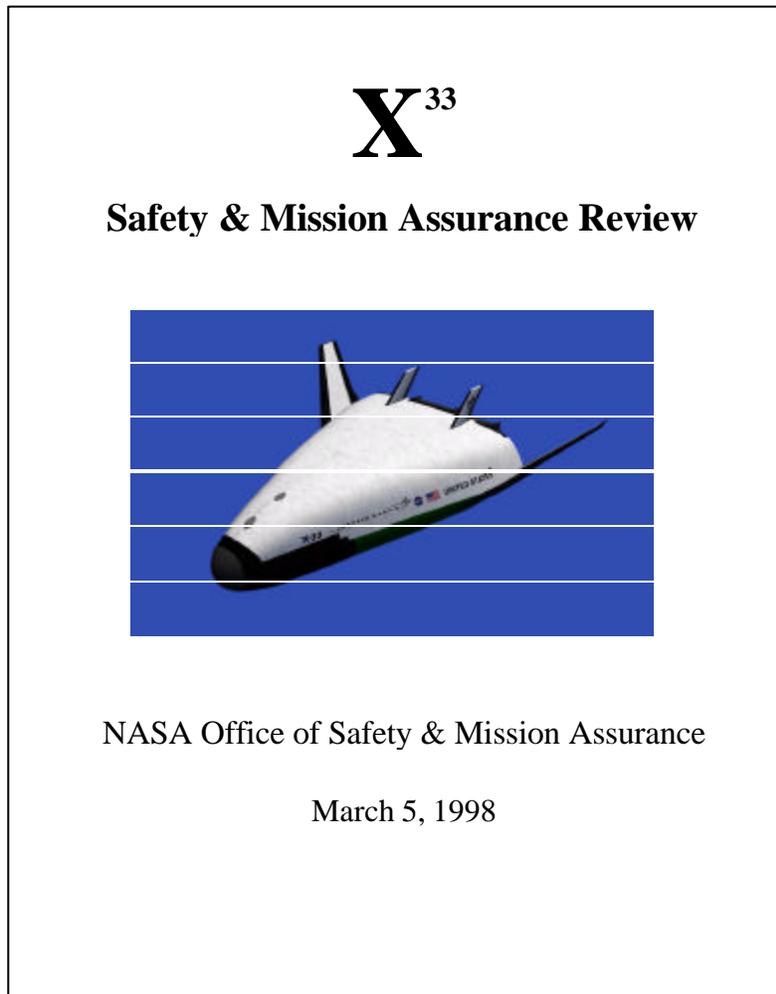


- Excerpt of Full Report -

This document contains excerpts from the X-33 Independent Assessment Report (title page shown below). Only those sections which relate to the PBMA element **Acquisition** are displayed.

The complete report is available through the PBMA web site, Program Profile tab.



## **2.2 Cooperative Agreement**

The X-33 Program is established as a Cooperative Agreement between NASA and LMSW. The X-33 is an industry-led program with NASA assuming an insight rather than the conventional oversight role. The responsibility for determining how the program will be implemented and the accountability for meeting program milestones resides with the industry partner. Industry has complete design authority for both the X-33 and the operational RLV.

One of the unique features of the cooperative agreement is that NASA Centers support the industry team through task agreements that are negotiated between LMSW and the individual NASA Centers. These task agreements define NASA's products, delivery schedule, and facility requirements. There are currently over one hundred task agreements involving all ten NASA Centers. Additionally there are DOD task agreements involving the Air Force Flight Test Center, Michael Army Air Field, Malmstrom AFB, and Wright Aeronautical Laboratory.

## **2.3 Liability and Indemnification**

Issues of liability and indemnification are described in Section 33 of the Cooperative Agreement:

“The parties recognize that potential liability to third parties is a substantial concern against which the Recipient (Lockheed Martin) desires indemnification by NASA. If legislation is enacted which provides NASA specific authority, NASA agrees to process the Recipient's application to indemnify Recipient against claims of third parties for death, bodily injury, or loss of, or damage to, property resulting from flight testing of the X-33 vehicle in the performance of this cooperative agreement. In the event that indemnification is not provided, either because legislation is not enacted or because an application for indemnification submitted by the Recipient is disapproved for good reasons, the recipient shall be responsible, either through insurance or otherwise, for any third-party liability it may incur under this agreement. In this event the parties will include in their financial contribution the cost of insurance or take other measures to provide for the financial protection against third-party liability.”

Under pending legislation (Senate Bill 2150), indemnification or partial indemnification would be granted. However this legislation also states that: “The Administrator may not provide liability insurance or indemnification unless the developer establishes to the satisfaction of the Administrator that appropriate safety procedures and practices are being followed in the development of the experimental aerospace vehicle.” This would suggest that NASA, as the government partner, must assume a more traditional oversight role with respect to the safety and mission assurance function if indemnification is granted.

- Excerpt of Full Report -

No cross waiver authority exists under the current Cooperative Agreement. Cross waiver authority allows each party to bear its own risks i.e. the involved parties agree not to bring suit against each other. Further, the pending legislation does not include cross waiver authority.