

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



October 18, 2007

Reply to Attn of: **Exploration Systems Mission Directorate**

Mr. George French
Chairman of the Board of Directors
Rocketplane Kistler, Inc.
4300 Amelia Earhart Lane
Oklahoma City, OK 73159

Dear Mr. French:

I am writing in response to Rocketplane Kistler's ("RpK") contention that NASA has failed to give special consideration to delays and events beyond RpK's control, as required by Article 17B of the parties' Space Act Agreement ("SAA"). RpK specifically cites its September 20, 2007, letter to Dr. Scott Horowitz and its October 8, 2007, proposal in support of this contention.

Contrary to RpK's assertions, NASA has complied fully with the requirements of Article 17B of the SAA and, as stated in NASA's September 7, 2007, letter, the Agency has determined that additional efforts under the present Agreement are not in its best interests. RpK has missed both technical and financial milestones under the SAA. RpK was provided multiple opportunities to complete its second financing milestone under the SAA and was unable to achieve it even after multiple schedule extensions were requested by RpK and agreed to by NASA.

RpK requested and received an extension on its first financial milestone. NASA and RpK have worked together since February 2007 to revise RpK's second financial milestone, and have communicated frequently during the spring and summer to consider RpK's updated plans for achieving these milestones. At RpK's request, NASA agreed to postpone completion of the second financing milestone, originally scheduled for February 2007, until May 2007 and modified the SAA accordingly. When the milestone was not accomplished in May, NASA requested additional information. NASA considered the information RpK presented on June 15, 2007, and again agreed to RpK's request to postpone the milestone completion until July 2007. On August 3, RpK informed NASA that, in spite of the extension, it was unable to meet the milestone in July. NASA considered the updates RpK provided on August 10 and August 28, as well as the information in RpK's September 20 letter. NASA also met with RpK on October 4, 2007, to hear the outline of a new proposal subsequently submitted on October 8. The October 8 proposal does not offer a clear plan to remedy RpK's failure to meet its milestones, nor does it propose a solution to meet any current milestones under the SAA. NASA believes it has given due consideration to RpK's failure to meet its milestones irrespective of whether the causes may have been beyond RpK's control.

NASA does not agree that the NASA actions cited in RpK's September 20, 2007, letter were the cause of RpK's failure to meet its milestones. Rather, there appears to be a number of factors that contributed to RpK's failure to meet its milestones. Furthermore, NASA does not believe that any delay or event cited by RpK as contributing to its inability to achieve its milestones is sufficient to excuse RpK's failure of performance under the SAA. As set forth in NASA's October 4, 2007, letter, NASA's actions have been consistent with NASA's stated plans with regard to the Commercial Orbital Transportation Services (COTS) project. To the extent RpK asserts that the requirements of the Commercial Space Act constrained RpK's ability to raise funding, RpK accepted Article 9 of the SAA that required it to maintain its status as an "eligible participant" under the COTS announcement. To the extent RpK asserts that market conditions prevented it from completing its fundraising, RpK assumed the risk that it would not be successful in raising funding by agreeing that NASA would have the option to terminate the SAA if the financing milestones were not met.

NASA has carefully considered the proposal provided on October 8, 2007, regarding the technical progress on RpK's program and the company's new efforts to secure financing. NASA is under no obligation to agree to the modifications to the SAA that RpK has requested and, more importantly, believes that it would not be in the Agency's best interest to do so. Rather, given the scope of the proposed changes, NASA believes it is in the best interest of the Agency to reopen competition for the remaining COTS Phase I funding.

For the reasons set forth above, NASA has determined that RpK did not meet Milestones 4 and 5, and its failure to do so was not the result of delays or events beyond RpK's control within the meaning of the SAA. To the extent RpK would otherwise be entitled to special consideration under the SAA, such consideration was provided. NASA cooperated with RpK by agreeing to amend the SAA as requested by RpK in February 2007 as well as by continuing to work with RpK through August 2007. NASA considered the additional information RpK provided on September 20 and October 8, and finds no basis to rescind the notice of failure to perform sent on September 7. Accordingly, the SAA is terminated pursuant to Article 17B, effective immediately. This is a final Agency decision.

Although the current agreement is terminated, RpK is not precluded from continuing to participate in the COTS project. NASA would entertain discussions for an unfunded agreement consistent with the agreements in place with many other COTS participants. Likewise, NASA would welcome any proposals RpK might submit for consideration in the next COTS competition.

Sincerely,



Richard J. Gilbrech
Associate Administrator
Exploration Systems Mission Directorate