SRB Handbook. Specifically, the six members were employees of NASA contractors with an interest in, or contract with, NASA’s Orion Project or its parent program—the Constellation Program.⁵ Because a lack of independence could result in violation of Federal conflict of interest rules under 18 U.S.C. 208 or the FAR, we also evaluated whether either the statute or the regulation applied to this situation.

Independence Requirement. NPR 7120.5D requires that SRB members be independent of the project under review and states that SRB members should be “unbiased and outside the advocacy chain” of the project. The SRB Handbook further emphasizes the importance of independence by stating that in “all matters relating to SRB reviews, the board members should be free from personal, external, and organizational impairments to independence, and should avoid the appearance of such impairments of independence.” The Handbook states that this is especially important when selecting the SRB Chair in order to minimize the potential for conflict of interest situations, which is paramount when seeking an independent and unbiased opinion of a project’s performance.

IPAO Determination of Independence. To identify potential independence impairments or conflict of interest situations, IPAO required each of the candidate Orion SRB members to complete the “Personal, External, and Organizational Independence, and Political Influence Self-Assessment,” September 28, 2005 (see Enclosure 3). In the self-assessment, each candidate provided yes or no answers to questions in seven categories, including financial interests, undue influence, and employment. A “yes” answer indicated a potential impairment to independence and the candidate was required to provide additional information. For example, a question from the “Current or Former Employee” section asked, “Have you ever directly worked for the program or project being reviewed or been an employee of a contractor that receives funding from the

⁵ The Constellation Program manages, develops, and integrates the flight and ground infrastructure and systems required to enable post-Space Shuttle access to the International Space Station and for future crewed missions to the Moon, Mars, and beyond. The Orion Project is one of six projects under the Constellation Program, which also includes the Crew Launch Vehicle, Ground Operations, Mission Operations, Extra-Vehicular Activity, and the Lunar Lander projects.

program or project being reviewed?” If the candidate answered yes to that question, he or she then had to provide details of that employment. That detailed information was used in conjunction with the self-assessment to determine the candidate’s fitness for SRB participation.

For the Orion Project, the IPAO determination of the candidates’ independence was based solely on a review of the self-assessments. Based on that review, IPAO determined that each candidate was independent in fact and appearance. In making that determination, IPAO did not seek or obtain assistance from NASA’s OGC.

OIG Determination of Independence. To evaluate IPAO’s independence determinations, we reviewed the self-assessments for the Chair and each SRB member.⁶ We considered the applicability of independence requirements expressed in NPR 7120.5D. Our review indicated that neither the SRB Chair nor five of the other members were independent of the Orion Project, as defined in the NPR.

SRB Chair. On his self-assessment, the SRB Chair provided a yes response in the section on “Conflicting Financial Interests” and provided the detailed information concerning his employment, as requested. The Chair stated that he was an employee and stockholder of Science Applications International Corporation (SAIC) and noted that SAIC receives funding from the Orion Project for engineering and safety-related services. However, the Chair also stated that he had full confidence that a conflict of interest, in appearance or in fact, did not exist for the following reasons:

- His employer, SAIC, provides only technical services to NASA and is not in any role that makes programmatic, funding, or technical decisions.
- He signed a Nondisclosure Statement that created a “firewall” between him and SAIC’s work on the Orion Project.
- He had never been employed by an SAIC organization performing work on the Orion Project.
- SAIC management will not allow him to discuss Orion-related work with the SAIC employees performing that work.

We do not consider the SRB Chair’s assurances as adequate to remedy his independence impairment. We reviewed the Chair’s self-assessment form and detailed information; the IPAO’s nomination letter to the convening authority; and SAIC’s organizational conflict of interest plan, “OCI Mitigation Plan (Revised),” September 4,

⁶ The independence evaluation was limited by the scope of the self-assessment forms, which do not provide the level of detailed information required for conflict of interest reviews of Federal employees or those serving on Federal advisory committees.

2007.⁷ We also interviewed IPAO officials to determine the nature and depth of their respective reviews for independence impairments, and we interviewed the Langley Research Center's attorney-advisor who routinely advises IPAO. We concluded that the Chair's position as a senior vice president at SAIC and a SAIC stockholder renders him unsuited to serve as Chair on an advisory board that emphasizes "objectivity and independence." The attorney-advisor agreed with our conclusions, stating that had IPAO requested his advice, he would have considered the Chair's self-assessment as problematic and that it represented, at a minimum, the appearance of a conflict of interest.

SRB Members. Review of the 14 self-assessments⁸ for the non-Federal Government employees indicated that 5 of the SRB members were employed by companies with an interest in the Orion Project. Two SRB members were employed by, and stockholders in, SAIC. Another SRB member was employed by, and held stock in, Lockheed Martin Corporation. Lockheed Martin is NASA's prime contractor for the design, development, testing, and evaluation of the Orion crew exploration vehicle. The fourth SRB member was employed by Muniz Engineering Incorporated, which provides engineering support services to the Orion Project, and the fifth member was employed by Gray Research, which provides launch abort system support to the Orion Project. With the exception of the Gray Research employee, the SRB members noted their employment status with a contractor that receives funding from the project under review; those who were stockholders noted that fact also. Because the Gray Research employee did not disclose that he was an employee of a contractor receiving funding from the Orion Project, IPAO did not identify him as such in the IPAO nomination letter to the convening authorities. We learned that Gray Research provided support to the Orion Project as part of a Center service support contract when we validated with NASA contracting officers whether any SRB members' employers had Orion-related contracts.

We identified no evidence on the self-assessments or other documentation that would remedy the impairments to independence for the five SRB members. While the SAIC employees' assurances were identical to the SRB Chair's, the other three SRB members did not provide any mitigation plans or assurances to ensure that a conflict would not exist in appearance and in fact. To assess the SRB members' potential conflict of interest situations, we reviewed the same documentation as for the Chair, and we interviewed IPAO officials to determine the nature and depth of their respective reviews for independence impairments. We concluded that because the five SRB members were employees of contractors with an interest in or contract with NASA's Orion Project, and their assurances were either identical to the Chair's or nonexistent, their membership was also problematic and, at a minimum, represented the same appearance of a conflict of interest as the SRB Chair.

⁷ The SRB members were employed as consultants under a blanket purchase agreement with SAIC. SAIC and NASA developed the OCI Mitigation Plan to ensure that the work accomplished under the blanket purchase agreement was unbiased and would not benefit SAIC or any of the SRB members.

⁸ We limited our review to the non-Federal SRB members' self-assessments; four of the members were NASA employees and were not required to complete the self-assessment.

Potential Conflict of Interest. Conflicts of interest of Federal employees and Government contractors are addressed, respectively, in 18 U.S.C. 208 and FAR Subpart 9.5, “Organizational and Consultant Conflicts of Interest.” Title 18 states that an officer or employee of any independent agency of the United States, including SGEs, would be subject to the penalties set forth in the law. FAR Subpart 9.505-3, “Providing Evaluation Services,” states: “Contracts for the evaluation of offers for products or services shall not be awarded to a contractor that will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect the Government’s interests.”

Conflict of Interest under 18 U.S.C. 208. In determining that the conflict provisions of Title 18 were not potentially applicable to the SRB members, we reviewed the NASA contract and task orders by which the SRB members were employed; reviewed the OCI Mitigation Plan; and spoke with officials in the Office of Government Ethics, a Federal agency. Because the SRB members are not Federal employees, the conflict of interest rules encompassed in 18 U.S.C. 208 do not apply.⁹ Significantly, had the Orion SRB been deemed a FACA committee from the outset, the SRB members would have, pursuant to NASA practice, properly been made SGEs.¹⁰ SGEs serving on FACA committees are subject to 18 U.S.C. 208 and are eligible for a waiver. The waiver for a conflict under 18 U.S.C. 208(b)(3) is instructive because it specifically allows the Government to obtain the desired services from an SGE in the event of a conflict:

[I]n the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee’s appointment, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, certifies in writing that the need for the individual’s services outweighs the potential for a conflict of interest created by the financial interest involved . . .

Without the rigorous and definitive conflict of interest resolution process provided under the ethics regime for Federal employees, the Agency examined the conflicts of interest of the SRB members only in the context of NPR 7120.5D when making its determination.

Conflict of Interest under the FAR. To determine the applicability of the FAR, we reviewed the member’s self-assessments and the OCI Mitigation Plan. The OCI Mitigation Plan incorporates by reference the FAR and NASA FAR Supplement, stating:

As set forth in the Federal Acquisition Regulation (FAR) Part 9.5 and in the NASA FAR Supplement (NFS) at 1809.507-2, *organizational conflicts of interest (OCI) occur when contractor personnel are placed in positions in which their individual*

⁹ The Agency employed the SRB members as consultants under the SAIC blanket purchase agreement and not as Federal employees or SGEs. Because the SRB members are contract employees rather than Federal employees, the ethics rules embodied in 18 U.S.C. 208 do not apply.

¹⁰ Whether FACA committee members must be classified as SGEs involves a level of scrutiny properly exercised by the OGC. However, if FACA is triggered and board members are deemed SGEs, those members would be subject to the ethical restrictions embodied in 18 U.S.C. 208.

judgment may become biased or when a contractor may gain a competitive advantage by having access to another contractor's proprietary data, processes or reviewing its performance. [emphasis added]

The IPAO Director cited the “firewalls” and non-disclosure agreements as measures that would mitigate potential organizational conflicts of interest of the SRB members. However, those measures are designed to address the compromise of information only; they do not remedy personal bias. Therefore, the personal biases of the SRB Chair and its members have not been sufficiently mitigated.

Because the OCI Mitigation Plan covered the formation of this SRB, and the Plan incorporates by reference the FAR 9.5 clause, the SRB Chair and the five SRB members' conflicts are, therefore, imputed to their contract employers and represent an organizational conflict of interest in violation of the FAR.

Conclusion

SRBs are designed to provide NASA management access to an impartial, yet knowledgeable, advisory opinion of a project's success in meeting technical, schedule, and cost-related milestones. According to an Office of PA&E¹¹ document, “Why an Independent Review—Why a Standing Review Board” (undated), having independent experts conduct reviews provides a unique view that may have been overlooked as a consequence of the project's close involvement with the ongoing project work. To provide an impartial opinion to NASA management, SRB members should be independent of the project. However, because the Orion Project and the Constellation Program are such extensive efforts, it is difficult for the Agency to identify employees who are technically qualified to serve on the SRBs and who are also independent of the program or project. As a result, the Agency relies on non-Federal Government employees to serve as SRB members, which, in part, resulted in the Orion SRB being subject to FACA requirements.

The four NASA advisory committees that are FACA compliant were established primarily because of public interest in the subjects covered by the committees. The SRB concept was established primarily to ensure that NASA management considered an impartial opinion when measuring a project's progress and readiness to move to the next life-cycle phase. We agree with that concept and believe that the Orion SRB provides a unique perspective from which to judge the Project's progress. However, NASA needs to determine the optimum structure for the SRB to ensure that it can accomplish its mission while also remaining compliant with any applicable Federal laws and NASA guidance.

¹¹The Office of PA&E is the parent organization of IPAO.

Management Action

In August 2007, while we were conducting our audit, NASA's OGC became aware that FACA might apply to Constellation Program SRBs¹² after receiving a copy of the draft SRB Handbook. The issue was informally discussed during the September 2007 Agency Program Management Council meeting, where it was decided that the OGC and the Office of PA&E should review the issue. As part of that review, the OGC spoke with other Federal agencies as to how they handle similar situations and studied restructuring options for the SRBs that would allow non-Federal Government employees to participate without triggering FACA. The results of the review were reflected in management's comments on Recommendation 1.b, in which we recommended, in part, that management conduct an analysis of whether the Orion SRB should be reorganized under FACA.

Management's Comments on the Finding and Evaluation of Management's Comments

Management's Comments on the Finding. In his first set of comments (see Enclosure 4), the Associate Administrator for PA&E requested that we revise the memorandum to state that the convening authorities, not IPAO, were responsible for nominating and appointing the SRB members and that IPAO did not have the authority to revise an SRB report. The Associate Administrator also requested that we revise the IPAO Director's statement concerning the applicability of NPD 1150.11 to the Orion SRB.

In his second set of comments (see Enclosure 5), the Associate Administrator stated that this memorandum and management comments were predecisional and, therefore, should be subject to exemption (b)(5) of the Freedom of Information Act.

Evaluation of Management's Comments. Although we did not specifically state in the draft memorandum that IPAO had the authority to revise an SRB report, we deleted our statement concerning IPAO involvement in the reporting process because it did not affect our finding. We did not revise the memorandum to state that the convening authorities were responsible for nominating the Orion SRB members because the nomination letter clearly indicates that IPAO nominated the members. We also did not revise the IPAO Director's statement concerning the applicability of NPD 1150.11 because the statement used in our memorandum was a direct quote from the Director.

Regarding management's statement that this final report should be subject to exemption (b)(5) of the Freedom of Information Act, our audit report is a final document representing a final decision of this office. Management's response, in our view, reflects firm commitments (decisions) toward future action. Specific options and positions for how the future action will be executed are not specified in these documents. We declined to invoke the deliberate process privilege and, therefore, under the authority of Title 14,

¹²In addition to the Orion SRB, the Constellation Program and its five other projects have SRBs.

Code of Federal Regulations, Section 1206.504, “Inspector General,” this report, and management’s response, is publicly available in its entirety.

Recommendations, Management’s Response, and Evaluation of Management’s Response

Recommendation 1.a. The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should suspend the six Orion SRB members that we determined were not independent of the Orion Project from involvement in further SRB activities until an evaluation of the legality and propriety of their membership is concluded.

Management’s Response. The Associate Administrator for PA&E stated that suspension of the six Orion SRB members was unnecessary, as he has taken steps to ensure the legality and propriety of the Orion SRB membership. He also stated that the SRB independence standards are being revised and that the Orion SRB members would be subject to those revised standards. The Associate Administrator further stated that disbanding or partially disbanding the Orion SRB would adversely affect the SRB’s work and the Orion Project.

Evaluation of Management’s Response. Management’s comments are nonresponsive. We recognize that the SRB provides a unique service that is important to the Orion Project; however, we believe that the six Orion SRB members should not participate in SRB activities until their organizational conflicts of interest can be adequately mitigated. We request that the Associate Administrator reconsider his position and provide additional comments on the final memorandum.

Recommendation 1.b. The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should evaluate the legality and propriety of allowing non-independent members to serve on the Orion SRB; the evaluation should include an analysis of whether the Orion SRB should be reorganized under FACA and whether the ethical rules for SGEs are implicated.

Management’s Response. The Associate Administrator for PA&E stated that this recommendation was already implemented because, after consultation with the OGC, it was concluded that the Orion SRB would no longer be subject to FACA because its members had been advised to render individual as opposed to consensus advice. The Associate Administrator further stated that the Orion SRB members were not SGEs and, therefore, not subject to the ethical rules for SGEs.

Evaluation of Management’s Response. Management’s comments are nonresponsive. While rendering individual instead of consensus advice may appear to defeat FACA applicability, that applicability is not limited to how the advice is rendered. There are other factors, such as whether group interaction benefits the

process and the formality and structure of the group, that help determine whether FACA is triggered.¹³

The direction to the SRB members to render individual opinions rather than a consensus opinion is also contrary to how the SRB has operated to date. While we were provided no detail on how the SRB would actually operate under this new direction, it is counterintuitive that an SRB designed, organized, and operated in a collective manner can then be redirected to operate in a manner that is wholly inconsistent with its original purpose and design without having an adverse impact to the purpose and advantage of that design. The new direction to assure the individuality of SRB member participation also defeats the concept of “board.” In essence, it would no longer be a board but a group of individual advisors on specific topics, providing advice as though those topics were unrelated. Thus, the SRB’s ability to provide integrated conclusions would be lost.

We request that management provide specific information as to how the SRB will be structured, organized, and managed to further distance itself from the requirements of FACA. The comments should also address the potential impact of not having the SRB provide a consensus opinion.

Recommendation 1.c. The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should conduct a rigorous analysis of the independence status of each of the SRB members if the determination is made to reorganize the Orion SRB to not implicate FACA.

Management’s Response. The Associate Administrator concurred, stating that analysis is ongoing and that SRB activities are being redirected in order to follow the new Agency plan for conducting independent assessments. The Agency will reevaluate the independence status of each Orion SRB member once the Office of PA&E completes its revision of the SRB independence standards.

Evaluation of Management’s Response. Management’s comments are nonresponsive. Delaying completion of the analysis of the SRB members’ independence until the independence standards are revised does not meet the intent of our recommendation, which was to ensure that a rigorous analysis of each member’s independence status is conducted. We note in this memorandum that the situation of the SRB Chair and five of its members created an organizational conflict of interest in violation of the FAR. Management should immediately mitigate the apparent conflict presented by the members’ financial interests in accordance with NASA’s ethics process and in conjunction with the OGC. Therefore, in response to the final memorandum, we request that the Associate Administrator provide specific information on how NASA plans to mitigate each member’s organizational conflict of interest.

¹³See *Alcoa v. National Marine Service*, 92 F.3d 902 (9th Cir. 1996) and *Association of American Physicians and Surgeons v. Clinton*, 302 U.S. App. D.C. 208, 997 F.2d 898, 913 (D.C. Cir. 1993).

Recommendation 1.d. The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should evaluate the purpose, roles, and responsibilities of SRBs established under NPR 7120.5D to determine the optimum approach for accomplishing the SRB mission while ensuring compliance with all applicable Federal and NASA guidance.

Management's Response. The Associate Administrator concurred, stating that the Agency is defining SRB implementation approaches that are in compliance with guidance while meeting the independent assessment requirements established in NPR 7120.5D.

Evaluation of Management's Response. Management's comments are responsive. The recommendation is resolved and will be closed upon completion and verification of management's corrective action.

Recommendation 2. The Chief Engineer should revise NPR 7120.5D, if necessary, to reflect any revised SRB roles, responsibilities, and membership requirements and to include a more robust discussion of independence resolution.

Management's Response. The Associate Administrator for PA&E stated that the Office of the Chief Engineer concurs with the recommendation and that NPR 7120.5D will be updated to reflect changes to SRB roles, responsibilities, and independence requirements.

Evaluation of Management's Response. Management's comments are responsive. The recommendation is resolved and will be closed upon completion and verification of management's corrective action.

Recommendation 3.a. The Associate Administrator for PA&E should revise the draft SRB Handbook, if necessary, to reflect any revised SRB roles, responsibilities, and membership requirements and to include a more robust discussion of independence resolution.

Management's Response. The Associate Administrator concurred and stated that the Agency will update the SRB Handbook to reflect changes related to the structure of SRBs and the evaluation of independence and nominations of SRB members.

Evaluation of Management's Response. Management's comments are responsive. The recommendation is resolved and will be closed upon completion and verification of management's corrective action.

Recommendation 3.b. The Associate Administrator for PA&E should direct IPAO, in coordination with the OGC, to ensure that the Orion SRB is operating in accordance with NPR 7120.5D and the draft SRB Handbook, based on any revisions to the NPR and the SRB Handbook.

Management's Response. The Associate Administrator concurred and stated that IPAO was directed to operate the Orion SRB in accordance with approved Agency policies and applicable law. IPAO also provided the Orion SRB with a new direction to ensure that the SRB complies with Agency policies and FACA. PA&E is also working with the OGC and other Headquarters offices on appropriate updates to NPR 7120.5D and the SRB Handbook.

Evaluation of Management's Response. Management's comments are responsive. The recommendation is resolved and will be closed upon completion and verification of management's corrective action.

Recommendation 4. The Assistant Administrator for External Relations, in coordination with the OGC, should develop and implement a plan to identify NASA committees that may meet the definition of a FACA advisory committee and ensure that those committees comply with FACA requirements, if necessary.

Management's Response. The Office of External Relations concurred and will issue an annual notice to Agency officials asking them to identify NASA-sponsored committees that may be subject to FACA. The Office of External Relations will also work with Agency sponsors to ensure identified committees comply with FACA requirements.

Evaluation of Management's Response. Management's comments are responsive. The recommendation is resolved and will be closed upon completion and verification of management's corrective action.

We request that the Associate Administrator for PA&E provide additional comments on Recommendations 1.a, 1.b, and 1.c in response to this final memorandum. The additional comments should address how the Agency plans to reorganize the SRB so that it does not trigger FACA, the potential impact of not having the SRB provide a consensus opinion, and how NASA plans to mitigate the organizational conflicts of interest for the Orion SRB members. We request that management provide the additional comments by May 28, 2008.

We appreciate the courtesies extended during our audit. If you have any questions, or need additional information, please contact Ms. Carol Gorman, Space Operations and Exploration Director, at 202-358-2562.

(signed) A. Dahnelle Payson for
Evelyn R. Klemstine

5 Enclosures

cc:
Director, Independent Program Assessment Office
Chief Counsel, Langley Research Center

Scope and Methodology

We performed this audit from June 2007 through April 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We performed audit fieldwork at NASA Headquarters, Johnson Space Center, and Langley Research Center.

This memorandum is the first in a series of reports on our audit of the Orion Crew Exploration Vehicle Project. The overall objective for the audit was to evaluate management's efforts to ready the Orion for the "Preliminary Design and Technology Completion" phase of its acquisition (Phase B). During our evaluation, we identified issues with the establishment and organization of the Orion SRB, which we address in this memorandum. We plan to issue two additional reports related to the overall audit objective. The first will address the management of the System Requirements Review and the System Definition Review; the second will address the development of Orion safety and human-rating requirements.

To determine whether NASA had established and operated the Orion SRB in accordance with Federal and NASA guidance, we reviewed the following Federal and NASA laws, policies, and requirements:

- Title 5 of the United States Code, Appendix 2, Sections 1–16, the Federal Advisory Committee Act (1972), as amended;
- Title 18, United States Code, Part 1, Chapter 11, Section 208 (18 U.S.C. 208), effective as of January 3, 2005;
- FAR Subpart 9.5;
- NPD 1150.11;
- NPR 7120.5D;
- NPR 7123.1A, "NASA Systems Engineering Processes and Requirements," March 26, 2007;
- Memorandum, "NASA Interim Guidance for Standing Review Boards," December 21, 2006;
- NASA's "Terms of Reference for the Independent Life-Cycle Review of the Orion Project," February 2, 2007; and
- IPAO's draft SRB Handbook.

To determine whether the Orion SRB Chair and its members were independent of the Orion Project, we reviewed the following documents:

- Langley Office of Chief Counsel's review of SAIC's OCI Mitigation Plan, July 26, 2007;
- OCI Mitigation Plan;
- SAIC Team, Final Proposal Revision, "Organization Conflict of Interest Avoidance/Mitigation," April 7, 2000;
- Nomination and approval letters and related e-mails concerning the SRB Chair and members (December 2006 through March 2007);
- "Personal, External, and Organizational Independence, and Political Influence Self-Assessment" forms submitted by the SRB Chairs and members (2007); and
- Task Orders NNL07AB87T (February 2007) and NNL07AB89T (February 2007) for providing the review Chair and team members under Langley Blanket Purchase Agreement NNL04AA00Z with SAIC (November 2003).

We also interviewed Agency, Federal, and contractor officials, including

- Office of Government Ethics representative,
- Headquarters OGC and Langley Office of Chief Counsel representatives,
- Headquarters Office of External Relations' NASA Advisory Committee Officer,
- Langley contract officer for the blanket purchase agreement with SAIC,
- NASA IPAO Director and personnel,
- Orion SRB Chairs (interim and permanent), and
- SAIC representatives.

To determine whether any potential conflicts of interest existed, and whether FACA applied to the SRB, we obtained a legal opinion from the Office of Counsel to the Inspector General. The OIG legal staff reviewed pertinent case law and participated in our interviews with Agency and contractor officials.

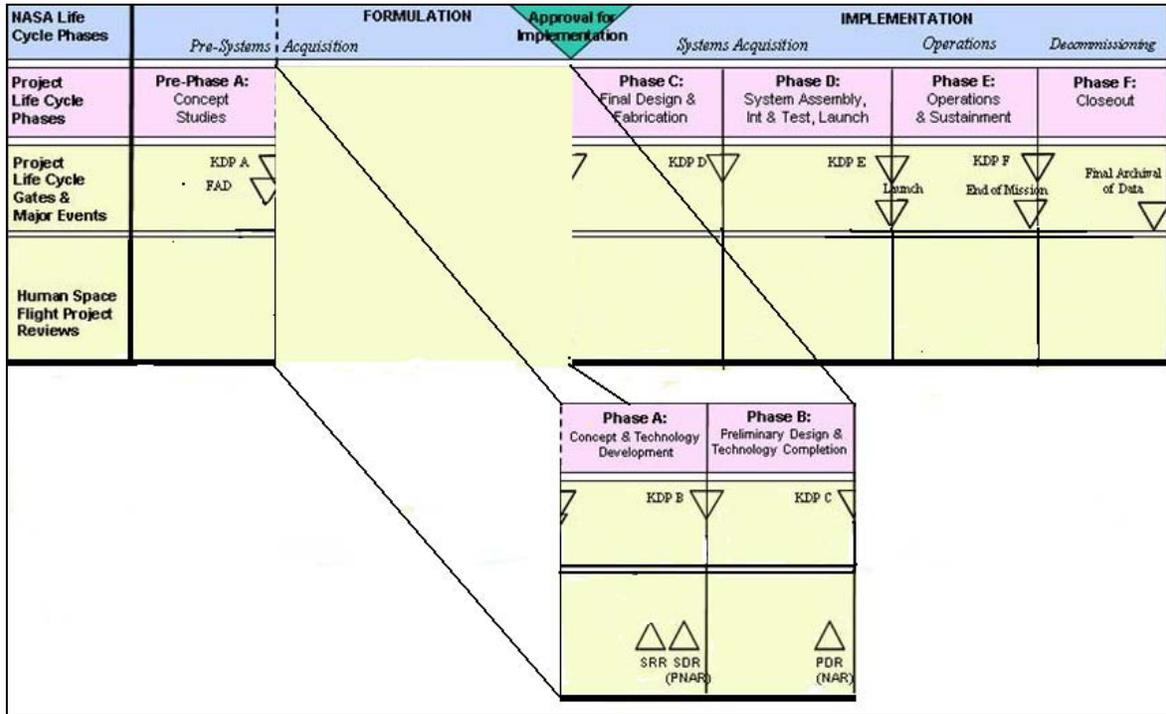
Computer-Processed Data. We did not use computer-processed data to perform this portion of the audit.

Review of Internal Controls. We reviewed and evaluated the internal controls associated with the establishment and operation of the Orion SRB. We identified weaknesses in SRB oversight activities, specifically in the applicability of FACA to the SRBs and the independence of SRB members. Implementing the recommendations in this memorandum should improve the internal controls over the SRBs.

Prior Coverage. During the last 5 years, the Government Accountability Office (GAO) issued one report of particular relevance to the subject of our audit: “Federal Advisory Committee Act: Issues Related to the Independence and Balance of Advisory Committees” (GAO-08-611T, April 2, 2008). Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>.

Life Cycle of a NASA Space Flight Project

The following figure shows the complete life cycle of a NASA space flight project. Our audit of the Orion Project focused primarily on Phases A and B of the life cycle.



Source: NPR 7120.5D (figure 2-4)

Acronyms

- FAD Formulation Authorization Document
- KDP Key Decision Point (for the Orion Project, KDP B is scheduled for April 29, 2008)
- NAR Non-Advocate Review
- PDR Preliminary Design Review
- PNAR Preliminary Non-Advocate Review
- SDR System Definition Review
- SRR System Requirements Review

SRB Member Self-Assessment

Personal, External, and Organizational Independence, and Political Influence Self-Assessment

Instructions to potential team member:

1. Read the following questions in each section below and assess your personal situation as it applies to the review team for which you are being considered.
2. Check the appropriate response.
3. If your response is “yes,” please provide a detailed explanation of the circumstances for the specific situation that may impair you. While a “yes” answer will not automatically disqualify you from consideration, a review committee will consider your response(s) to determine your fitness for participation. Hence, a detailed explanation for each “yes” response is necessary to render an informed decision.

When you have completed the self-assessment, sign, date, and fax this form to Michelle Calloway 757-864-3927.

Disclosed impairments are not automatic grounds for disqualifying a potential team member from serving on an independent review team. Upon adjudication, the IPAO team lead will make a recommendation to the IPAO Director who make the final determination and approve/disapprove each candidate’s membership.

I. Personal Independence

Conflicting Financial Interests

Will the contemplated consulting work in support of a particular program or project review have an effect on your own personal financial interests? Are you a stockholder in a company that receives funding from the program or project being reviewed? Do you own a patent or hold a copyright to a product or service or invention that is being considered for use by a program or project being reviewed? You also must be concerned about the financial interests of your spouse, your minor children, and outside persons or businesses that employ you. You should be concerned if anything you are asked to work on would affect them.

No. Yes. [Explain circumstances in detail and use additional sheets if necessary]:

_____.

Seeking Other Employment

Are you job-hunting, seeking employment or engaged in discussions with an organization, contractor, business entity or prospective new employer that could directly benefit from the program or project being reviewed? Have you received an offer of employment from a NASA contractor, subcontractor, or grantee in connection with a program or project being reviewed by NASA?

No. Yes. [Explain circumstances in detail and use additional sheets if necessary]: _____.

Outside Activities and Public Speaking

Have you ever written an article, published a paper, or taught a class that expresses a personal opinion, advocates a viewpoint, or proffers a professional judgment on the merits of the program or project being reviewed, or on the merits of the products and services associated with the program or project being reviewed? Do you belong to or are you a member of an organization that receives charitable contributions, gifts, monies, compensation, or honorariums from a contractor or person(s) that directly benefit from the program or project being reviewed?

No. Yes. [Explain circumstances in detail and use additional sheets if necessary]: _____.

II. External Independence

Impartiality in Performing Official Duties

Will the contemplated consulting work being performed in support of a particular program or project review give rise to an “improper appearance,” that is, make a reasonable person who knew the circumstances of the situation (and had knowledge of the facts) legitimately question your fairness? For example, your fairness might reasonably be questioned if you were to perform an independent assessment of a program or project that could directly benefit a family member, relative, friend, or business partner.

No. Yes. [Explain circumstances in detail and use additional sheets if necessary]: _____.

Undo Influence and Coercion

Do you feel you are unable to perform your work unfettered, uncompromisingly, openly, and effectively and free from schedule pressures, resource constraints, and opposing institutional, organizational or cultural forces? Do you feel you are unable to perform your work unfettered, uncompromisingly, openly, and effectively without fear of retribution, intimidation, threat, or prohibited personnel practices, including reprisal for whistle-blowing, as defined by law at [§ 2302\(b\) of title 5](#) of the United States Code (U.S.C.)?

No. Yes. [Explain circumstances in detail and use additional sheets if necessary]: _____.

III. Organizational Independence

Current or Former Employee

Have you ever been a superior or subordinate of an employee of a program or project being reviewed? Have you ever directly worked for the program or project being reviewed or been an employee of a contractor that receives funding from the program or project being reviewed?

No. Yes. [Explain circumstances in detail and use additional sheets if necessary]: _____.

IV. Political Influence

Do you serve as an officer, director, or trustee of a for-profit organization or a non-profit political advocacy group or do you belong to or support a political party, lobby, association, organization, group, or action committee that seeks to advance, promote or advocate legislation in support of a program or project being reviewed?

No. Yes. [Explain circumstances in detail and use additional sheets if necessary]: _____.

V. Certification:

I, _____, have completed this self-assessment of my fitness to serve on the Orion Crew Exploration Vehicle Project Standing Review Board. I have read and answered all the questions and I certify that the statements I have made on this form and all attached statements are true, complete, and correct to the best of my knowledge.

Signature

Date

Management's Comments

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001



MAR 14 2008

Reply to Attn of: **Office of Program Analysis and Evaluation**

TO: Assistant Inspector General for Auditing
FROM: Associate Administrator for Program Analysis and Evaluation
SUBJECT: NASA's Initial Response to the Office of Inspector General's Draft Memorandum on the Standing Review Board for the Orion Crew Exploration Vehicle Project (Assignment No. A-07-011-00)

Thank you for the opportunity to review the audit findings in the Office of Inspector General (OIG) management memorandum concerning the Standing Review Board for the Orion Crew Exploration Vehicle. The affected offices have been actively reviewing the report and developing responses, however, we are not prepared to offer a complete response to the recommendations at this time. We anticipate that by Wednesday, March 26, 2008, we will be able to provide a specific date by which we will have responses to each recommendation. We will also indicate any matters addressed in the draft report for which a Freedom of Information Act exception would apply at that time.

At this time, however, we would appreciate it if you would consider factual changes to the text, indicated on the following page.

If you have any questions about this response, please contact Elaine Akst at 202-358-1860.


Scott Pace

Enclosure

cc:
OCE/Mr. Ryschkewitsch
OGC/Mr. Wholley
OER/Mr. O'Brien

NASA's Initial Response to the Office of Inspector General's Draft Memorandum on the Standing Review Board for the Orion Crew Exploration Vehicle Project (Assignment No. A-07-011-00)

Recommended Changes:

On page 3, on the second paragraph of the Background section:

From: "SRB members are nominated by NASA's Independent Program Assessment Office (IPAO) and appointed by the project's convening authority."

To: "SRB members are nominated and appointed by the project's convening authority."

Rationale: Nominations are not made solely by the IPAO; the IPAO is only fully responsible for preparing the paper work that documents the nominations and approvals.

On page 5, in the table entitled "FACA Applicability to the Orion SRB," in the "SRB Specification" column, row 3:

From: "The SRB members were selected and nominated by IPAO and approved by the NASA convening authorities."

To: "The SRB members were nominated and approved by the NASA convening authorities."

Rationale: Nominations are not made solely by the IPAO; the IPAO is only fully responsible for preparing the paper work that documents the nominations and approvals.

On page 5, in the table entitled "FACA Applicability to the Orion SRB," in the "SRB Specification" column, row 4:

From: "The convening authorities set the terms for the board's reviews and reporting. The IPAO supervises, reviews, and approves the board's reports prior to issuance."

Page 5

Page 7

Revised

Page 7

Second sentence deleted

To: "The convening authorities set the terms for the board's reviews and reporting. The SRB chair oversees the SRB and assembles the board's reports. The IPAO reviews the board's reports prior to issuance as a documentation quality check to help the SRB Chair better communicate their SRB results to Agency management."

Rationale: The IPAO does not have authority to change SRB results.

On page 6, in the paragraph titled, "OGC Coordination":

From: "The IPAO Director stated that since the Orion SRB was established in accordance with NPR 7120.5D, the IPAO determined that NPD 1150.11 was not a "necessary reference" and, therefore, did not comply with its requirements."

To: "The IPAO Director stated that since the Orion SRB was established in accordance with NPR 7120.5D, which does not reference, cite, or invoke NPD 1150.11, the Orion SRB was not established using the NPD 1150.11 policy for FACA committees."

Rationale: The new language clarifies that the IPAO Director was acting according to approved NASA Procedural Requirements that did not reference, cite, or invoke NPD 1150.11. It was not a matter of the IPAO Director choosing not to comply with its requirements.

Page 7

Additional Management's Comments

National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001

APR 2 2008



Reply to Attn of: **Office of Program Analysis and Evaluation**

TO: Assistant Inspector General for Auditing
FROM: Associate Administrator for Program Analysis and Evaluation
SUBJECT: NASA's Initial Response to the Office of Inspector General's Draft Memorandum on the Standing Review Board for the Orion Crew Exploration Vehicle Project (Assignment No. A-07-011-00)

In response to each of the recommendations contained in the Memorandum on the Standing Review Board for the Orion Project, we have developed the following responses:

Recommendation 1a: The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should suspend the six Orion SRB members that we determined were not independent of the Orion Project from involvement in further SRB activities until an evaluation of the legality and propriety of their membership is concluded.

Response: PA&E agrees that management should ensure FACA compliance, but does not find it necessary to suspend the Orion members because PA&E has already taken steps to ensure the legality and propriety of Orion SRB membership. All Orion members were informed on April 1st that individual rather than consensus advice shall be rendered. In addition, PA&E is in the process of rewriting the standards for independence in the SRB Handbook and will subject members to those standards once they have been vetted through proper Agency channels.

The Orion SRB is providing an indispensable service to the Agency as the Orion project proceeds. Substantial specialized project knowledge and expertise have been developed by the SRB members as a result of the services already provided. Disbanding or partially disbanding the Orion SRB would adversely impact the future work of the members and adversely impact the Orion Project.

Recommendation 1b: The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should evaluate the legality and propriety of allowing non-independent members to serve on the Orion SRB, the evaluation should include (i) an analysis of whether the Orion SRB should be reorganized under FACA and (ii) whether the ethical rules for SGEs are implicated.

Response: NASA has implemented this recommendation. Regarding part (i), after consultation with the OGC, PA&E has concluded that the Orion SRB should not be reorganized under FACA since, as noted above, all Orion SRB members have been advised to render individual as

opposed to consensus advice. Regarding part (ii), after consultation with the OGC, PA&E has concluded that since Orion SRB members are not SGEs, the ethics laws and regulations applying to SGEs are not implicated. However, as stated in Response 1a, PA&E is in the process of developing a new standard for validating member independence in the SRB handbook, which will comply with NASA management guidance and NPR 7120.5D. This standard will be applied to all Orion SRB members as soon as possible.

Recommendation 1c: The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should conduct a rigorous analysis of the independence status of each of the SRB members if the determination is made to reorganize the Orion SRB to not implicate FACA.

Response: PA&E concurs and will reevaluate the independence status of each Orion SRB member according to the updated SRB handbook requirements discussed in the responses to 1a and 1b. This work is already ongoing and SRB activities are being redirected in order to follow the new Agency plan for conducting independent assessments and validating independence, pending completion of Agency requirements documents and handbooks.

Recommendation 1d: The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should evaluate the purpose, roles, and responsibilities of SRBs established under NPR 7120.5D to determine the optimum approach for accomplishing the SRB mission while ensuring compliance with all applicable Federal and NASA guidance.

Response: PA&E concurs and strives to ensure compliance with all Federal and NASA guidance. The office is in the process of defining SRB implementation approaches that are in compliance with guidance while meeting the independent assessment requirements established in 7120.5D.

Recommendation 2: The Chief Engineer should revise NPR 7120.5D, if necessary, to reflect any revised SRB roles, responsibilities, and membership requirements and to include a more robust discussion of independence resolution.

Response: The Office of the Chief Engineer and PA&E concur with this recommendation. The Office of the Chief Engineer will update NPR 7120.5D and PA&E will update the SRB Handbook, as necessary, to reflect changes to SRB roles, responsibilities, and independence requirements.

Recommendation 3a: The Associate Administrator for PA&E should revise the SRB Handbook, if necessary, to reflect any revised SRB roles, responsibilities, and membership requirements and to include a more robust discussion of independence resolution.

Response: PA&E concurs with this recommendation. PA&E will update the SRB Handbook, as necessary, to reflect changes related to SRB structure and implementation, independence screening, and SRB member acceptance by the convening authority. This work is already ongoing and SRB activities are being redirected in order to follow the new Agency plan for

conducting independent assessments and ensuring members have no disqualifying impediments, pending completion of Agency requirements documents and handbooks.

Recommendation 3b: The Associate Administrator for PA&E should direct IPAO, in coordination with the OGC, to ensure the Orion SRB is operated in accordance with NPR 7120.5D and the SRB Handbook, based on the results of this study and any subsequent revisions to the NPR and the SRB Handbook.

Response: PA&E concurs with this recommendation. IPAO has been directed to operate the Orion SRB in accordance with approved Agency policies and applicable law. IPAO has provided new direction to the Orion SRB that brings the SRB in conformance with Agency policies and FACA. PA&E has been working with the OGC and other appropriate Headquarters offices to ensure that updates to 7120.5D and the SRB Handbook reflect the results of this study.

Recommendation 4: The Assistant Administrator for External Relations, in coordination with the OGC, should develop and implement a plan to identify NASA committees that may meet the definition of a FACA advisory committee and ensure that those committees comply with FACA requirements, if necessary.

Response: OER concurs with this recommendation. OER will annually issue a notice to Agency officials in charge (OICs) regarding FACA requirements and solicit their support to identify any potential NASA sponsored committees that may be subject to FACA. Should such committees be identified, OER will work with the Agency sponsor to ensure that all committee activities are conducted in full compliance with FACA.

After review, in conjunction with the Office of the General Counsel, management has determined that the memorandum and management response are pre-decisional and subject to exemption (b)(5) of the Freedom of Information Act (FOIA), as they will inform final decisions about revisions to the standing review board policies that have not yet been fully coordinated within the Agency. Accordingly, the final report should be marked "Sensitive But Unclassified" until such time as the SRB Handbook completes internal review and release. Upon release, the intent is to publish the SRB Handbook on a NASA website. PA&E would be pleased to notify the Office of the Inspector General once it is released and the matter is no longer considered pre-decisional.

If you have any questions about this response, please contact Elaine Akst at elaine.akst@nasa.gov or 202-358-1860.


Scott Pace

cc:
OCE/Mr. Ryschkewitsch
OGC/Mr. Wholley
OER/Mr. O'Brien

Concurrence:

via email:

Gregory Robinson, Deputy Chief Engineer 4.02.08
Michael Ryschkewitsch Date:
Office of Chief Engineer

Michael C. Wholley 4/2/08
Michael Wholley Date:
Office of General Counsel

M. O'Brien 4/2/08
Michael O'Brien Date:
Office of External Relations