IG-00-044

AUDIT REPORT

TRANSFER OF EXTERNAL TANK DISPLAY TO KENNEDY SPACE CENTER VISITOR COMPLEX

September 14, 2000

National Aeronautics and
Space Administration

OFFICE OF INSPECTOR GENERAL

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Acronyms

FY	Fiscal Year
NHB	NASA Handbook
NPD	NASA Policy Directive
NPG	NASA Procedures and Guidelines
OIG	Office of Inspector General

W September 14, 2000

TO: A/Administrator

FROM: W/Inspector General

SUBJECT: INFORMATION: Transfer of External Tank Display to Kennedy Space Center Visitor Complex
Report Number IG-00-044

The NASA Office of Inspector General has completed an audit of the Stennis Space Center (Stennis) transfer of a Space Shuttle external tank display (external tank) to the Kennedy Space Center (Kennedy) Visitor Complex. We found that the Stennis Public Affairs Office used nonappropriated funds to effect an unauthorized augmentation of NASA's budget. This condition occurred because senior Kennedy and Stennis officials did not follow Agency policy in entering into a bilateral agreement to transfer a mock-up[1] external tank to Kennedy's Visitor Complex. In exchange for transferring the external tank, the Kennedy Visitor Complex Concessioner, Delaware North Parks Services of Spaceport, Inc. (Delaware North), paid $500,000 in nonappropriated funds to the Stennis Exchange,[2] which deposited the amount in an interest-bearing account for use by the Stennis Public Affairs Office. That office subsequently used the $500,000 to construct an addition to the Stennis Visitor Center and to acquire new exhibits. Stennis should have paid for those activities with appropriated funds, because no statutory authority provides for the acceptance and use of the nonappropriated funds from Delaware North.

Background

The external tank is one of three major elements[3] of the Space Shuttle's main propulsion system and serves as the Shuttle's structural backbone. The external tank holds more than a half million gallons of liquid oxygen and liquid hydrogen that fuel the Shuttle's main

[1] A mock-up is a scale model, usually a full-sized replica, of a structure or apparatus used for instructional or experimental purposes. The transferred external tank is a full-sized replica.
[2] The Stennis Exchange is a nonappropriated fund instrumentality whose mission is to operate activities contributing to the efficiency, welfare, and morale of NASA personnel. NASA Policy Directive (NPD) 9050.6E, "NASA Exchange Activities," December 2, 1997, states that the purpose of the NASA Exchange is to operate activities contributing to the efficiency, welfare, and morale of NASA personnel.
[3] The three major elements that comprise the Space Shuttle's main propulsion system are (1) two solid rocket boosters, (2) three main engines, and (3) the external tank.

engines during liftoff. NASA purchased the subject external tank in 1977 for $500,000.[4] The tank was initially located at the Marshall Space Flight Center (Marshall). Marshall transferred the external tank to Stennis in April 1990.

On February 27, 1997, the Directors of Kennedy and Stennis Space Centers entered into a bilateral agreement (see Appendix B) whereby Stennis agreed to transfer an external tank mock-up display, located at the Stennis Visitor Center, to the Kennedy Visitor Complex for use as a major exhibit. In return for the external tank, Kennedy directed its Visitor Complex Concessioner, Delaware North, to pay $500,000[5] to the Stennis Exchange. The bilateral agreement stated that the payment was to compensate Stennis for the potential loss of future revenue to the Stennis Visitor Program due to the external tank transfer. Stennis officials subsequently stated that because appropriated funds were not available for a proposed expansion of the Stennis Visitor Center, the funds received for the external tank transfer would be used for construction.

Recommendations

We recommended that the Director, John C. Stennis Space Center direct the Stennis Chief Financial Officer to reimburse the Stennis Exchange from appropriated funds, an amount equal to all nonappropriated funds obligated by the Stennis Exchange that were used to augment NASA's appropriation by constructing the addition to the Stennis Visitor Center and to acquire new exhibits. Also, upon receipt of the appropriated funds reimbursement, the Stennis Exchange Council should refund the $500,000 payment received for the external tank transfer and the accumulated interest to Delaware North. Further, the Director, John F. Kennedy Space Center, should direct the NASA Contracting Officer for Kennedy's concession agreement to direct Delaware North to redeposit the $500,000 and accumulated interest received from the Stennis Exchange to the exhibits fund.

Management's Response

Management nonconcurred with the conclusions and recommendations in the report (see Appendix C). Management stated that we used a narrow interpretation of the broad authority given to the Agency in the Space Act and disputes the underlying premise of the report. Management stated that the transfer of the external tank to Kennedy and the payment of nonappropriated funds to the Stennis Exchange were two separate transactions.

We reaffirm our position with respect to both the finding and recommendations and have requested management to reconsider its position and provide additional comments. We

[4] The NASA Equipment Management System shows the cost of the external tank (Equipment Control Number 1013861) as $500,000.

[5] Prior to the February 27, 1997, agreement, Delaware North had budgeted funds to contract for the fabrication of a new external tank mock-up to display at the Kennedy Visitor Complex.

do not agree with management's position and believe it is based on an overly broad and liberal interpretation of not only the Space Act, but also of Kennedy's concession agreement with Delaware North. The documentation supporting this transaction clearly shows that the payment of $500,000 to the Stennis Exchange was dependent on delivery of the external tank to Kennedy and was, in substance, a single transaction rather than two separate and unrelated events.

We provide a detailed response to management's comments in Appendix D of the report.

[original signed by]
Roberta L. Gross

Enclosure
Final Report on Audit of Transfer of External Tank Display to Kennedy Space Center Visitor Complex

FINAL REPORT
AUDIT OF TRANSFER OF EXTERNAL TANK DISPLAY TO KENNEDY SPACE CENTER VISITOR COMPLEX

W September 14, 2000

TO: AA/Director, John C. Stennis Space Center
AA/Director, John F. Kennedy Space Center
B/Chief Financial Officer
J/Associate Administrator for Management Systems

FROM: W/Assistant Inspector General for Auditing

SUBJECT: Final Report on Audit of Transfer of External Tank Display to Kennedy Space Center Visitor Complex
Assignment Number A0000200
Report Number IG-00-044

The subject final report is provided for your use and comments. Our evaluation of your response is incorporated into the body of the report and into Appendix D. With respect to management's nonconcurrence with the recommendations, we request that management reconsider its position and submit additional comments by November 13, 2000. The recommendations will remain open for reporting purposes.

If you have questions concerning the report, please contact Mr. Kevin J. Carson, Program Director, Safety and Technology Audits, at (301) 286-0498, or Mr. Oscar Lindley, Auditor-in-Charge, at (228) 688-1493. We appreciate the courtesies extended to the audit staff. The final report distribution is in Appendix E.

[original signed by]
Russell A. Rau

Enclosure

cc:
B/Comptroller
BF/Director, Financial Management Division
G/General Counsel
JM/Acting Director, Management Assessment Division
M/Associate Administrator for Space Flight
P/Associate Administrator for Public Affairs

NASA Office of Inspector General

IG-00-044 **September 14, 2000**
A0000200

Transfer of External Tank Display to Kennedy Space Center Visitor Complex

Introduction

The NASA Office of Inspector General (OIG) has completed an audit of the Stennis transfer of a Space Shuttle external tank display (external tank) to the Kennedy Visitor Complex. The overall objective of the audit was to evaluate the propriety and use of $500,000 paid by the Kennedy Visitor Complex Concessioner to the NASA Exchange at Stennis in relation to the transfer of the external tank. The specific objective was to determine whether the payments were appropriate and reasonable and were for authorized purposes.

The Stennis Exchange is a nonappropriated fund instrumentality whose mission is to operate activities contributing to the efficiency, welfare, and morale of NASA personnel.

Appendix A contains further details on the audit objectives, scope, and methodology.

Results in Brief

Senior Management Officials at Kennedy and Stennis did not follow established policies for transferring property between NASA Centers without reimbursement of property cost. Consequently, the Kennedy Visitor Complex Concessioner made an unauthorized payment of $500,000 in nonappropriated funds to the Stennis Exchange. The Stennis Public Affairs Office used the $500,000 to fund a construction project and additional public exhibits at the Stennis Visitor Center, which resulted in an unauthorized augmentation of NASA's appropriation.

Background

The National Aeronautics and Space Act of 1958 (Space Act), as amended, allows NASA to use nonappropriated funds of concessioners to fund construction, maintenance, and operation of all manner of facilities and equipment for visitors and to provide services incidental to the dissemination of information concerning the Agency's activities. The Stennis Visitor Center is not operated under a concession agreement. The Stennis Public Affairs Office manages the Stennis Visitor Center with support personnel provided by the Center's facilities operations contractor. The Stennis Exchange is not a concessioner, but rather an instrumentality of the Federal Government under NASA's control.[6]

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[6] NPD 9050.6E, "NASA Exchange Activities," December 2, 1997, identifies NASA Exchanges as instrumentalities of the United States that must be under NASA's control, and ownership interests must be with the Government.

The Delaware North concession agreement with Kennedy states that the Government will provide on a no-charge basis, various exhibits, displays, and artifacts[7] for public viewing at the Kennedy Visitor Complex. The external tank transferred from Stennis is classified as an artifact and is permanently displayed in the Space Shuttle Exhibit at the Kennedy Visitor Complex. Stennis and Delaware North completed the transfer of the external tank with Delaware North reporting the tank as "Contractor Acquired Property" with a value of $500,000 on NASA Form 1018, "NASA Property in the Custody of Contractors." Delaware North also paid shipping costs of approximately $112,000 to transport the external tank from Stennis to the Kennedy Visitor Complex.

Transfer of Space Shuttle External Tank

Finding. The Stennis Public Affairs Office used nonappropriated funds to effect an unauthorized augmentation of NASA's budget. This condition occurred because senior Kennedy and Stennis officials did not follow Agency policy in entering into a bilateral agreement to transfer a mock-up external tank to Kennedy's Visitor Complex. In exchange for transferring the external tank, the Kennedy Visitor Complex Concessioner, Delaware North, paid $500,000 in nonappropriated funds to the Stennis Exchange, which deposited the amount in an interest-bearing account for use by the Stennis Public Affairs Office. That office subsequently used the $500,000 to construct an addition to the Stennis Visitor Center and to acquire new exhibits. Stennis should have paid for those activities with appropriated funds, because no statutory authority provides for the acceptance and use of the nonappropriated funds from Delaware North.

NASA Requirements Governing Transfers of Property

NASA Handbook (NHB) 4200.1D, "Equipment Management Manual," April 1, 1992, establishes requirements and procedures for NASA and its contractors to screen the NASA Equipment Management System prior to purchasing new equipment. Screening the system is done to determine whether the desired item or an acceptable substitute is available. The system identifies available items as having status codes of B, C, or D. Status code B items include "inactive equipment approved for retention as a national asset,"which would include the external tank transferred to Kennedy since it is classified as an artifact. Once an item is identified as being available for transfer and the requester

[7] An artifact is a unique object that documents the history of the science and technology of aeronautics and astronautics. Its significance and interest stem mainly from its relation to: (1) historic flights, programs, activities, or incidents; (2) achievements or improvements in technology; (3) our understanding of the universe; and 4) important or well-known personalities.

has agreed to accept the transfer, the transfer is effected using an unfunded purchase request. Using an unfunded purchase request to transfer property, in effect, means that the transfer is to be made without reimbursement.

NHB 4300.1, "NASA Personal Property Disposal Manual," March 27, 1987, states that NASA installations will use excess and surplus property to the maximum extent feasible to fill existing needs and satisfy requirements prior to initiating new acquisitions. The NHB further requires that a NASA Center requesting excess property from another Center pay only for shipping expenses, except when the requested item is installed. For installed items, the requesting Center is also required to bear the costs of dismantling and removing the item.

Federal Appropriations Guidance

Section 4-5 of General Accounting Office, "Principles of Federal Appropriations Law," states that "an agency cannot do indirectly what it is not permitted to do directly." Additionally, Section 6-103 states:

> As a general proposition, an agency may not augment its appropriation from outside sources without specific statutory authority. The prohibition against augmentation is a corollary of the separation of powers doctrine. When Congress makes an appropriation, it is also establishing an authorized program level. In other words, it is telling the Agency that it cannot operate beyond the level that it can finance under its appropriation. To permit an Agency to operate beyond this level with funds derived from some other source without specific congressional sanction would amount to a usurpation of the congressional prerogative. Restated, the objective of the rule against augmentation of appropriations is to prevent a Government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity.

External Tank Transfer to Kennedy in Exchange for Reimbursement

As part of the transfer agreement signed by the Kennedy and Stennis Center Directors, Stennis agreed to release any and all interest in the external tank if Kennedy:

- Will direct its concessioner (Delaware North), through its Visitor Complex, to pay the Stennis Exchange $500,000 to compensate Stennis for the potential loss of future revenue to the Stennis Visitor Program due to the external tank transfer. A payment of $250,000 will be made when the external tank is delivered at Kennedy, with the remaining $250,000 paid before April 30, 1998.

- Will allow Stennis to review the list of artifacts and/or mock-ups not used by the Kennedy Visitor Program for possible use at the Stennis Visitor Center.

- Will provide advice, through its Visitor Complex, to Stennis in terms of design concepts for Stennis Visitor Center enhancements and/or construction.

- Agreed that Stennis will receive priority in obtaining another external tank for display in the event another one becomes available for Visitor Center programs.

Stennis shipped the external tank to Kennedy in December 1996. In April 1997, Delaware North made the first payment of $250,000 to the Stennis Exchange and made the second payment in May 1998.

Payments to the Stennis Exchange for External Tank

Stennis transferred the external tank, an item of NASA equipment, to Kennedy in exchange for reimbursement. NHB's 4200.1D and 4300.1 state that transfers of equipment or personal property between NASA Centers are nonreimbursable, with the exception of shipping charges paid by the requesting Center. The $500,000 paid to the Stennis Exchange was derived from the Delaware North Exhibits Fund,[8] held in trust by Delaware North for improvements to the Visitor Complex as part of the concession agreement with Kennedy. The Delaware North Exhibits Fund was established to provide for the replacement, renovation, upgrade, and general improvement of existing Kennedy Visitor Complex exhibits, displays, and major audio-visual equipment. The fund is not intended for making payments for the "potential loss of future revenue" or for funding projects at other NASA Centers.

At the time the agreement to transfer the tank was signed, Delaware North had budgeted to use a portion of the Exhibits Fund to contract for the fabrication of a new external tank mock-up to display at the Kennedy Visitor Complex. Evidence that the $500,000 payment was for acquiring the external tank and was not related to a potential loss of future revenue is provided in Kennedy's direction to Delaware North. In a letter dated April 21, 1997, the NASA Contracting Officer directs Delaware North to make the first $250,000 payment to the Stennis Exchange. The letter states that the payment is "for the external tank for the Shuttle Orbiter Exhibit." In a May 12, 1998, memorandum to Delaware North, the Kennedy Director of Procurement states that "Delaware North purchased the external tank from Stennis."
The transaction between Delaware North and Stennis appears to be payment from Delaware North to a nonappropriated fund activity that would not require enabling statutory authority. However, the substance of the transaction is a payment from Delaware North to construct an

[8] Delaware North's Concession Agreement with the Kennedy Space Center provides for the establishment of three funds to be held in trust for Kennedy Visitor Complex improvements. The three funds and their authorized uses are as follows:

> Exhibits Fund - A trust account to provide, as directed by the Contracting Officer, for the replacement, renovation, upgrade, and general improvement of existing Kennedy Visitor Complex exhibits, displays, and major audio-visual equipment.
> Facilities Fund - A trust account to provide, as directed by the Contracting Officer, for the replacement, renovation, upgrade, and general improvement of existing Kennedy Visitor Complex facilities, collateral equipment, and support infrastructure.
> Transportation Fund - A trust account to provide, as directed by the Contracting Officer, for the replacement, upgrade, and general improvement of existing Kennedy Visitor Complex vehicles and transportation systems, and expansion of the base fleet.

addition to the Stennis Visitor Center, which is an activity requiring the use of funds appropriated by Congress for this purpose. Correcting this transaction to ensure compliance with applicable appropriations guidance can result in an Anti-Deficiency Act[9] Violation. Such a violation would occur to the extent that insufficient appropriated funds of the correct type and fiscal year (FY) are available to obligate and disburse for construction of the Visitor Center addition and for the acquisition of new exhibits.

The external tank transfer was clearly conditional upon the payment of funds from Delaware North to the Stennis Exchange. Stennis officials involved in the transfer told us that the external tank was the focal point of the outdoor exhibits at the Stennis Visitor Center and that the Center would not have agreed to its transfer without compensation for its loss. Stennis officials also stated that at the time of the transfer, appropriated funds were not available for a planned expansion of the Stennis Visitor Center. This resulted in the bilateral agreement between the Directors of Kennedy and Stennis to transfer the tank to Kennedy in return for the funds necessary to construct an addition to the Visitor Center.

Stennis properly prepared the documentation required by NHB 4200.1D and NHB 4300.1 for initiating a nonreimbursable transfer of the external tank to Kennedy. However, Stennis actually effected a reimbursable transfer by requiring Kennedy to provide compensation of $500,000, which was NASA’s original cost of the tank. Identifying the $500,000 payment as compensation for potential loss of future revenue to the Stennis Visitor Program, as cited in the transfer agreement between Kennedy and Stennis, does not make this transaction a nonreimbursable transfer.

Basis for Potential Loss of Revenue

Stennis could provide no evidence for its position that the $500,000 payment was to compensate for the potential loss of future revenue to the Stennis Visitor Program. Rather, the amount paid for lost revenue ($500,000) was identical to the cost of the external tank reported in NASA's Equipment Management System. Stennis receives no revenue from the public in operating its Visitor Center. The general public is allowed to view all exhibits and participate in activities without charge. Stennis management officials stated that the "potential loss of future revenue" really meant an anticipated loss of revenue to the Stennis Exchange. The Stennis Exchange operates a souvenir shop in the Visitor Center, and it was anticipated that the shop would have reduced revenues as a result of transferring the external tank, one of the Visitor Center's focal point exhibits. Stennis management officials told us that a significant decrease in the number of visitors was projected because of the absence of the external tank. However, Stennis could provide no support for the projected decrease. Our analysis of visitor statistics and souvenir shop sales data showed that the projected decrease did not occur. In fact, there was an increase in the number of visitors and a corresponding increase in revenues of the Exchange’s souvenir shop as shown in the following table.

[9] The Anti-Deficiency Act (31 United States Code 1341, 1342, and 1517) provides that Federal employees shall not authorize an obligation under any appropriation in excess of the amount available or for any purpose in advance of authorization by law.

Stennis Visitor Center
Number of Visitors/Souvenir Shop Gross Sales

FY	Number of Visitors	Gross Sales
1990 (Stennis receives external tank)	116,646	$182,500
1991	114,202	$149,200
1992	113,726	$171,100
1993	111,931	$154,600
1994	103,031	$163,000
1995	102,982	$183,700
1996 (external tank transferred to Kennedy)	91,185[1]	$179,100
1997	109,628[2]	$212,200
1998	111,765	$187,900
1999	112,454	$189,800

[1] The Visitor Center auditorium was closed for a 4-month period for refurbishment. Bookings of school groups were suspended during that time.
[2] The increase was attributed to new exhibits, special events, increased tourism, and heightened media awareness of the Stennis Visitor Center through use of a Web site.

During FY's 1990 through 1996, the Stennis Visitor Center had an average annual attendance of 107,672. From FY's 1997 through 1999, or after the external tank was transferred, average attendance at the Stennis Visitor Center increased to 111,282. During this same period, average annual gross sales at the Exchange's souvenir shop rose from $169,029 to $196,633.

Even if a programmatic decision had been made to transfer the external tank in furtherance of a NASA program or mission, the Exchange would not be due any form of compensation for the financial impact. NASA has authority to transfer exhibits, without consideration of Exchange activities, to locations that best promote NASA's programs and mission.[10] As previously stated, however, the transfer of the external tank does not change the substance of the transaction that resulted in Delaware North funds being used for purposes that require the use of appropriated funds.

[10] NHB 4200.1D, "NASA Equipment Management Manual," states Government equipment is not owned by the holder, and action will be taken, when it makes economic and programmatic sense, to move such equipment from one use and user to another, including movement among offices, functions, programs, contractors, and installations.

Addition to Visitor Center Constructed With Funds Received From Delaware North

The Stennis Exchange deposited the $500,000 payment from Delaware North into an interest-bearing account with the Hancock Bank for the exclusive use of the Stennis Public Affairs Office for making Visitor Center improvements. In June 1998, the Stennis Exchange awarded a firm-fixed-price contract for $432,031 to D.N.P., Inc., to construct a 7,000 square foot expansion to the Stennis Visitor Center, a facility that was originally constructed with appropriated funds. The Stennis Exchange paid for this contract with funds from the Stennis Exchange's account with Hancock Bank. At the direction of the Stennis Public Affairs Office, the Stennis Exchange is also using funds, including accrued interest from the same account, to acquire exhibits to be displayed in the expanded Visitor Center.

Although the Space Act allows NASA to use nonappropriated funds of concessioners for construction and other activities, the Stennis Exchange is not a concessioner, but an instrumentality of the Federal Government under NASA's control. Therefore, the Stennis Exchange lacks the authority given concessioners to use nonappropriated funds for constructing a Visitor Center expansion. Further, NASA Visitor Center exhibits and displays promoting the mission and programs of NASA are also normally acquired with appropriated funds provided for public affairs activities.[11] It is the responsibility of NASA, not the Stennis Exchange, to promote the Agency's programs and projects. By constructing the addition and acquiring exhibits, the Stennis Exchange is involved in activities outside its authorized purpose. The resulting facility construction and acquisition of exhibits occurred outside specific appropriation authority and without congressional approval.

Unauthorized Augmentation of NASA's Budget

The Stennis Public Affairs Office use of nonappropriated funds to construct the Visitor Center addition and to acquire new exhibits constitutes an unauthorized augmentation of NASA's budget. The General Accounting Office Principles of Federal Appropriations Law states that an agency cannot do indirectly what it is not authorized to do directly with appropriated funds and that an agency may not augment its appropriation from outside sources without specific statutory authority.

The Comptroller General of the United States referenced the prohibition against an agency augmenting its appropriation in an opinion concerning an agency's use of interest earned on appropriated funds. In an opinion dated February 24, 2000, to the Trustee, Court Services and Offender Supervision Agency for the District of Columbia, the Comptroller General stated:

> When an agency retains and spends funds received from outside sources, it augments its appropriation to the extent that such amounts result in agency spending in excess of the level established by the appropriation act. An agency's authority to augment its appropriation

[11] NASA Management Instruction 1387.1D, "NASA Exhibits Program," December 19, 1990, states that funding for the design, construction, and procurement of exhibits, exhibit materials, and exhibit refurbishment will normally be borne by the proponent installation.

> is no greater than its authority to spend funds in the absence of an appropriation. Further, even when a law authorizes an officer or employee to receive funds from outside sources, the authority to spend the funds must be provided in law. The authority to spend may not be inferred from the absence of an express prohibition to spend in the law authorizing the collection.

Regarding the use of nonappropriated funds for construction and the acquisition of new exhibits, Stennis did not have specific statutory authority to either receive the funds from Delaware North or to use the funds for these purposes.

Conclusion

In our opinion, Stennis and Kennedy management pursued "creative financing" to further the NASA mission. However, management lacked the statutory authority to do so. Accordingly, management should ensure that (1) only appropriated funds are used for the facility construction project and purchase of exhibits; (2) the $500,000 and accrued interest is repaid to Delaware North; and (3) Delaware North redeposits the funds in the exhibits fund. In addition, Stennis should ensure that sufficient appropriated funds of the correct appropriation and fiscal year are available to fund construction activities.

Recommendations, Management's Response, and Evaluation of Response

The Director, John C. Stennis Space Center, should:

> **1. Direct the Stennis Chief Financial Officer to take appropriate actions to reimburse the Stennis Exchange from appropriated funds, an amount equal to all nonappropriated funds obligated by the Stennis Exchange that were used to augment NASA's appropriation by constructing the building addition to the Stennis Visitor Center and to acquire new exhibits. The appropriated funds should be from the fiscal year in which the obligations were incurred.**
>
> **2. Upon receipt of the appropriated funds reimbursement, direct the Stennis Exchange Council to refund the $500,000 payment received for the external tank transfer and the accumulated interest to Delaware North.**

3. The Director, John F. Kennedy Space Center, should direct the NASA Contracting Officer for Kennedy's concession agreement with Delaware North to direct Delaware North to redeposit the $500,000 and accumulated interest received from the Stennis Exchange to the exhibits fund.

Management's Response. Nonconcur. Management stated that the OIG used a narrow interpretation of the broad authority given to the Agency in the Space Act and that management disputes the underlying premise of the report. Management stated that the transfer of the external tank to Kennedy and the payment of nonappropriated funds to the Stennis Exchange were two separate transactions that need to be examined. On the one hand, one NASA Center transferred a Government-owned external tank to another, with title retained in the Government at all times. Such transfers happen regularly between NASA Centers and, as long as the transfer is properly documented, there should be no questions about its propriety. On the other hand as a separate transaction, a NASA concessioner from one Center provided nonappropriated funds for an addition to a Visitor Center at another NASA Center. It is clear that the Space Act authorizes the use of nonappropriated funds from concessioners to do exactly that.

The complete text of management's comments is in Appendix C.

Evaluation of Management's Response. Management's comments are not responsive to the recommendations. We do not agree with management's position and believe it is based on an overly broad and liberal interpretation of not only the Space Act, but also of Kennedy's concession agreement with Delaware North. The Space Act does allow NASA to use nonappropriated funds of concessioners to fund construction, maintenance, and operation of all manner of facilities and equipment for visitors. However, the Stennis Visitor Center is not operated under a concession agreement. The nonappropriated funds were deposited in the Stennis Exchange account. The Stennis Exchange is not a concessioner, but rather an instrumentality of the Federal Government under NASA's control, and its primary mission is to operate activities contributing to the efficiency, welfare, and morale of NASA personnel. We also take exception to management's rationale that Kennedy's current concession agreement allows Delaware North funds to be used at other NASA Centers for constructing facilities. The $500,000 paid to the Stennis Exchange was derived from Delaware North's "Exhibits Fund" which, as defined in the concession agreement, is to provide, as directed by the Contracting Officer, for the replacement, renovation, upgrade, and general improvement of existing Kennedy Visitor Complex exhibits, displays, and major audio-visual equipment. There is no mention in the concession agreement that these funds can be used to construct facilities at any NASA Center other than Kennedy.

Management has no foundation for its comment that separate transactions effected the transfer of the tank and the providing of nonappropriated funds from a concessioner at one Center for the construction of an addition at another Center. Although Centers routinely transfer property, such transfers do not normally occur under the auspices of a formal written agreement signed by not only the Center Directors, but also senior NASA officials on the Directors' respective staffs. Further, the agreement clearly states that in return for transferring the external tank to Kennedy, the Kennedy concessioner would pay the NASA Exchange at Stennis $500,000, payable in an amount of $250,000 when the tank is delivered to Kennedy and another $250,000 by April 30, 1998. The agreement as worded, clearly indicates that the payment of $500,000 to the Stennis Exchange was dependent on delivery of the external tank.

We are requesting that management reconsider its position and provide additional comments on each of the recommendations. The recommendations are unresolved and will remain undispositioned and open for reporting purposes. Our additional comments on management's response are in Appendix D.

Appendix A. Objectives, Scope, and Methodology

Objectives

The overall objective of the audit was to evaluate the propriety and use of funds paid to the NASA Exchange at Stennis in relation to the transfer of an external tank to the Kennedy Visitor Complex. The specific objective was to determine whether the payments were appropriate and reasonable and were used for authorized purposes.

Scope and Methodology

To accomplish our objectives, we:

- Obtained an overall understanding of the February 27, 1997, bilateral agreement between the Kennedy and Stennis Center Directors regarding the transfer of the external tank.

- Reviewed the payments made by Delaware North to the Stennis Exchange and the subsequent use of the funds.

- Reviewed NASA's policies and procedures for (1) equipment transfers between Centers, (2) activities of NASA Exchanges, and (3) management of the NASA Exhibits Program.

- Reviewed the Kennedy Visitor Complex's Concession Agreement with Delaware North and the agreement's relationship to the external tank transfer in order to identify the responsibilities and requirements of the Kennedy Concessioner.

- Reviewed the National Aeronautics and Space Act of 1958 to determine NASA's authority to (1) use a concessioner to operate a NASA Visitor Complex, (2) establish a NASA Exchange, and (3) accept cash donations from outside sources.

- Reviewed the General Accounting Office "Principles of Federal Appropriations Law" to identify policies and procedures related to the augmentation of appropriations.

- Reviewed Stennis Exchange files and documents relative to the receipt and use of funds obtained from Delaware North.

- Interviewed personnel at Kennedy, Stennis, and NASA Headquarters regarding the external tank transfer and associated payments, including the basis for the amount of funds received.

- Interviewed Delaware North personnel to obtain information regarding payments made to the Stennis Exchange and to understand processes used to carry out contractual responsibilities.

- Reviewed the Stennis Exchange construction contract with D.N.P., Inc.

Management Controls Reviewed

We reviewed management controls relative to (1) transferring personal property or equipment, (2) nonappropriated fund activities including NASA exchanges, and (3) uses of appropriated and nonappropriated funds. As discussed in the finding, sufficient management controls are in place governing the transfer of personal property or equipment and the proper use of appropriated and nonappropriated funds. However, as described in the finding section of this report, the two Centers did not follow these controls.

Audit Field Work

We conducted field work from October 1999 through March 2000 at NASA Headquarters, Stennis, and Kennedy. We performed the audit in accordance with generally accepted government auditing standards.

Appendix B. Agreement Terms

National Aeronautics and
Space Administration

John C. Stennis Space Center
Stennis Space Center, MS 39529-6000

Reply to Attn of:

CA02-96-175

FEB 27 1997

Mr. Jay Honeycutt
Director
John F. Kennedy Space Center
National Aeronautics and Space Administration
Kennedy Space Center, Florida 32899-0001

Dear Mr. Honeycutt:

This letter agreement captures the essence of conversations we, members of our staffs, and Marshall Space Flight Center (MSFC) employees have had regarding the Space Shuttle External Fuel Tank (External Tank) that has been displayed at the Visitors Center at Stennis Space Center (SSC). Your signature at the end of this letter will confirm our agreement whereby SSC is transferring this External Tank to Kennedy Space Center.

The Shuttle External Tank being transferred has been displayed outside the SSC Visitors Center as a key outdoor exhibit of our visitors' center program. However, we recognize KSC's Visitor Center is completing a major exhibit, a portion of which is dependent upon the exhibition of an External Tank. No other External Tanks are currently available for its Visitor Center. Therefore, SSC agrees to transfer the External Tank formerly located at SSC to KSC pursuant to an agreement between the parties as set forth in this letter.

As a result of the above noted conversations, the following responsibilities have been agreed upon:

A. NASA/SSC will perform the following tasks, and other such tasks as may be necessary to meet the purpose of this agreement:

SSC agrees to deliver the External Tank to the Michoud Assembly Facility and agrees to release any and all interest in said External Tank to KSC.

B. NASA/KSC agrees to perform the following tasks, and other such tasks as may be necessary to meet the purpose of this agreement:

1. KSC will direct its concessioner, through its Visitor Center, to make payment to the NASA Exchange - SSC Branch the sum of $500,000 to compensate SSC for the potential loss of future revenue to SSC's Visitor Program due to transfer of this major exhibit to KSC. A payment of $250,000 will be made when the External Tank is delivered at KSC, and the remaining $250,000 will be paid before April 30, 1998.

2. KSC will allow SSC to review the list of artifacts and/or mock-ups which are presently not being used by the KSC Visitors Center Program (the list is attached as Exhibit "A"), and SSC will be allowed a period of up to six months to make a determination of which of the exhibits would be of beneficial use to SSC. Upon this determination, KSC will release these displays to SSC, and SSC will be responsible for packing and transporting these exhibits to SSC.

3. KSC, through its Visitors Center, will provide advice to SSC in terms of design concepts for visitors center enhancements and/or construction. This provision is subject to SSC payment of travel, if any, and the availability of KSC personnel.

In order to complete this letter agreement, the following personnel are designated as the key officials for their respective parties. These key officials are the principal points of contact between the parties in the performance of this agreement.

2

NASA/SSC
Kirk Miller (Technical Support)
601-688-1092

NASA/SSC
Myron Webb (Public Affairs Support)
601-688-3341

NASA/MSFC
Parker Counts (External Tank Management Support)
205-544-1292

NASA/KSC
Roger Hall (Technical Support)
407-867-7373

NASA/KSC
Larry Mauk (Public Affairs Support)
407-867-2363

It is further agreed that in the event another external tank becomes available in the future for visitors' center programs, that SSC will receive priority to display this external tank.

Please feel free to contact either of the SSC points of contact if you have any questions. If not, please sign the acceptance part of this agreement and send it to me for completion.

Sincerely,

Roy S. Estess
SSC Director

Acceptance:

Jay Honeycutt
KSC Director

2/18/97
Date

3

Concurrence:

NOT APPLICABLE

Parker Counts
MSFC External Tank Project
Manager

Date

Jon B. Roth
SSC Exchange Operations Mgr.

2-20-97
Date

Hugh Harris
Director, Public Affairs Office

2/14/97
Date

James E. Hattaway, Jr.
Director, Procurement Office

2-14-97
Date

Douglas G. Hendriksen
Office of Chief Counsel

2-18-97
Date

4

Appendix C. Management's Response

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

Reply to Attn of: M

AUG - 4 2000

TO: W/Assistant Inspector General for Audit

FROM: M/Associate Administrator for Space Flight

SUBJECT: Draft Report on Audit of Transfer of External Tank Display to Kennedy Space Center Visitor Complex
Assignment Number A0000200

In response to your May 23, 2000, letter transmitting the draft report on the subject audit , we are forwarding the enclosed joint response from Stennis Space Center and Kennedy Space Center. The response indicates a nonconcurrence to the conclusions and recommendations provided in the draft report and I support this position. We have designated Mr. Kenneth R. Human, Chief Counsel at the John C. Stennis Space Center as the point of contact for this joint response. Mr. Human can be reached at (228) 688-2164.

Joseph H. Rothenberg

Enclosure

cc:
M-6/Mr. Reilly
MI/Mr. Malone
MX/Ms. Gabourel
B/Mr. Holz
B/Mr. Peterson
G/Mr. Frankle
J/Mr. Sutton
JM/Dr. Tynan
P/Ms. Wilhide

JOINT SSC/KSC RESPONSE TO THE NASA INSPECTOR GENERAL'S DRAFT AUDIT REPORT A0000200, "TRANSFER OF EXTERNAL TANK DISPLAY TO KENNEDY SPACE CENTER VISITOR COMPLEX" DATED MAY 23, 2000

I. Introduction

See Appendix D, OIG Comment 1

In its audit report the IG takes a narrow interpretation of the broad authority given to NASA in the NASA Space Act; and, as a result, we dispute the underlying premise of the report and nonconcur with its conclusions and recommendations. The foundation of the IG's position is that the construction of an addition to the Stennis Visitor Center "is an activity requiring the use of funds appropriated by Congress for this purpose." (IG draft audit report, page 5.) NASA, however, has specific statutory authority to use non-appropriated funds from concessioners to construct and improve facilities for visitors. Congress enacted this authority in section (c) (11) of the Space Act to encompass and authorize transactions such as the one the IG finds fault with in this draft audit report.

In this case, non-appropriated concession revenues generated at KSC were transferred to an account for non-appropriated funds of the Stennis branch of the NASA Exchange for the purpose of funding an addition to the Stennis Visitor Center. It was within the authority of the Space Act for SSC to use non-appropriated concession revenues from another NASA center to construct the addition.

See Appendix D, OIG Comment 2

There is no question that the transfer and use of the concession revenues should have been better documented. More specifically, the letter agreement between the two centers should have cited the authority of section (c) (11) of the Space Act as the authority for the transfer. The NASA form 1509 that authorized the addition to the Visitor Center correctly indicated that "non-appropriated" funds would be used, but it should have more specifically identified "non-appropriated concession revenues from KSC" as the source of the funding.

II. Economy Act Restrictions on the Use of Non-appropriated Funds

It is acknowledged that the IG position is premised upon a long, well-established line of Comptroller General decisions that hold that Congress should fund the cost of repairs and improvements to Government buildings and properties by direct appropriations. It is also true that, generally, the alteration or improvement of Government buildings cannot be financed by concessioners. This line of cases relies on section 321 of the Economy Act of June 30, 1932, 40 U.S.C. 303b as amended, which provides that:

> Except as otherwise specifically provided by law, the leasing of buildings and properties of the United States shall be for a money consideration only, and ***there shall not be included in the lease any provision for the alteration, repair, or***

ENCLOSURE

> ***improvement of such buildings* or *properties as a part of the consideration for the rental to be paid for the use and occupation of the same*.** The moneys derived from such rentals shall be deposited and covered into the Treasury as miscellaneous receipts. [Emphasis added].

The Comptroller General has held that these restrictive provisions of section 321 of the Act of June 30, 1932, cited above, are applicable to all such grants, whether or not they meet the strict definition of leases. It has been specifically held that these provisions are applicable to concession contracts. *Concessions – Repair, Etc., of Government Property*, B-125035, 41 Comp. Gen. 493, February 1, 1962.

In *Concessions*, the Department of Interior unsuccessfully argued that concession contracts entered into by the National Park Service (NPS) were not "lease(s) of buildings and properties of the United States" within the meaning of that phrase as used in section 321 of 40 U.S.C. 303b. The Comptroller General found that, notwithstanding the particular term used to characterize payments for the use of Government space and facilities, nothing changed the intrinsic character of such payments as rental paid for the use of Government property.

The decision notes:

> Since 1928 we held consistently that the operation of a concession utilizing Government-owned facilities constitutes a valuable privilege for which the Government should be compensated and that contractual and other arrangements relating to the establishment and operation of such activities should be subject to existing statutory provisions governing public contracts. 7 Comp. Gen. 806; 19 *id* 887; B-157, B-32837, April 11, 1950.

In the 1962 *Concessions* decision, the Comptroller General also suggests the recourse for agencies that want to use funds from a concessioner to repair or improve Government facilities. In the penultimate paragraph the decision notes:

> If you believe that the costs of repairs and improvements should be financed by the concessioners under such contractual arrangements rather than through direct appropriations by the Congress, specific statutory authority therefor should be obtained from the Congress as contemplated by 40 U.S.C. 303b.

In 1973 the National Aeronautics and Space Act of 1958 was amended to add specific statutory authority allowing NASA to use funds from concessioners to finance the cost of constructing and maintaining certain Government buildings. The amendment reads in pertinent part:

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> [In the performance of its functions the Administration is authorized -] to provide by concession, without regard to section 321 of the Act of June 30, 1932 (47 Stat. 412, 40 U.S.C. 303b) ... for the construction of all manner of facilities and equipment for visitors to the several installations of the Administration...[1]

See Appendix D, OIG Comment 3

While the IG draft audit report refers to the existence of this "concessioner" language in several places in its report, it fails to fully appreciate its significance. Under this statutory authority, non-appropriated revenues from a NASA concession agreement were properly used to construct an addition to the Visitor Center at SSC.

See Appendix D, OIG Comment 4

The draft IG audit report recognizes that Delaware North is a *bona fide* "concessioner" within the meaning of the Space Act. In this context, there should be no question that revenues from the KSC concession agreement can be used at KSC to construct and improve Government-owned buildings for the KSC public visitor program. It also follows from the statutory language concerning concessioners, however, that the funds generated by a KSC concessioner (or for that matter any NASA concessioner) can be used to construct and improve Government-owned buildings for visitors at any NASA installation. There is nothing in the statutory grant of authority to NASA restricting expenditures for the enumerated purposes to the site generating the concession income. And, in fact, non-appropriated funds from KSC have been used, at least once before, in 1984 to construct the first major modification to the Visitor Center at SSC.

III. <u>The Historical Background of the (c) (11) Space Act Amendment</u>

It is important, in the context of this discussion, to consider the 1973 amendment in its proper historical perspective. At the time the Space Act was enacted in 1958 few people could have anticipated the success and popularity that the space program would soon enjoy. But by 1965 NASA was basking in the glory of its first successes in human space flight and the number of public visitors to NASA installations, and particularly KSC, had skyrocketed. KSC officials were overwhelmed by the onslaught of tourists and were seeking appropriated money to expand and upgrade KSC visitor facilities[2]. At the same time, NASA was considering other options. There was a general desire to create and enable a self-sufficient public visitor program that was independent of appropriated money. (NASA's budget, both in real dollars and as a percentage of the total Federal budget, began a decline in 1966 that lasted ten years.[3]) If NASA could create a self-supporting public visitor program, then taking care of tourists and telling the NASA story would be one less drain on NASA's budget.

A concessioner began operations at KSC in May of 1968 under the (c) (5) authority of the Space Act. Although some NASA officials believed the "other transactions" language of (c) (5) was sufficient authority to allow concessioners

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to run self-sufficient public visitor programs, other more conservative thinkers worried about the implications of the long line of Comptroller General decisions discussed previously. NASA's authority under (c) (5) may well have been insufficient to overcome the provisions of section 321 of the Economy Act that prohibit Agencies from allowing concessioner-funded improvements to Government facilities, thereby augmenting Congressional appropriations. Based on a conservative approach, the terms of the KSC agreement were designed to avoid any potential appearance of augmentation of appropriations. The agreement provided that, in the event that concessioner improvements to government facilities were allowed, the concessioner would, at the end of its term, restore the premises to their original condition (unless the Government agreed to some other disposition of the improvements such as transfer to a subsequent concessioner or an unconditional donation to the Government).

Prior to enactment of the Space Act amendment, NASA asked the NPS to do a study of the public visitors program at KSC in 1965. Among its other conclusions, NPS predicted huge increases in the number of public visitors to KSC[4] and recommended the expansion of facilities for visitors. NPS also indicated a willingness to take over the KSC public visitor program on behalf of the Government. Although there were many reasons militating against such a course of action, one compelling reason to turn over the KSC visitor program to NPS was statutory authority that enabled NPS concessioners to put back excess revenues into new and improved Government-owned facilities for visitors.[5]

NASA had another option more attractive than turning its visitor program over to another agency and its concessioner. NASA could follow the Comptroller General's advice in the *Concessions* case and get specific statutory authority for concession operations. Upon enactment of such statutory authority, NASA would not have to worry about augmentation of appropriation issues, and the usual requirements for the disposition of miscellaneous receipts, when funds from concession agreements were used to fund construction of, or improvements to, Government-owned facilities for visitors. As a result of the amendment to the Space Act enacted in 1973, NASA acquired statutory authority similar to that of the NPS and retained control of its public visitor program in-house.

IV. Interpreting NASA's (c) (11) Authority

The issue whether non-appropriated concession revenues from one NASA installation can be used to fund facilities for visitors at another is essentially an Agency policy question. NASA is not restricted in making such decisions by the Space Act's concessioner language. Specifically, the Space Act's broad general grant of authority is intended to give NASA the ability to attract concessioners who will be able to make a profit running a public visitor program and who will also be able to reinvest a part of this profit in new and improved Government-owned facilities for visitors.

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See Appendix D, OIG Comment 7

The fact that SSC does not have its own Visitor Center concessioner[6] does not mean that only appropriated money can be used to fund the modification of facilities for visitors at SSC. The Space Act's grant of authority to expend such concession funds does not say that these funds cannot be used to fund facilities for visitors at another NASA installation. Indeed, one of the principal purposes of the Space Act amendment was to relieve NASA of the requirement to use appropriated money for facilities for visitors. In the Report of the Committee on Science and Astronautics, authorizing appropriations to the National Aeronautics and Space Administration for fiscal year 1974, it is stated:

> Current budgetary limitations apparently will not permit such [public visitor] accommodations to be financed from appropriated funds. The Committee has reviewed this matter in detail with NASA officials to explore ways in which present visitor information centers can be expanded or improved ***without the expenditure of appropriated funds***. Revenues generated by sales of service and goods at the information centers appear to be an excellent source of funds to defray the costs of improving and maintaining existing facilities. [Emphasis added]

See Appendix D, OIG Comment 5

See Appendix D, OIG Comment 6

Under the current KSC concession agreement between NASA and Delaware North, Delaware North can be directed to send concession revenues to other NASA centers (as was the case under prior concession agreements with other concessioners). In this case, non-appropriated concession revenues were sent to SSC at the direction of KSC management for the specific purpose of funding the improvement of NASA visitor facilities in concert with legislative intent expressed above.

V. The Origin of and Basis for the Transfer of Concession Revenues to SSC

In 1983, SSC (which was then called the National Space Technology Laboratories) had a very small Visitor Center. NASA management officials realized that many of the tourists traveling to the 1984 World's Fair in New Orleans would drive by SSC en route to and from New Orleans. Center Director, Jerry Hlass, recognized the need to upgrade the Visitor Center to accommodate this increased stream of tourists and tell the NASA story properly. In March of 1983 he sought appropriated "Construction of Facilities" money to fund an addition to the Visitor Center; however, such funds were not available. Headquarters Code B officials suggested that Mr. Hlass use concession funds from KSC and directed KSC to transfer $250,000 in non-appropriated concession revenues to SSC. These funds were used for the addition of 4,617 square feet of floor area to the SSC Visitor Center in 1984.[7]

The KSC concession agreement with TWA provided, at that time, for a "Service Improvement Account" (SIA). The SIA was the source of funds for the construction of and improvements to Government-owned facilities for visitors at

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KSC and it was also the source of the concession revenues that were transferred to SSC in 1983. Section "d." of Article 4 of the concession agreement stated:

> The SIA shall be used as directed by the Contracting Officer, for the general improvement, expansion, or updating of NASA visitor services, accommodations and tours at KSC ***or other designated NASA installations***, or for other uses beneficial to the KSC [Public Visitor Program]. [Emphasis added][8]

This provision, explicitly allowing the use of non-appropriated concession revenues from KSC to fund improvements to facilities at other NASA installations was added to the KSC/TWA concession agreement when it was reviewed at Headquarters prior to its execution. NASA Headquarters added this provision with the potential need for funding for smaller centers like SSC specifically in mind. (The concession agreement at KSC was recompeted in 1995, and a new company, Delaware North, was selected. Broad language in the new concession agreement still provides a vehicle for transferring non-appropriated concession revenues from KSC to fund improvements to facilities for visitors at other NASA installations.[9])

See Appendix D, OIG Comment 8

Years after the 1984 addition, in a telephone conversation in mid-1996, SSC Center Director, Roy Estess, first proposed to the KSC Director, Jay Honeycutt, that SSC should transfer the mock external tank on display on the grounds of the SSC Visitor Center to KSC. Mr. Estess recognized the benefit that would accrue to the Agency as a result of displaying the external tank at KSC rather than SSC due to the higher volume of visitors to KSC; also, it would be a far more impressive and educational experience to view the external tank as an integrated component in the mock-up Shuttle display at KSC rather than as an isolated component as it was displayed at SSC. Mr. Honeycutt accepted the offer. (Mr. Estess planned to transfer the external tank regardless of any "potential loss of future revenue" and without any requirement for compensation; it was clear to him that this was the right thing for NASA to do.)

See Appendix D, OIG Comment 9

Mr. Estess, realized that the SSC Visitor Center was in 1996, once again, inadequate in light of plans for new exhibits, special events and a Web site that would attract media interest and stimulate tourism. Mr. Estess was also aware that the KSC concessioner had previously planned to purchase a mock external tank.[10] In a subsequent conversation with Spaceport USA officials, Mr. Estess expressed his desire to expand and upgrade SSC's Visitor Center and asked about the possibility that KSC concession revenues might be available for this purpose[11]. KSC management eventually agreed to direct the KSC concessioner to transfer non-appropriated concession revenues to SSC, as KSC had previously done in 1983, to fund the planned upgrade to SSC's Visitor Center.

Viewed in this light, there were really two separate transactions that need to be examined; on the one hand, one NASA center transferred a Government-owned

See Appendix D, OIG Comment 10

external tank to another, with title retained in the Government at all times. Such transfers happen regularly between NASA centers and, as long as the transfer is properly documented, there should not be any question about the propriety of the transfer. The external tank remains Government property although it is now on the property list of a different center, even though it is being exhibited by a concessioner. On the other hand as a separate transaction, a NASA concessioner from one center provided non-appropriated money for an addition to a Visitor Center at another NASA Center; it is clear that the Space Act authorizes the use of non-appropriated funds from concessioners to do exactly that.

VI. The KSC/SSC Letter Agreement

See Appendix D, OIG Comment 11

See Appendix D, OIG Comment 12

See Appendix D, OIG Comment 13

The attorneys who drafted the letter agreement were not privy to the original conversation between the two NASA Center Directors. Although an agreement is not required for a transaction between two NASA Centers, attorneys at the two centers wanted to make sure there were no misunderstandings about the details of the transfer of the external tank and the transfer of concession revenues. (The external tank actually left SSC and began its journey to KSC in late 1996, before the letter agreement was drafted.) The IG draft audit report calls attention to the statement in the letter agreement that the KSC concessioner would make two payments to the SSC branch of the NASA Exchange "for the potential loss of future revenue to SSC's Visitor Program due to transfer of this major exhibit to KSC." In retrospect, the justification for the transfer of the concession revenues to SSC should have simply (and more accurately) stated that KSC would direct the transfer of the concession funds under the authority of section (c) (11) in order for SSC to modify and improve its Visitor Center.

See Appendix D, OIG Comment 14

See Appendix D, OIG Comment 15

It is not reasonable for the IG to attempt to characterize the transfer of the external tank as a sale. First, there was no change in ownership of the external tank. Second, SSC transferred the external tank to KSC, not Delaware North, despite the statement at the bottom of page 2 of the audit report that "Stennis and Delaware North completed the transfer of the external tank..." Finally, Delaware North had neither the power or authority to "pay" SSC for the external tank; KSC management, under the terms of its concession agreement, directed Delaware North to send the concession funds to SSC. As evidence of its contention that the tank was sold, the IG audit report also cites letters from two KSC officials who either characterize the transfer as a purchase by Delaware North or refer to "payment" for the external tank. The transfer should have been better documented, and it may well have been mischaracterized by various NASA officials, but the fact remains that when one NASA center transfers a piece of Government-owned property to another NASA center, it is not a sale.

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VII. Use of the Exchange Account

The concession revenues from KSC were not transformed into something different by virtue of being deposited, for bookkeeping purposes, into an interest-bearing account for non-appropriated money in the name of the SSC branch of the NASA Exchange. It is contradictory for the IG to assert that, for the purposes of modifying the SSC Visitor Center, the funds from the Exchange account were Exchange funds and not concessioner funds, but for the purpose of devising a remedy for a perceived fiscal law violation, the same funds must be returned to its concessioner source. Although, there is, at times, some overlap between the authorized purposes to which non-appropriated Exchange funds and non-appropriated concession funds can be used, in this case, the segregated funds from each source (and the interest accruing thereto) were accounted for separately in order to preserve their character and maintain a distinction, in terms of the separate purpose and source of each.

See Appendix D, OIG Comment 16

In the subject transaction, the SSC branch of the NASA Exchange was merely used as a banking repository for the funds from the KSC concessioner. The Exchange account was used as a matter of administrative convenience to achieve the joint KSC/SSC purpose of constructing an addition to the SSC Visitor Center. SSC was not yet ready to contract for the new addition at the time the non-appropriated funds from Delaware North arrived at SSC.[12] The only account for non-appropriated money that was available to hold the concession revenues from KSC was that of the SSC branch of the NASA Exchange. The Delaware North funds were segregated from other Exchange monies with the understanding that they would only be used to fund the addition to the Visitor Center.

A 1509 form was submitted to Headquarters early in May of 1998 as part of NASA's internal authorization process. The project was properly approved at Headquarters several weeks before the construction contract was executed. The 1509 form correctly identifies non-appropriated funds from the NASA Exchange as the funding source, but in retrospect a more insightful disclosure should have stated that "non-appropriated concession revenues from KSC" were being used by SSC[13]. Although funds for the addition eventually emanated from an Exchange account, concession revenues generated by the sale of goods and services at KSC were properly used to fund the Visitor Center addition at SSC.

See Appendix D, OIG Comment 17

VIII. Conclusion

According to the IG position, in the absence of a concession agreement at a particular installation, appropriated money must be used to fund the construction of NASA facilities for visitors at that installation. The basis for the IG's position is not clear in the IG audit report, it is contrary to previous NASA policy and practice, and it is not grounded on any justifiable legal foundation.

See Appendix D, OIG Comment 18

The transactions that are the subject of this IG audit report have their genesis in a conversation between two NASA center directors who believed the two decisions they made were in the best interests of both NASA and the taxpayer. The SSC Center Director decided to transfer an impressive piece of space hardware to NASA's premier tourist destination where it could be displayed as part of a larger exhibit illustrating the Space Shuttle as it appears when it leaves the launch pad. Finally, the KSC Center Director decided to send non-appropriated revenues generated at KSC under KSC's concession agreement to another NASA installation where it was used to fund the improvement of facilities for visitors and to disseminate information about NASA, all in accordance with the authority and power granted to NASA by the Space Act.

In an era of ever-tighter budgetary constraints, it would be imprudent for NASA not to take advantage of the fiscal flexibility conferred by the Space Act. The use of non-appropriated concession money to fund NASA facilities for visitors was specifically authorized by Congress and signed into law by President Nixon. The concessioner language in the Space Act is not limiting and does not prohibit using non-appropriated funds generated by a concessioner to finance facilities for visitors at another NASA installation; it authorizes just such uses. When KSC management directed its concessioner to send funds to SSC, in this case and once before in the past, and when SSC subsequently used those concessioner funds to construct additions to its Visitor Center, NASA was acting within its authority under the Space Act "...to provide by concession, ...for the construction ... of all manner of facilities and equipment for visitors to the several installations of the Administration..." In this case, two NASA centers, working together, have improved their public visitor programs and facilities without the use of appropriated funds; and fully in accord with NASA's specific statutory authority.

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1 See Attachment A for the full text of the (c) (11) amendment to the National Aeronautics And Space Act Of 1958, as amended, 42 U.S.C. 2451 et seq., Public Law 85-568, 85th Congress, H.R. 12575, July 29, 1958, 72 Stat. 426, in the context of section 203.

2 During the Congressional hearings on NASA's FY 1965 budget, the Subcommittee on Manned Space Flight recommended that the House Science and Astronautics Committee add $1 million to the NASA Authorization for the construction of public facilities for visitors to KSC. Interestingly enough, at the same time the House added $1 million to the NASA authorization, it substantially reduced the NASA construction of facilities authorization. Although the Senate restored some of those funds when it considered the NASA authorization bill, and notwithstanding the positive statements made during the hearings, no specific identifiable line item emerged regarding the construction of public visitor facilities at KSC. This illustrates the dynamic tension between the use of appropriated funds for facilities for visitors and the rest of NASA's construction of facilities budget. In the end, although no specific line item was included in the NASA

Authorization for FY 1965, it was clear that Congress considered such a program as necessary and NASA had to administratively determine the amount of money that could be allocated to the KSC visitors facility project within the gross funds appropriated by Congress for construction of facilities.

[3] See attached chart (Attachment B) produced by Code B at NASA HQ.

[4] From July 1966 through the end of the calendar year, over 175,000 visitors took the escorted bus tour. The NPS report in 1965 forecast (over-optimistically, it turns out) that visitor volume at KSC could increase to 3 million persons annually by calendar year 1970.

Less than ten years later, in a letter dated March 30, 1973 (and signed by George Low), the NASA Administrator wrote to Spiro Agnew, President of the Senate, that:

> The annual number of visitors to our installations is now over 2,800,000 compared with about 1,800,000 four years ago. The current annual figure includes more than 1,500,000 to the Kennedy Space Center (KSC), Florida, which is the primary visitor attraction.

Thirty years later in 1996, the number of visitors to KSC had increased to over 2,300,000. This was more than half of the number of visitors to all NASA installations in 1996.

[5] In 1965, only a few years after the *Concessions* case was decided by the Comptroller General, the National Parks – Concession Policies Act, Public Law 89-249; 79 Stat. 969, was enacted by Congress. The value of the authority given NPS concerning concessioners and funds generated by concessioners must have been apparent to NASA officials; the Concession Policies Act contains a specific grant of statutory authority relating to concessioners similar to the Space Act concessioner amendment language that was to follow it less than a decade later.

[6] At SSC the facility operating support service contractor staffs and operates the Visitor Center as part of its overall contractual requirements. Present operations are funded with appropriated funds.

Since the Visitor Center reopened in May of 2000 (after the addition, which is the subject of the IG draft audit report), an Exchange concessioner operates the new restaurant, the Rocketeria, and another Exchange concessioner operates the new motion simulator ride at the Visitor Center. As the IG report acknowledges, the Exchange has also operated a gift/souvenir shop at the Souvenir Shop since April of 1981. SSC management believes it has the authority under section (c)(11) of the Space Act to use non-appropriated Exchange revenues generated by these concession operations to construct and improve facilities for visitors at SSC, consistent with the policy stated in NPD 9050.6E that Exchange funds are

See Appendix D, OIG Comment 7

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to be used to contribute to the efficiency, morale and welfare of NASA employees. It should not be difficult to justify such Exchange expenses to the extent that such construction and/or improvements enhance the income-generating capacity of Exchange operations at facilities for visitors that are constructed and/or improved.

[7] See attached e-mail memorandum from Jerry Hlass dated July 6, 2000 (Attachment C).

[8] See section d. in Article 4 on the attached page from the TWA/KSC concession agreement executed in 1980 (Attachment D).

[9] In paragraph 7 of section B., "Exhibits, Displays, and Audio-Visual Equipment", of the concession agreement with Delaware North (Concession Agreement NAS10-12215) it is stated:

> At the Government's sole discretion, uncommitted amounts on deposit in this Exhibits Fund may be transferred to any other improvement fund described in this Article 6 or special fund if it is determined by the Contracting Officer that such transfer is necessary or in the best interest of the [Public Visitor Program].

The term "Public Visitor Program" is defined broadly in the Agreement to mean:

> ...that program established by NASA to help implement its statutory obligation to communicate information about NASA programs and the results thereof by providing public access to the KSC, a broad range of information activities and visitor services. As used in this Agreement, PVP is an all-inclusive term describing this program and all activities required of the Concessioner in relation thereto.

[10] A company called "Guard Lee" proposed to fabricate a mock external tank for KSC to exhibit for $1,269,504. See Attachment E.

[11] See Attachment F, Memorandum for the Record from Roy Estess dated July 18, 2000.

[12] The first check from Delaware North was deposited on April 25, 1997; the second check was deposited May 14, 1998. The effective date of the construction contract for the addition to the Visitor Center was June 26, 1998.

[13] See Attachment G, NASA Form 1509 executed on June 8,1998.

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Attachment A

"FUNCTIONS OF THE ADMINISTRATION

Sec. 203...

(c) **In the performance of its functions the Administration is authorized –**

...(11) **to provide by concession, without regard to section 321 of the Act of June 30, 1932 (47 Stat.412; 40 U.S.C. 303b)**, on such terms as the Administrator may deem to be appropriate and to be necessary to protect the concessioner against loss of his investment in property (but not anticipated profits) resulting from the Administration's discretionary acts and decisions, **for the construction, maintenance, and operation of all manner of facilities and equipment for visitors to the several installations of the Administration** and, in connection therewith, to provide services incident to the dissemination of information concerning its activities to such visitors, without charge or with a reasonable charge therefor (with this authority being in addition to any other authority which the Administration may have to provide facilities, equipment, and services for visitors to its installations). A concession agreement under this paragraph may be negotiated with any qualified proposer following due consideration of all proposals received after reasonable public notice of the intention to contract. The concessioner shall be afforded a reasonable opportunity to make a profit commensurate with the capital invested and the obligations assumed, and the consideration paid by him for the concession shall be based on the probable value of such opportunity and not on maximizing revenue to the United States. Each concession agreement shall specify the manner in which the concessioner's records are to be maintained, and shall provide for access to any such records by the Administration and the Comptroller General of the United States for a period of five years after the close of the business year to which such records relate. A concessioner may be accorded a possessory interest, consisting of all incidents of ownership except legal title (which shall vest in the United States), in any structure, fixture, or improvement he constructs or locates upon land owned by the United States; and, with the approval of the Administration, such possessory interest may be assigned, transferred, encumbered, or relinquished by him, and, unless otherwise provided by contract, shall not be extinguished by the expiration or other termination of the concession and may not be taken for public use without just compensation." [Emphasis added]

Appendix C

Attachment B

Comparison of NASA Budget
to Federal Budget
(In Millions)

Fiscal Year	Total Federal Budget	NASA	Percentage of Total Budget
1959	81,365	331	0.4
1960	79,574	524	0.7
1961	110,426	964	0.9
1962	118,314	1,826	1.6
1963	130,085	3,674	2.8
1964	132,636	5,100	3.8
1965	136,010	5,250	3.8
1966	163,123	5,175	3.2 -
1967	182,582	4,968	2.7 —
1968	190,049	4,589	2.4 —
1969	196,167	3,996	2.0 —
1970	212,073	3,749	1.8 —
1971	238,406	3,313	1.4 —
1972	248,097	3,308	1.3 -
1973	276,417	3,408	1.2 -
1974	313,661	3,040	1.0 —
1975	412,099	3,231	0.8 —
1976	416,836	3,552	0.9
TQ	91,409	932	1.0
1977	465,231	3,819	0.8
1978	501,200	4,064	0.8
1979	556,732	4,559	0.8
1980	656,790	5,243	0.8
1981	716,400	5,823	0.8
1982	779,926	6,053	0.8
1983	856,746	6,875	0.8
1984	849,761	7,316	0.8
1985	1,074,063	7,573	0.7
1986	1,072,773	7,807	0.7
1987	1,099,893	10,923	1.0
1988	1,163,528	9,061	0.8
1989	1,044,638	10,969	1.1
1990	1,368,800	12,322	0.90
1991	1,398,243	14,015	1.00
1992	1,466,638	14,316	0.98
1993	1,473,887	14,309	0.97
1994	1,528,401	14,568	0.95
1995	1,543,291	13,883	0.90
1996	1,561,063	13,886	0.88
1997	1,642,857	13,709	0.83
1998	1,692,282	13,648	0.81
1999	1,776,813	13,654	0.77
2000 Est.	1,801,079	13,601	0.76
2001 Est.	1,865,361	14,035	0.74

Source: Budget Analysis/Presentation of the United States Government
"Federal Programs by Agency and Account"

File 58_01H00

BR 03/17/00 12:20 PM

Attachment C

Human, Ken

From: Jerry Hlass [hlass@sunherald.infi.net]
Sent: Thursday, July 06, 2000 3:01 PM
To: Ken.Human@ssc.nasa.gov
Subject: SSC Visitor Center

Memo to the Record

From: Jerry Hlass, former Director, SSC (retired)

Subject: SSC Visitor Center

I received a call from Ken Human on 7/5/2000. Ken wanted to know if I remembered the circumstances and financing of the addition to the Visitor Center that was implemented in l983/l984 time frame. Evidently, the files on this subject have been retired. I told him that I clearly remembered the project and how it was financed and that I will be glad to document it for the record.

In late 1982/early 1983, we became aware that the World Fair was coming to New Orleans in 1984. We anticipated substantial increase of the number of visitors to our Center; and we recognized that we needed to upgrade our facilities. Until then, we were hosting approximately 10,000 to 15,000 visitor per year. Our staff predicted that the number will be increased about ten fold due to the forthcoming World fair. Clearly, we needed an addition to our Visitor Center that would accommodate the increased number of visitors predicted for 1984. We discussed this with NASA Headquarters Officials and they wer very supportive of the project.

I made a special trip to Washington on March 24-25, 1983 to discuss two major issues: a proposed third SSME position on the B-Stand and upgrading the Visitor Center. Concerning the latter, I met with four Headquarters Officials: Dick Wisniewsky, Assistant to the Associate Administrator for SpaceFlight, Brian Duff, Director of Public Affairs for NASA, Gneral McGarvey, Director of Facilities for NASA, and Mike Cushman, Assistant to the NASA Comptroller.

All four officials were very supportive of the project, however, funding was tight at the time. General McGarvey, who generally approves and funds these types of projects, specifically told me that he would approve the project as soon as a funding source was identified. He added that all available CoF funds were being used to repair a Wind tunnel at the Ames Research Center in California. He volunteered that the estimated cost of that repair is in excess of 10 million dollars. Brian Duff suggested investigating the availability of non-appropriated fund possibly from the Exchange at JSC. Mike Cushman came to the rescue. He was opposed to using Exchange funds from JSC, but wanted to look into using non-appropriated funds generated by The KSC visitor Center. He stated that hw clearly remembers some language in the TWA operating contract for the KSC visitor center that allowed the use of the funds generated to add, not only to the KSC visitor facilities, but to visitor facilities at other NASA centers like ours. That language was inserted by Headquaters during the review of the TWA contract to assist small centers like NSTL, Flight Reseach Center in California and possibly Wallops in Virginia. Mike wanted to review the language again to make sure that allowing us to use these non-appropriated funds to add to our visitor facilities is the appropriate course of action.

Shortly after the meeting, Mike called and let me know That the language in the TWA contract clearly permits the use of the funds to build the proposed

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addition at our center. He suggested that I call Joe Malaga, the KSC Comptroller and request the funds directly from him. I did that. I requested $ 250,000 which was the estimated cost od the facility. Joe evidently was aware of the language in the TWA operating contract, and Joked that he would approve our request provided that we do not spread the word to the other NASA centers . Joe indicated there were a few steps that shoud be taken before he could release the money. He stated that he needed to brief the KSC Center Director, Jerry Smith and get his concurrence and he reuested of us a copy of the approved project by NASA Headquarters. He also invited me to come to KSC and brief all the concerned officials. Over the next two months (April and June, 1983) all the actions needed were accomplished. To the best of my recollection, the $ 250,000 was transferred from KSC to SSC in June, 1983.

In the meantime, I appointed an interdisciplinary team to implement the project. The team was headed by Harry Guin and included Mack Herring, Eddy Gobert, and representatives for Finance and procurement and possibly the Chief Council's office. Funds fro the exhibits were provided by each of the Resident agencies that wanted to participate. The project was completed on Schedule and the new Addition was dedicated in itime for the opening of the World's Fair in New Orleans.

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Attachment D

NAS10 9675

ARTICLE 4. - SERVICE IMPROVEMENT ACCOUNT

a. The Concessioner shall establish and maintain a special fund which shall be referred to as the Service Improvement Account (SIA).

b. The SIA shall be constituted of and from:

(1) Funds derived from the SIA share of Gross Profit.

(2) Any funds deposited to the SIA by the Concessioner pursuant to other provisions of this Agreement.

(3) Interest accrued as a result of SIA deposits.

(4) Any funds transferred from the SIA of the previous concessioner.

c. The Concessioner shall deposit, each month, in a separate, insured, interest bearing account(s) or insured investment(s) the projected SIA share of Gross Profit. Such monthly deposits shall be provisional and subject to final annual audit.

d. The SIA shall be used as directed by the Contracting Officer, for the general improvement, expansion, or updating of NASA visitor services, accommodations and tours at KSC or other designated NASA installations, or for other uses beneficial to the KSCPVP.

e. Expenses incurred by the Concessioner in accomplishing the efforts contemplated in d. above shall be charged to and paid from the SIA only to the extent that such expenses fall into either of the following categories and are acceptable to the Contracting Officer.

(1) Expenses of subcontracts.

(2) Expenses incurred as a result of the Concessioner's own employees engaged full-time in work directly attributable to the SIA efforts.

(3) Other expenses approved in advance by the Contracting Officer.

f. The Concessioner shall transfer to the Government all its title and interest in all the real or personal property acquired using funds from the SIA. This transfer shall be without charge to the Government. This transfer shall be made by the Concessioner at the time the Concessioner acquires title to the property or at such time as the Contracting Officer shall designate for this transfer.

00027

Appendix C

Attachment E

SHUTTLE EXTERNAL TANK REPLICA

COST ESTIMATE

	LABOR	MAT.&SUBS	TOTALS
1. DESIGN & STRESS ANALYSIS	$42,864	$12,160	$55,024
2. STRUCTURAL STEEL BEAM	60,800	30,400	91,200
3. STRUCTURAL STEEL OTHER	182,400	45,600	228,000
4. FIBERGLASS NOSE TOOLING, PARTS & ASSEMBLY	30,704	13,072	43,776
5. FIBERGLASS AFT DOME TOOLING, PARTS & ASSEMBLY	10,944	3,040	13,984
6. STEEL SKINS ASSEMBLIES 1/2 RND. (28)	154,280	218,880	373,160
7. FASTENING MATERIALS RIVETS, BOLTS, ETC.	INCLUDED	27,360	27,360
8. BONDING & SEALING (SIKA FLEX)	15,200	10,640	25,840
9. WELDING MATERIALS	INCLUDED	9,120	9,120
10. ATTACHMENT FIXTURES TO CRADLES	11,552	2,128	13,680
11. PAINT & PROTECTION MATERIALS	30,400	45,600	76,000
12. CRANE TIME & LIFT DEVICES	7,600	68,400	76,000
13. DOCUMENTATION	9,424	3,040	12,464
14. QUALITY - WELD CERT.	10,944	1,520	12,464
15. SPECIAL TIE DOWN FIXTURES	7,752	9,424	17,176
16. LIGHTNING ARREST. SYSTEM		41,040	41,040
17. TRANSPORTATION, FLAT BED (APPROX. 40 TRIPS)	31,920	31,920	63,840
18. CLEAN-UP SURFACE DETAILS	12,160	30,400	42,560
19. ERECTION (4 WKS, 4 MEN)	43,776	3,040	46,816
	$682,720	$606,784	$1,289,504

E. J. Guard 2/3/15

EDWARD J. GUARD, PRESIDENT

Attachment F

National Aeronautics and
Space Administration

John C. Stennis Space Center
Stennis Space Center, MS 39529-6000

Reply to Attn of: CA01-00-074

JUL 18 2000

MEMORANDUM FOR THE RECORD

FROM: AA00/Director

SUBJECT: ET Transaction

I noticed in 1996 during one of several visits to KSC that the Visitor Center had a prominent outdoor Space Shuttle exhibit. A mock orbiter was on display with two solid rockets but the exhibit lacked an external tank (ET). At various meetings I also heard talk that KSC officials had tried unsuccessfully to find an ET and that there was talk of getting one manufactured for the exhibit at a cost of over a million dollars.

I mentioned the lack of an ET to Jay Honeycutt who was then Center Director of KSC. During the course of a telephone conversation sometime in 1996, I told Jay that we (SSC) had a mock ET displayed at our Visitor Center, all by itself, without the orbiter and solid rockets. I volunteered that it would make more sense to send the ET to KSC to complete the entire mock-up Space Shuttle exhibit. It was obvious to me that more people would see the ET at KSC. At that time SSC only had about 100,000 visitors a year compared to several million at KSC. Also the ET would be displayed at KSC as an integral part if the entire STS system, instead of being displayed at SSC as a separate component. Jay was very receptive to the idea and said that he would have someone call me back to complete the arrangements.

At this time, I was already considering plans to modify the SSC Visitor Center. The number of visitors had increased substantially since it had last been modified in 1984. My staff had advised me that the existing Visitor Center was inadequate. There were plans for new exhibits and special events that would attract even more visitors. A web site that would attract media interest and stimulate tourism was also about to come on line. I was well aware that my predecessor, Jerry Hlass, used $250,000 from the KSC concessioner contract in 1984 to build the Exhibit Hall and modify the SSC Visitor Center. When Spaceport USA management officials called me back to discuss the transfer of the ET, I asked them about the possibility of using concession money to fund the new addition to the Visitor Center at SSC. I was told that this could be arranged if the proper KSC officials concurred. At this point I informed my Chief Counsel, Ken Human, about these discussions. I asked him to follow up with KSC officials and work out the details.

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I always planned to transfer the external tank regardless of any "potential loss of future revenue". Although I signed the letter agreement with KSC, I never noticed this provision until it was pointed out to me years later. As far as I was concerned, I was wearing my "NASA hat" and there was no requirement at all for KSC to compensate SSC for the ET.

Roy S. Estess
Director

Attachment G

Facility Project-Brief Project Document

PROJECT TITLE	INSTALLATION/PROGRAM OFFICE	PROJECT ID	PROJECT CODE
Addition to Visitor's Center B-1200 Expansion of the Exhibit Area	SSC / M	B153	98NNAZ
		DATE: 05/05/1998	SUB/REV. NO.: / 0

APPROVED FACILITY PROJECT COST ESTIMATE

ITEMS (List)	AMOUNT
	500,000

RELATED COST DATA
(Not included in this Approved Facility Project Cost Estimate but required to make the facility operable)

RELATED COSTS INVOLVED: [X] YES (Identify) [ ] NONE

	SS (Amount)	PER (Amount)	DESIGN (Amount)
			20,000

OTHER RELATED EQUIPMENT — ITEM	AMOUNT	ITEM	AMOUNT
TO BE PURCHASED		FUTURE FUNDING	
TRANSFER OF EXCESS		ACTIVATION	
EXISTING		OTHER REAL ESTATE	
		OTHER Exhibits	1,000,000

CATEGORY	JUSTIFICATION: Institutional Routine	WORK: Construction
FUND SOURCE	TYPE: Non-Appropriated	IDENTIFICATION: NASA Exchange

SCOPE / DESCRIPTION

Construct an Approximately 7,000 square foot addition to building 1200. Addition shall be precast concrete with a minimum eave height of 18 feet. Building will be designed as an exhibit hall, with this portion of the work providing the shell for a future exhibit design. Area will be lighted and have HVAC designed for an exhibit hall application.

BASIS OF NEED

The current exhibit hall has reached capacity and is not large enough to accommodate planned future exhibits. The growth rate of visitors to SSC demands growth and modernization of exhibits and display areas. This addition shall satisfy the requirements for exhibit space for the foreseeable future.

SCHEDULE DATES

DESIGN	PER	START	
		COMPL	
	FINAL	START	04/01/1998
		COMPL	05/08/1998
CONSTRUCTION		AWARD	06/15/1998
		COMPL	10/15/1998
ACTIVATION START			/ /
REQUIRED OPERATIONAL			/ /

PROJECT APPROVAL

	SIGNATURE AND TITLE	DATE
SUBMITTED BY	W. K. Miller, Chief Facilities Engineering Div.	5 7 98
CONCURRENCE BY	Samuel Malone, Chief, Center Operations (MI)	6 5 98
JX CONCURRENCE	H.W. Brubaker, Director, Facilities Engineering (JX)	6 18 98
APPROVED BY	Malcolm L. Peterson, Comptroller (B)	6 8 98

PROJECT STIPULATIONS: (a) UNFORSEEN PROGRAMMATIC Project Analysis Sheet attached, dated/ ______ ; (b) Notification of bid per NHB 8820.2, par 6.04-05: (c) Send Copy to NASA Hq. CODE JX: (d) ______

NASA FORM 1509 JUL 85 Previous editions may be used.

Appendix D. OIG Comments on Management's Response

NASA management provided the following comments in response to our draft report. Our responses to the comments are also provided.

Management's Comment. The OIG takes a narrow interpretation of the broad authority given to NASA in the NASA Space Act. The foundation of the OIG's position is that the construction of an addition to the Stennis Visitor Center "is an activity requiring the use of funds appropriated by Congress for this purpose."

1. OIG Comments. Management's statement regarding the foundation of our position is a misrepresentation of the facts. We take exception to the funding arrangement and accounting method the two Centers used to execute the transfer of funds to Stennis and to fund Visitor Center improvements at Stennis, which resulted in an unauthorized augmentation of appropriated funds.

The funding arrangement between Kennedy and Stennis is inappropriate for the following reasons:

- The Kennedy Visitor Complex Concessioner paid the Stennis Exchange in return for NASA property. The concession agreement with Delaware North states that the Government will make available excess property from Kennedy and other NASA Centers for the operation of the Public Visitor Program. Delaware North paid the Stennis Exchange from its exhibits fund, which shows the payment was for an exhibit as opposed to providing funds for the Stennis Visitor Center expansion. In fact, Kennedy procurement officials directed Delaware North to make payments to the Stennis Exchange for the external tank, and Delaware North reported the tank to NASA as contractor-acquired property as opposed to Government-furnished property. Funds for the construction of visitor facilities would be properly paid from another Delaware North account established for that purpose. Furthermore, transfers of property between NASA Centers are to be nonreimbursable.

- Concessioner funds are by the concession agreement for the purpose of the Kennedy Public Visitor Program and are not for use at other NASA Centers. The Delaware North agreement makes it clear that funds generated from the Kennedy Public Visitor Program and the Kennedy Visitor Complex are for use at Kennedy.

The accounting of the funds at Stennis is inappropriate for the following reasons:

- Even if reimbursement for the external tank were appropriate, disposition of funds collected from Delaware North for the external tank was improper. The concessioner funds were improperly paid to the Stennis Exchange for Stennis' use, as opposed to being paid directly to Stennis for deposit into a U.S. Treasury or NASA account. Normally, funds received for the sale of property are to be deposited to the General Fund Proprietary Receipts account and are not available for use by NASA. However, if the funds collected will be used to replace an item (which was not the case with the external tank), then proper disposition would be to reimburse the procuring appropriation. In the case of a reimbursable transfer of property, funds collected would be a reimbursement to the appropriation that bore the cost of procuring the item transferred. In the external tank transaction, Stennis did not collect the funds into the General Fund Proprietary Receipts account nor did Stennis credit the proper appropriation. Regardless of the fact that the funds were nonappropriated concessioner revenues, it was improper to use the Stennis Exchange, also a nonappropriated activity, as a mechanism to account for and use the funds, at Stennis' direction, for projects outside the scope of the Exchange's authority. The Stennis Exchange is not a concessioner and, therefore, lacks the authority provided to concessioners by the Space Act. It is inappropriate for NASA to use the Exchange as a substitute for a concessioner in accomplishing the visitor program at Stennis. If Stennis lacked the authority and means to deposit the funds into NASA's account and to exercise direct control over use of the funds, then it also lacked authority to indirectly account for and use the funds to accomplish its mission through the Stennis Exchange.

- Interest on deposits into NASA's account, had funds been properly accounted for, would not have accrued. Therefore, interest earned on the concessioner funds in the Exchange account would not be allowable for use by Stennis. If Stennis had the authority to use Kennedy concessioner funds for its Visitor Center expansion and exhibits, the proper accounting practice would be to deposit the funds directly into NASA's account. Direct deposit to NASA would result in no accrued interest being earned; thus, Stennis' use of interest accrued indirectly through use of the Exchange account would result in an augmentation as NASA cannot do indirectly what it is not authorized to do directly.

Management's Comment. There is no question that the transfer and use of the concession revenues should have been better documented.

2. OIG Comments. Management's acknowledgement that the transfer of the external tank and use of the concession revenues were inadequately documented does not address the Letter Agreement between Kennedy and Stennis and other supporting evidence, which clearly show management's intent to enter into a reimbursable transaction. Stennis effected a reimbursable transfer of property by requiring receipt of funds in exchange for the external tank. We are not questioning the lack of documentation for this transaction; we are questioning the propriety of the transaction itself.

Management's Comment. While the OIG draft report refers to the existence of this "concessioner" language (Space Act, as amended) in several places in the report, the OIG fails to fully appreciate its significance. Under this statutory authority, nonappropriated revenues from a NASA concession agreement were properly used to construct an addition to the Visitor Center at Stennis.

3. OIG Comments. Again, management does not recognize that our conclusions are not based solely on the language in the Space Act that gives NASA authority to use concessioner revenues to construct visitor facilities. As stated previously, we take no exception to the position that NASA has specific statutory authority to use nonappropriated funds from concessioners to construct and improve facilities for visitors. We do take exception to the means by which Kennedy and Stennis accomplished the end result, which was to exchange the external tank at Stennis for funds to expand and improve a visitor facility. Our position is as follows:

- Stennis violated established policy and procedure for transferring property. In accordance with NASA Handbook (NHB) 4200.1D and NHB 4300.1, property transfers between NASA Centers are to be on a nonreimbursable basis. Stennis transferred the external tank to the Kennedy Visitor Complex only after Kennedy agreed to have its concessioner pay $500,000 to the Stennis Exchange, as evidenced in the Letter Agreement between Kennedy and Stennis, and other documentation and interviews. The transmittal letter from the Stennis Legal Office to the Kennedy Legal Office states "you have advised that as soon as the tank is at Kennedy, the Kennedy concessionaire will make the first payment to the NASA Exchange – Stennis Branch."

- Kennedy misused its concessioner by directing it to pay for the external tank from concessioner-generated revenues. The concession agreement states that the Government will make available excess property from Kennedy and other NASA Centers for the operation of the Public Visitor Program. Also, the Kennedy concession agreement clearly states that revenues generated from the Kennedy Public Visitor Program and Visitor Complex are for use at Kennedy.

- Stennis violated established accounting procedure for the disposition of funds collected for the sale of property or for a reimbursable transfer of property and in so doing, misused the Stennis Exchange as a mechanism to indirectly account for and use the funds for Stennis. As stated previously, the Stennis Exchange is not a concessioner and should not have been used as a substitute concessioner to indirectly accomplish what should have been done directly through the NASA accounts.

- The Letter Agreement misrepresented that the $500,000 is to "compensate Stennis for the potential loss of future revenue to the Stennis Visitor Program due to transfer of this major exhibit." As shown in this report, Stennis never generated any revenue from its Visitor Program, and Stennis officials informed us that the anticipated loss of revenue was actually to the Stennis Exchange. Nevertheless, the fact that the Letter Agreement specifies that the funds were for potential losses of revenue and not for construction of facilities further shows that Kennedy and Stennis officials were not forthright in identifying how the funds were to be used.

If Stennis had authority to receive the funds for the external tank from the Kennedy concessioner and to use the funds for improving its visitor facilities, we question why significant efforts were made to complete this transaction indirectly through the Stennis Exchange.

Management's Comment. Nonappropriated funds from Kennedy have been used, at least once before, in 1984 to construct the first major modification to the Visitor Center at Stennis.

4. OIG Comments. We believe comparing the recent facility expansion and improvement to the 1984 modification is irrelevant. Juxtaposition and comparison of events relative to the 1984 modification and the current expansion show the following key differences:

- The previous concession agreement contained specific language not included in the current concession agreement with Delaware North that allowed concessioner funds to be used to support the visitor program at Kennedy and other NASA Centers.

- Appropriate NASA Headquarters approval was obtained prior to the transfer of funds from the Kennedy concessioner in 1983, which was not the case for the transfer of funds from Delaware North. The Letter Agreement between Kennedy and Stennis did not receive Headquarters approval and neither did subsequent payments of funds. The Stennis Center Director at the time of the 1984 modification made it clear in his recollection of events that the 1983 fund transfer and 1984 modification to the Stennis Visitor Center was a concerted effort on the part of Kennedy, Stennis, and NASA Headquarters throughout the entire process.

- There is no mention of using the Stennis Exchange as a means of collecting, accounting for, and using the funds at the direction of Stennis for the 1984 modification, as is the case with the funds received from Delaware North. The then Stennis Center Director further stated that the Assistant to the NASA Comptroller at that time objected to using nonappropriated Exchange funds from the Johnson Space Center.

- Unlike the transfer of funds for the recent Stennis Visitor Center expansion and exhibits in which Kennedy received an external tank display in return, the 1983 transfer of funds from the Kennedy concessioner was unconditional. Kennedy received nothing in return for the funds paid to Stennis.

Management's Comment. Under Kennedy's current concession agreement, Delaware North can be directed to send concession revenues to other NASA Centers (as was the case under prior concession agreements with other concessioners).

5. OIG Comments. The Delaware North concession agreement has no language that authorizes payments to other NASA Centers for Visitor Center enhancements. Also, management refers to an article from the previous concession agreement that specifically relates to the "Service Improvement Account." Management's use of the "Service Improvement Account" article from the previous concession agreement is not germane because the questionable payments to Stennis from Delaware North were paid from the Exhibits Fund and were for the external tank.

Management's Comment. In this case, nonappropriated concession revenues were sent to Stennis at the direction of Kennedy management for the specific purpose of funding the improvement of NASA facilities in concert with the legislative intent expressed in the Space Act.

6. OIG Comments. Contemporaneous events and justifications belie management's comment. Concessioner funds paid to Stennis were payment for the external tank and did not constitute a simple transfer of funds for visitor program improvements.

Management's Comment. Footnote 6 of management's response states:

> Since the Visitor Center reopened in May of 2000, an Exchange concessioner operates the new restaurant, the Rocketeria, and another Exchange concessioner operates the new motion simulator ride at the Visitor Center. As the OIG report acknowledges, the Exchange has also operated a gift/souvenir shop since April of 1981. Stennis management believes it has the authority under section (c) (11) of the Space Act to use nonappropriated Exchange revenues generated by these concession operations to construct and improve facilities for visitors at Stennis, consistent with the policy stated in NASA Policy Directive (NPD) 9050.6E that Exchange funds are to be used to contribute to the efficiency, morale and welfare of NASA employees. It should not be difficult to justify such Exchange expenses to the extent that such construction and/or improvements enhance the income-generating capacity of Exchange operations at facilities for visitors that are constructed and/or improved.

7. OIG Comments. We take exception to management's broad and unprecedented interpretation of the Space Act in concluding that Exchange funds generated either from direct Exchange operations or from Exchange concessioners can be used to construct or improve visitor facilities. Section (c) (3) of the Space Act authorizes the Exchange "to provide…for cafeterias and other necessary facilities for the welfare of employees of the Administration." The Space Act allows NASA to provide facilities primarily for the welfare of its employees, but does not authorize the support of NASA programs with nonappropriated Exchange funds. NPD 9050.6E lists functions the Exchanges may perform, including:

> Conduct other activities authorized by the Center Director with the prior concurrence of the Center Chief Counsel and the Center Public Affairs Officer, when activities involve the public and are clearly in NASA's and its employees' interests.

While this NPD language may appear to give the Exchange authority to provide for a facility designed to serve the public, that would be too expansive an interpretation. The statutory authority is to provide for the welfare of NASA employees. Furthermore, the NPD language itself requires that activities involving the public must be "clearly in NASA's and its employees' interests." Regarding the Visitor Center addition and improvements addressed in this report, the Exchange provided the funding for a facility primarily for the benefit of the public, with only an incidental benefit to NASA employees.

Management disregards other key elements of the Space Act in its conclusion that Exchange concessioners fall within the authorities granted in section (c) (11). This section authorizes NASA to provide by concession "…the construction, maintenance, and operation of all manner of facilities and equipment for visitors to the several installations of the Administration and, in connection therewith, to provide services incident to the dissemination of information concerning its activities to such visitors.…" The primary purpose of the Stennis Exchange souvenir shop and Exchange concessioners at the Visitor Center is to produce revenues for the Exchange and is not to disseminate information concerning NASA activities to visitors. Therefore, revenues generated to the Exchange by these activities are subject to legislative limitations of section (c) (3) of the Space Act, which authorizes Exchange activities. It is also evident that the Space Act authorizes NASA to directly enter into Visitor Center concession agreements and not indirectly through the NASA Exchange.

Using the rationale that the Exchange can expend funds on facility construction and improvements to enhance the income-generating capacity of Exchange operations, management could inappropriately justify the use of Exchange funds for any project in which the Exchange indirectly benefits.

Management's Comment. Broad language in the new concession agreement still provides a vehicle for transferring nonappropriated concession revenues from Kennedy to fund improvements to facilities for visitors at other NASA installations.

8. OIG Comments. A reading of the entire concession agreement shows that the concessioner's undertakings are for the benefit of the Kennedy Public Visitor Program (PVP). Article 1, section C, paragraph 1, identifies PVP as follows:

> The Government hereby bargains, sells and conveys to the Concessioner, under the terms and conditions stated in this Agreement, a preferential right, not an exclusive or monopolistic right, and grants necessary access, to conduct the revenue-producing activities described in this Agreement associated with the Kennedy Public Visitor Program (PVP) and Spaceport USA." [Spaceport USA was later renamed Kennedy Space Center Visitor Complex.]

The above language specifically identifies PVP as being the Kennedy Public Visitor Program and not the overall NASA public visitor program as described by management's comments. Once the acronym PVP was established, it was used throughout the agreement to identify the Kennedy Public Visitor Program. We maintain our position that the concession agreement does not authorize payments for visitor program improvements at other NASA Centers.

Management's Comment. The Stennis Center Director planned to transfer the external tank regardless of any "potential loss of future revenue" and without any requirement for compensation; it was clear to him that this was the right thing for NASA to do.

9. OIG Comments. To discern the intent of the parties, we give more credence to the documentation created at the time the transaction took place than to a memorandum created in July 2000, more than 3 years later. When establishing the Letter Agreement and executing its terms, it is evident that other management officials involved in transferring the external tank to Kennedy were not as clear as the Stennis Center Director who understood the right thing for NASA to do was not require any compensation for the tank. The Stennis Center Director's July 2000 understanding that compensation should not have been made for the tank is correct and is also the our position. Nevertheless, the Stennis Center Director signed the agreement that specifically requires compensation once the external tank is delivered to Kennedy, and thus effected an improper reimbursable transfer of property that ultimately resulted in an unauthorized augmentation of funds.

Management's Comment. There were really two separate transactions that need to be examined. On the one hand, one NASA Center transferred a Government-owned external tank to another, with title retained in the Government at all times. On the other hand, as a separate transaction, a NASA concessioner from one Center provided nonappropriated funds for an addition to a Visitor Center at another NASA Center. It is clear that the Space Act authorizes the use of nonappropriated funds from concessioners to do exactly that.

10. OIG Comments. In actuality, consideration to Stennis in exchange for the external tank was the issue, as it is so clearly stated in the Letter Agreement and other supporting evidence. The Letter Agreement and evidence gathered during the audit clearly show the two transactions are interrelated in that the external tank transfer and payment of concessioner funds were dependent on each other. In reality, this is one transaction – transfer of the external tank for cash. Therefore, our position remains that Kennedy and Stennis effected a reimbursable transfer of property.

Management's Comment. The attorneys who drafted the letter agreement were not privy to the original conversation between the two NASA Center Directors.

11. OIG Comments. This assertion is irrelevant. The attorneys who drafted the Letter Agreement must have known at least some of the details discussed by the NASA Center Directors, otherwise those officials would not have known an agreement was needed. In a July 18, 2000, memorandum, Subject: "External Tank Transaction," the Stennis Center Director states "…I informed my Chief Counsel, . . ., about these discussions. I asked him to follow up with Kennedy officials and work out the details." Moreover, the Stennis Center Director's February 27, 1997, letter to the Kennedy Center Director incorporating the Letter Agreement states "This letter agreement captures the essence of conversations we, *members of our staffs*, and Marshall Space Flight Center (MSFC) employees have had regarding the Space Shuttle External Fuel Tank *(external tank)* that has been displayed at the Visitors Center at Stennis Space Center." (emphasis added)

Management's Comment. The external tank actually left Stennis and began its journey to Kennedy in late 1996, before the letter agreement was drafted.

12. OIG Comments. We specifically asked the Stennis Chief Counsel why the Letter Agreement was dated after actual shipment of the external tank from Stennis in December 1996. The Stennis Chief Counsel responded in writing as follows:

> Prior to December 1996, detailed discussions and negotiations were ongoing as to how this transaction would be recorded. Based upon the fact that Kennedy faced an impending deadline for the opening of the new exhibit, it was determined that Stennis would allow the external tank to be shipped to Michoud Assembly Facility in December 1996 before the agreement was fully executed. The parties recognized that in addition to the time involved in actually moving the external tank to Kennedy, there was substantial work to be performed on the tank prior to its installation at the Kennedy display. Since negotiations on the terms of the agreement were essentially complete by December 9th and the agreement was in the review and concurrence cycle at the two

> NASA Centers, it was determined that it would be appropriate to release the external tank prior to the final execution of the written agreement. After actual shipment, no particular urgency required formal agreement signature, which occurred in February 1997.

As evidenced by the above statement, the fact that the tank left Stennis prior to a signed agreement is no indication that Stennis would have transferred the tank without an agreement specifying terms of compensation from the Kennedy concessioner. Indeed, according to the Stennis Chief Counsel's written response, the terms had already been agreed to. Only the formalities remained to be accomplished.

Management's Comment. In retrospect, the justification for the transfer of the concession revenues to Stennis should have simply (and more accurately) stated that Kennedy would direct the transfer of the concession funds under the authority of section (c) (11) of the Space Act in order for Stennis to modify and improve its Visitor Center.

13. OIG Comments. In retrospect, the Chief Counsels at either Kennedy or Stennis should have rendered a legal opinion, considering all factors and parties involved, on the plans to transfer and use concessioner funds paid to the Stennis Exchange prior to carrying out the transaction. We maintain our position that concessioner funds were improperly paid to the Stennis Exchange in return for the external tank display and that the Exchange acted outside its designated authority in accounting for and using the funds at Stennis.

Management's Comment. It is not reasonable for the OIG to attempt to characterize the transfer of the external tank as a sale. First, there was no change of ownership of the external tank. Second, Stennis transferred the external tank to Kennedy, not Delaware North, despite the statement on page 2 of the audit report that "Stennis and Delaware North completed the transfer of the external tank.…" Finally, Delaware North had neither the power nor authority to "pay" Stennis for the external tank. Kennedy management, under the terms of its concession agreement, directed Delaware North to send the concession funds to Stennis.

14. OIG Comments. We did not characterize the tank as a sale, but as evidenced in the Letter Agreement, NASA officials made it clear from the transaction's inception that funds in the amount of $500,000 were to be transferred in exchange for the external tank. Our position is that, although Kennedy and Stennis documented a nonreimbursable transfer of property, the two Centers actually entered into an improper reimbursable agreement whereby Stennis required consideration in the form of Kennedy concessioner revenues for the external tank. While the property transfer arrangement worked out between the two Centers did not result in a change in property ownership, it was not a nonreimbursable transfer.

Management is correct in its statement that Stennis transferred the external tank to Kennedy, not Delaware North. The audit report clearly states on page 5 that Stennis transferred the tank to Kennedy. Specifically:

> Stennis properly prepared the documentation required by NHB 4200.1D and NHB 4300.1 for initiating a nonreimbursable transfer of the external tank to Kennedy. However, Stennis actually effected a reimbursable transfer by requiring Kennedy to provide compensation of $500,000, which was NASA's original cost of the tank.

We agree with management's statement that Delaware North had neither the power nor authority to "pay" Stennis for the external tank, but not for the same reasons management provides. We also take the position that the concession agreement with Delaware North does not contain language that authorizes concessioner revenues to be used at other NASA Centers and, as a result, Kennedy management is not authorized to direct these payments to Stennis.

Management's Comment. As evidence of its contention that the tank was sold, the OIG audit report also cites letters from two Kennedy officials who either characterize the transfer as a purchase by Delaware North or refer to "payment" for the external tank. The transfer should have been better documented, and it may well have been mischaracterized by various NASA officials, but the fact remains that when one NASA Center transfers a piece of Government-owned property to another NASA Center, it is not a sale.

15. OIG Comments. Our position is that Kennedy officials did not mischaracterize the transfer, but acted in accordance with the Letter Agreement in their direction to Delaware North to make payments to the Stennis Exchange for the external tank. The Letter Agreement expresses the intent to transfer the tank in exchange for the payment of $500,000 of concessioner revenues to the Stennis Exchange. While we agree with management that the transfer did not result in a sale of property, we continue to disagree that it represented a proper nonreimbursable transfer as management portrays.

Management's Comment. The concession revenues from Kennedy were not transformed into something different by virtue of being deposited, for bookkeeping purposes, into an interest-bearing account for nonappropriated funds in the name of the Stennis branch of the NASA Exchange. It is contradictory for the OIG to assert that, for the purposes of modifying the Stennis Visitor Center, the funds from the Exchange account were Exchange funds and not concessioner funds, but for the purpose of devising a remedy for a perceived fiscal law violation, the same funds must be returned to its concessioner source. Although, there is, at times, some overlap between the authorized purposes to which nonappropriated Exchange funds and nonappropriated concession funds can be used, in this case, the segregated funds from each source (and the interest accruing thereto) were accounted for separately in order to preserve their character and maintain a distinction in terms of the separate purpose and source of each.

The Stennis branch of the NASA Exchange was merely used as a banking repository for the funds from the Kennedy concessioner. The Exchange account was used as a matter of administrative convenience to achieve the joint Kennedy/Stennis purpose of constructing an addition to the Stennis Visitor Center. Stennis was not yet ready to contract for the new addition at the time the nonappropriated funds from Delaware North arrived at Stennis. The only account for nonappropriated funds that was available to hold the concession revenues from Kennedy was that of the Stennis branch of the NASA Exchange.

16. OIG Comments. If Stennis lacked the authority and means to deposit the funds into NASA's account and to exercise direct control over use of the funds, then it also lacked authority to indirectly account for and use the funds to accomplish its mission through the Stennis Exchange. Regardless of the fact that funds were nonappropriated concessioner revenues, it was improper to use the Stennis Exchange, also a nonappropriated activity, as a convenient mechanism to account for and use the funds at Stennis' direction for projects outside the scope of the Exchange's authority. The Stennis Exchange is not a concessioner.

Our assertion that funds from the Exchange account were Exchange funds and not concessioner funds is derived from language in the Letter Agreement and from oral and written testimony of the Chief Counsel and the Exchange Operations Manager at Stennis. The Letter Agreement states "Kennedy will direct its concessioner…to make payment to the NASA Exchange – Stennis Branch the sum of $500,000 to compensate Stennis for the potential loss of future revenue to Stennis' Visitor Program.…" In our entrance conference with Stennis officials, the Stennis Chief Counsel and the Stennis Exchange Operations Manager who is also Special Assistant to the Stennis Center Director, informed us that funds received from Delaware North were for future potential loss of revenue to the Stennis Exchange Souvenir Shop located at the Stennis Visitor Center. These officials stated that the external tank was its largest exhibit, and because of its loss to Kennedy, the number of visitors would be significantly reduced and would result in lower sales revenues at the souvenir shop. Finally, the Stennis Chief Counsel wrote "It was noted that the transfer of any funds would serve as a means of compensating the Stennis Space Center (and its Exchange) for the anticipated loss of Visitor Center traffic and revenue.…" Because the Stennis Visitor Program received no revenues from visitors, it would be logical that any revenue reimbursements would be to the Stennis Exchange and would thus become subject to the usage authority provided the Exchange by the Space Act.

Management's Comment. Stennis submitted a NASA Facility Project-Brief Project Document (Form 1509) to Headquarters early in May 1998 as part of NASA's internal authorization process. The project was properly approved at Headquarters several weeks before the construction contract was executed. The Form 1509 correctly identifies nonappropriated funds from the NASA Exchange as the funding source, but in retrospect, a more insightful disclosure should have stated that "nonappropriated concession revenues from Kennedy" were being used by Stennis.

17. OIG Comments. The OIG agrees with management that the Form 1509 was insufficiently documented to provide detailed information necessary for approving officials to make a fully informed decision regarding the Visitor Center addition. Again, we are not primarily concerned about insufficient documentation. We question the propriety of the transaction itself.

Management's Comment. According to the OIG position, in the absence of a concession agreement at a particular installation, appropriated funds must be used to fund the construction of NASA facilities for visitors at that installation. The basis for the OIG's position is not clear in the OIG audit report, it is contrary to previous NASA policy and practice, and it is not grounded on any justifiable legal foundation.

18. OIG Comments. The basis for our position is clear in the report. Throughout the report, we take no exception to NASA's authority to use concessioner funds for visitor facilities, but instead identify as inappropriate the mechanism used to accomplish the Visitor Center expansion and improvements at Stennis. Our position was not conjecture. Rather, we reached our conclusions after considering all the in-depth criteria and evidence regarding the transfer of the external tank, payment of concessioner funds to the Stennis Exchange, and accounting and use of concessioner funds paid the Exchange. Our conclusions and recommendations remain unchanged.

Appendix E. Report Distribution

National Aeronautics and Space Administration (NASA) Headquarters

A/Administrator
AI/Associate Deputy Administrator
B/Comptroller
BF/Director, Financial Management Division
G/General Counsel
H/Associate Administrator for Procurement
J/Associate Administrator for Management Systems
JM/Acting Director, Management Assessment Division
L/Associate Administrator for Legislative Affairs
M/Associate Administrator for Space Flight
P/Associate Administrator for Public Affairs
Z/Associate Administrator for Policy and Plans

NASA Centers

Director, Ames Research Center
Director, Dryden Flight Research Center
Director, John H. Glenn Research Center at Lewis Field
Director, Goddard Space Flight Center
Director, Jet Propulsion Laboratory
Director, Lyndon B. Johnson Space Center
Director, Langley Research Center
Director, George C. Marshall Space Flight Center
Chief Counsel, Kennedy Space Center

Non-NASA Federal Organizations and Individuals

Assistant to the President for Science and Technology Policy
Deputy Associate Director, Energy and Science Division, Office of Management and Budget
Branch Chief, Science and Space Programs Branch, Energy and Science Division, Office of Management and Budget
Associate Director, National Security and International Affairs Division, Defense Acquisition Issues, General Accounting Office
Professional Assistant, Senate Subcommittee on Science, Technology, and Space

Chairman and Ranking Minority Member - Congressional Committees and Subcommittees

Senate Committee on Appropriations
Senate Subcommittee on VA, HUD, and Independent Agencies
Senate Committee on Commerce, Science, and Transportation
Senate Subcommittee on Science, Technology, and Space
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on VA, HUD, and Independent Agencies
House Committee on Government Reform
House Subcommittee on Government Management, Information, and Technology
House Subcommittee on National Security, Veterans Affairs, and International Relations
House Committee on Science
House Subcommittee on Space and Aeronautics

Congressional Member

Honorable Pete Sessions, U.S. House of Representatives

NASA Assistant Inspector General for Auditing
Reader Survey

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Report Title: Transfer of External Tank Display to Kennedy Space Center Visitor Complex

Report Number: ____________________ **Report Date:** __________________

Circle the appropriate rating for the following statements.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	N/A
1. The report was clear, readable, and logically organized.	5	4	3	2	1	N/A
2. The report was concise and to the point.	5	4	3	2	1	N/A
3. We effectively communicated the audit objectives, scope, and methodology.	5	4	3	2	1	N/A
4. The report contained sufficient information to support the finding(s) in a balanced and objective manner.	5	4	3	2	1	N/A

Overall, how would you rate the report?

Excellent Fair
Very Good Poor
Good

If you have any additional comments or wish to elaborate on any of the above responses, please write them here. Use additional paper if necessary. _____________

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How did you use the report? ____

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How could we improve our report? ____

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How would you identify yourself? (Select one)

Congressional Staff	Media
NASA Employee	Public Interest
Private Citizen	Other: ______________________

Government: _________ Federal: __________ State: _________ Local: _________

May we contact you about your comments?

Yes: ______ **No:** ______

Name: ______________________________

Telephone: __________________________

Thank you for your cooperation in completing this survey.

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