

GAO

Report to the Subcommittee on Interior,
Environment, and Related Agencies,
Committee on Appropriations, House of
Representatives

September 2006

KENNEDY CENTER

Progress Made on
GAO
Recommendations,
but Oversight
Challenges Still Exist





Highlights of [GAO-06-1025](#), a report to the Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, House of Representatives

Why GAO Did This Study

In April 2005, GAO recommended that the John F. Kennedy Center for the Performing Arts (Kennedy Center) increase oversight of its management of federal funds, better comply with fire code, and conform to project management best practices. GAO was asked to evaluate (1) the progress the Kennedy Center has made in implementing GAO's April 2005 recommendations, (2) the status of federally funded capital projects and the planned spending of federal funds for capital projects as indicated by the Kennedy Center's most recent comprehensive building plan, and (3) the Kennedy Center Board of Trustees' responsibilities for federally funded capital projects and the extent to which the board fulfills these responsibilities. To fulfill these objectives, GAO examined Kennedy Center documents, visited other arts organizations, and interviewed affected parties.

What GAO Recommends

GAO recommends that the Kennedy Center comply with the FAR provision regarding alternative contracting methods, improve information to the board on capital projects, and develop and implement procedures for the board on how to carry out its responsibilities for federal funds. The Kennedy Center disagreed with our recommendation that it improve compliance with the FAR provision, but agreed generally with GAO's other recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-06-1025.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Mark Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

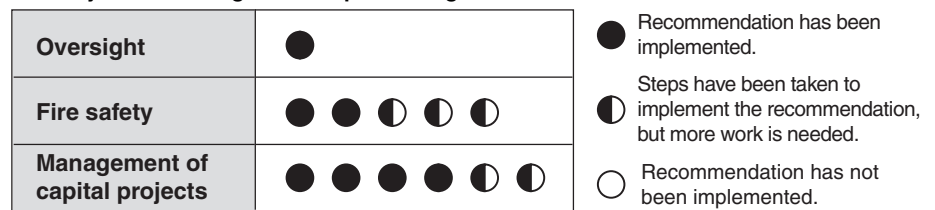
KENNEDY CENTER

Progress Made on GAO Recommendations, but Oversight Challenges Still Exist

What GAO Found

The Kennedy Center has taken steps to implement GAO's oversight, fire safety, and capital project recommendations but more work remains. For example, to increase oversight of its management of federal funds, the Kennedy Center contracted with the Smithsonian Institution Office of the Inspector General for audits of federal funds used for capital projects. In addition, to better comply with fire safety code, the Kennedy Center has implemented GAO's recommendations to obtain a peer review of its fire-modeling study and manage the storage of combustible materials. As a result of the peer review, the center made changes to its fire-modeling study. Finally, to better align with project management best practices, the Kennedy Center has implemented GAO's recommendations to design and implement contract, financial, and project management policies and procedures and control cost and schedule changes in future projects.

Kennedy Center's Progress in Implementing GAO's Recommendations



Source: GAO.

The Kennedy Center's 2005 comprehensive building plan (CBP)—or long-term renovation effort—shows that the center will not complete its capital renovations within the planned 2008 time frame and budgets. The estimated costs for the remaining CBP projects have increased from \$48 million to \$58 million since the 2004 CBP, and the center plans to defer most terrace-level renovations beyond 2008, the original completion date. The 2005 CBP shows that the Family Theater was completed on schedule in 2005 with limited cost growth. However, despite improved contracting practices, GAO found that the Kennedy Center did not fully comply with the Federal Acquisition Regulation (FAR) when it used an alternative contracting method. In addition, it increased the risk of cost overruns by authorizing Family Theater work to begin before establishing the contract's guaranteed maximum price.

The Kennedy Center Board of Trustees has delegated to management most of its responsibilities for federally funded capital projects, which is a typical board action. However, GAO found that several factors limit the board's oversight of federally funded capital projects. The Kennedy Center Board of Trustees and its Operations Committee (1) lack procedures on how to carry out the board's responsibilities for federally funded projects (2) have experienced low attendance at meetings, and (3) lack information needed to evaluate the implementation of capital projects. In addition, the Operations Committee has met infrequently, which further limits oversight.

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Abbreviations

CMAR	construction manager at risk
CBP	comprehensive building plan
FMO	Facilities Management Office
FAR	Federal Acquisition Regulation
GMP	guaranteed maximum price
GSA	General Services Administration
MOU	memorandum of understanding
NARA	National Archives and Records Administration
NPS	National Park Service
OIG	Office of the Inspector General
OMB	Office of Management and Budget
PMO	Project Management Office

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United States Government Accountability Office
Washington, D.C. 20548

September 15, 2006

The Honorable Charles Taylor
Chairman
The Honorable Norman Dicks
Ranking Minority Member
Subcommittee on Interior, Environment,
and Related Agencies
Committee on Appropriations
House of Representatives

The John F. Kennedy Center for the Performing Arts (Kennedy Center) opened in 1971 as a national cultural arts center and presidential memorial. Every year, millions of people either visit the Kennedy Center to view the center and memorial or to attend live performances. Since at least 1990, the Kennedy Center facility has needed substantial capital repairs. At that time, officials from both the Kennedy Center¹ and the Department of the Interior's National Park Service (National Park Service), which then shared responsibility for managing the Kennedy Center, acknowledged that the physical condition of the center had seriously deteriorated.

In 1994, legislation was enacted that gave the Kennedy Center Board of Trustees sole responsibility for managing the facility. As part of that responsibility, the legislation required the Kennedy Center Board of Trustees to develop, and annually update, a comprehensive building needs plan. In response, the Kennedy Center developed a comprehensive building plan (CBP) in 1995 that included an assessment of the facility and identified the capital projects considered necessary to repair the center and bring it into compliance with current codes for fire safety and disabled access.² The plan consisted of a long-term capital repair and upgrade project that, among other things, envisioned the center's meeting or exceeding relevant fire safety regulations by 2008 and addressing disabled access needs. To

¹For this report, the term Kennedy Center refers to the Board of Trustees and management officials unless otherwise specified.

²The National Fire Prevention Association Life Safety Code is designed to protect building occupants from fire and other hazards. The code covers construction, protection, and occupancy features to minimize danger to life from fires, smoke, fumes, or panic before buildings are vacated. The Americans with Disabilities Act prohibits discrimination on the basis of disability in employment, services rendered by state and local governments, places of public accommodation, transportation, and telecommunications services.

implement its CBP, the Kennedy Center received almost \$216 million³ in federal funds during fiscal years 1995 through 2006 for capital repairs and alterations.

For more than a decade, we have identified shortcomings in, and made recommendations to improve, the Kennedy Center's construction, planning, and management processes: (1) In the 1990s, we reported that the Kennedy Center did not have sufficient staff capability to effectively manage its capital improvement plans;⁴ (2) In 2003, we reported that the Kennedy Center needed to strengthen its management and oversight of large construction projects, such as the garage expansion and renovation project;⁵ and (3) In 2004, we reported that the Kennedy Center had implemented most of the projects in its CBP but would likely not complete its plan by 2008, given the number and size of the renovation projects that remained to be done, the amount of anticipated future appropriations, and the likelihood that project budgets may increase as designs are completed.⁶ Most recently, we reported that although the Kennedy Center completed four major renovations, each of these projects exceeded budget estimates, some by substantial amounts. We also found that the Kennedy Center lacked the comprehensive policies and procedures needed to adequately safeguard federal funds and did not appear to meet fire safety code requirements. Accordingly, we recommended in our April 2005 report that the Kennedy Center increase its oversight of federally funded capital projects, better comply with fire code, and better align its management of capital projects with best practices.⁷

³This amount includes a beginning balance of \$35.3 million, which is the value of transfers from the National Park Service and the Smithsonian Institution, and approximately \$180.5 million in federal appropriations.

⁴GAO, *Kennedy Center: Information on the Capital Improvement Program*, [GAO/GGD-93-46](#) (Washington, D.C.: Feb. 9, 1993) and *Kennedy Center: Information on Facility Management Capability*, [GAO/GGD-98-56](#) (Washington, D.C.: Mar. 25, 1998).

⁵GAO, *Kennedy Center: Improvements Needed to Strengthen the Management and Oversight of the Construction Process*, [GAO-03-823](#) (Washington, D.C.: Sept. 5, 2003).

⁶GAO, *Kennedy Center: More Information on Project Status and Budgets Needed to Understand the Impact of Future Funding Decisions*, [GAO-04-933](#) (Washington, D.C.: Sept. 15, 2004).

⁷GAO, *Kennedy Center: Stronger Oversight of Fire Safety Issues, Construction Projects, and Financial Management Needed*, [GAO-05-516T](#) (Washington, D.C.: Apr. 6, 2005) and [GAO-05-334](#) (Washington, D.C.: Apr. 22, 2005).

To assist Congress, you requested that we examine the Kennedy Center's management and oversight of federally funded capital projects.

Accordingly, this report evaluates (1) the progress the Kennedy Center has made in implementing the recommendations in our April 2005 report; (2) the status of federally funded capital projects and the planned spending of federal funds for capital projects, as shown in the Kennedy Center's most recent comprehensive building plan; and (3) the Kennedy Center Board of Trustees' responsibilities for federally funded capital projects and the extent to which the board fulfills these responsibilities.

To determine the progress the Kennedy Center has made in implementing our April 2005 recommendations to increase oversight of its management of federal funds, better comply with fire code, and better align its management of capital projects with best practices, we reviewed Kennedy Center documents, including a 2005 risk assessment and internal audit plan; peer reviews of the center's fire-modeling study; annual CBPs; Family Theater contract modifications; and contract, financial, and project management policies and procedures. In addition, we spoke with management officials at the Kennedy Center, General Services Administration (GSA), and National Archives and Records Administration (NARA). To determine the status of federally funded capital projects and the planned spending of federal funds, as indicated by the Kennedy Center's most recent CBP, we reviewed the Kennedy Center's 1995 CPB and its 2004 and 2005 updates. Specifically, we examined the changes in the 2005 CBP that were made since the 2004 CBP and developed a list of federally funded projects that the Kennedy Center plans to delay or defer and reviewed the Kennedy Center's request for additional funds. To determine the Kennedy Center Board of Trustees' responsibilities for federally funded capital projects and the extent to which the board fulfills these responsibilities, we analyzed various federal laws, documents from the Board of Trustees and its Operations Committee,⁸ and the annual updates to the CBP. Specifically, to examine the extent to which the board fulfills its responsibilities for federally funded capital projects, we reviewed Board of Trustees and Operations Committee information packets and meeting minutes from January 1995 through April 2006 to determine how a variety of capital projects were overseen by the board. These projects included, but are not limited to, the Opera House renovation, fire alarm system replacement, public space modifications, site improvements

⁸The Board of Trustees created the Operations Committee to help the board carry out its responsibilities for capital projects.

project, and the Family Theater. In addition, we interviewed current and previous trustees from the board and congressional staffers that are designees of Kennedy Center trustees. We also spoke with Kennedy Center management officials about the status of federally funded capital projects. To obtain information on how other boards govern, including their responsibilities for capital projects and oversight of public funds, we interviewed academics that focus on board governance; officials from nonprofit board governance associations, and officials from arts organizations that have characteristics similar to the Kennedy Center. We conducted our work in Los Angeles, California; New York City, New York; and Washington, D.C., between October 2005 and August 2006 in accordance with generally accepted government auditing standards (see app. I for more information on our scope and methodology).

Results in Brief

The Kennedy Center has taken steps to implement our oversight, fire safety, and capital project recommendations, but more work is needed to fully implement them. Since April 2005, the Kennedy Center has fully or partially implemented all of our 12 recommendations related to increasing oversight of its management of federal funds, better complying with fire code, and better aligning its management of capital projects with best practices. Specifically:

- To increase oversight of its management of federal funds, the Kennedy Center has implemented our recommendation to work with an independent federal government oversight organization, such as the Smithsonian Institution Office of the Inspector General (OIG), for audits of the center's use of federal funds. In August 2005, the Kennedy Center hired a nongovernmental organization to develop a risk assessment and audit plan to assist the Kennedy Center Board of Trustees in overseeing the center's management of appropriated funds. In July 2006, the Kennedy Center finalized a memorandum of understanding (MOU) with the Smithsonian OIG for audits of federal funds used for capital projects. In addition, the Kennedy Center has contracted with a nongovernmental organization to implement the portion of the audit plan that covers the federal funds used for operations and maintenance activities. According to a Kennedy Center management official, the Kennedy Center selected a nongovernmental organization to audit the federal funds used for operations and maintenance activities because this approach was more efficient and cost effective than contracting with an independent federal government organization.

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- To better comply with fire safety code, the Kennedy Center has implemented two of our five recommendations in this area—to (1) obtain a peer review of its performance-based fire-modeling study and (2) manage the storage of combustible materials. In addition, the center has partially implemented three of our fire safety recommendations—to (1) install exit signs, (2) correct a fire safety deficiency at the Millennium Stages, and (3) ensure that doors in key areas provide adequate separation from fire.
 - To better align its management of capital projects with best practices, the Kennedy Center has implemented four of our six recommendations—to (1) design and implement contract and project management policies and procedures, (2) control cost growth and schedule changes in future capital projects, (3) design and implement comprehensive financial management policies and procedures, and (4) establish and enforce a documents retention policy. However, the center has only partially implemented the remaining two capital project management recommendations—to (1) develop as-built drawings to prevent costly unforeseen site conditions and (2) provide more timely and accurate information about capital projects to stakeholders and Congress. For example, the Kennedy Center has created a policy that requires as-built drawings of new construction improvements to the building. However, this policy does not require the center to integrate the individual new construction as-built drawings into one master set of centerwide drawings, nor does it require as-built drawings to be updated as additional changes to the center are made.

The most recent update of the CBP—the project-by-project plan for the comprehensive capital renovation of the Kennedy Center covering fiscal years 1995 through 2008—shows that the Kennedy Center will not complete all planned capital renovations within planned time frames and budgets. Although the 2005 CBP is better than previous versions because it provides information needed to evaluate the progress of federally funded capital projects, its new project-by-project budget reconciliations fail to show how changes in project budgets have affected the overall CBP budget, making it difficult to determine the overall impact of the changes on the CBP budget through 2008. According to our analysis, these changes will raise the cost of implementing the remainder of the CBP (for fiscal years 2006 through 2008) from \$48 million to \$58 million—a 21 percent increase over the 2004 CBP. To improve information to Congress and the Kennedy Center Board of Trustees, we are recommending that the Kennedy Center identify in the CBP the impact of changes to individual project

budgets on the plan's overall budget. The 2005 CBP further shows that the Family Theater was completed on schedule in 2005 with limited cost growth, unlike four federally funded capital projects that we reviewed in April 2005. According to our analysis, the Kennedy Center improved some of its contracting practices in completing the Family Theater project, but did not comply with the Federal Acquisition Regulation (FAR) in selecting its contracting method. In addition, the Kennedy Center authorized contractor work to begin on the Family Theater before establishing a guaranteed maximum price for the overall project. Consequently, had any cost increases occurred during construction, the Kennedy Center may have been obligated to pay for them. To comply with the FAR and prevent exposure to cost increases during construction, we are recommending that the center comply with the FAR provision regarding alternate contracting methods and ensure that contracting costs are agreed to before work begins on the project. The 2005 CBP also shows that the Eisenhower Theater renovations are scheduled to begin in fiscal year 2007, but may be delayed. Most terrace-level renovations will not be completed by 2008, even though they were originally scheduled for fiscal years 2000 through 2005. Finally, in addition to the changes identified in the 2005 CBP, more budget increases and project deferrals will be necessary before fiscal year 2008, according to Kennedy Center management officials. As a result, the Kennedy Center is seeking to extend the plan's period of implementation from 2008 to 2012.

The Kennedy Center Board of Trustees has delegated to management its responsibilities for federally funded capital projects, as is typical for governing boards; however, it has provided limited oversight for these projects. Under the Kennedy Center Act, the Kennedy Center Board of Trustees is responsible for developing and annually updating the CBP; planning, designing, and constructing capital projects; and preparing a budget. Although management performs these responsibilities, the board has provided limited oversight of the about \$121 million appropriated to the center for capital projects since 2000. For example, for 2000 through 2005, we found no evidence that the board had approved the annual updates to the CBP, reviewed management's performance in implementing capital projects, or approved the center's proposed federal appropriation request, which includes funding for capital projects. These actions are all required by the board's policies and procedures manual. We also found that the Operations Committee, which the board created to help it carry out its responsibilities for capital projects, receives the annual updates to the CBP after the center's annual capital project budget is finalized, limiting the board's ability to ensure that the federally funded capital projects proposed

in the CBP are in accordance with the requirements of the Kennedy Center Act.

According to our analysis, several factors limit the board's oversight of federally funded capital projects. First, the Kennedy Center Board of Trustees lacks procedures on how the board and its Operations Committee are to carry out the board's responsibilities for federally funded capital projects. Second, attendance at meetings of the Kennedy Center Board of Trustees and its Operations Committee has been low, and extended periods of time have elapsed between meetings of the Operations Committee. Since most of the board's responsibilities are carried out at board and committee meetings, it is important for the board and its committees to hold regular meetings and for board members to attend these meetings. Lastly, the board and its Operations Committee lack information needed to monitor and evaluate whether all federally funded capital projects have been implemented efficiently and in accordance with the requirements in the Kennedy Center Act. Without information on original budgeted costs, the board and Operations Committee cannot hold management accountable for the implementation of federally funded capital projects.

The board's lack of oversight may have contributed to the Kennedy Center's problems keeping federally funded capital projects within budget estimates—we found in 2005 that several of the Kennedy Center's largest federally funded capital projects exceeded budget estimates by amounts ranging from 13 to 50 percent. To strengthen the role of the Kennedy Center Board of Trustees', we are recommending that the board develop and implement procedures on how it is to carry out its responsibilities for federally funded capital projects and ensure that it receives information on how federal funds have been used for capital projects.

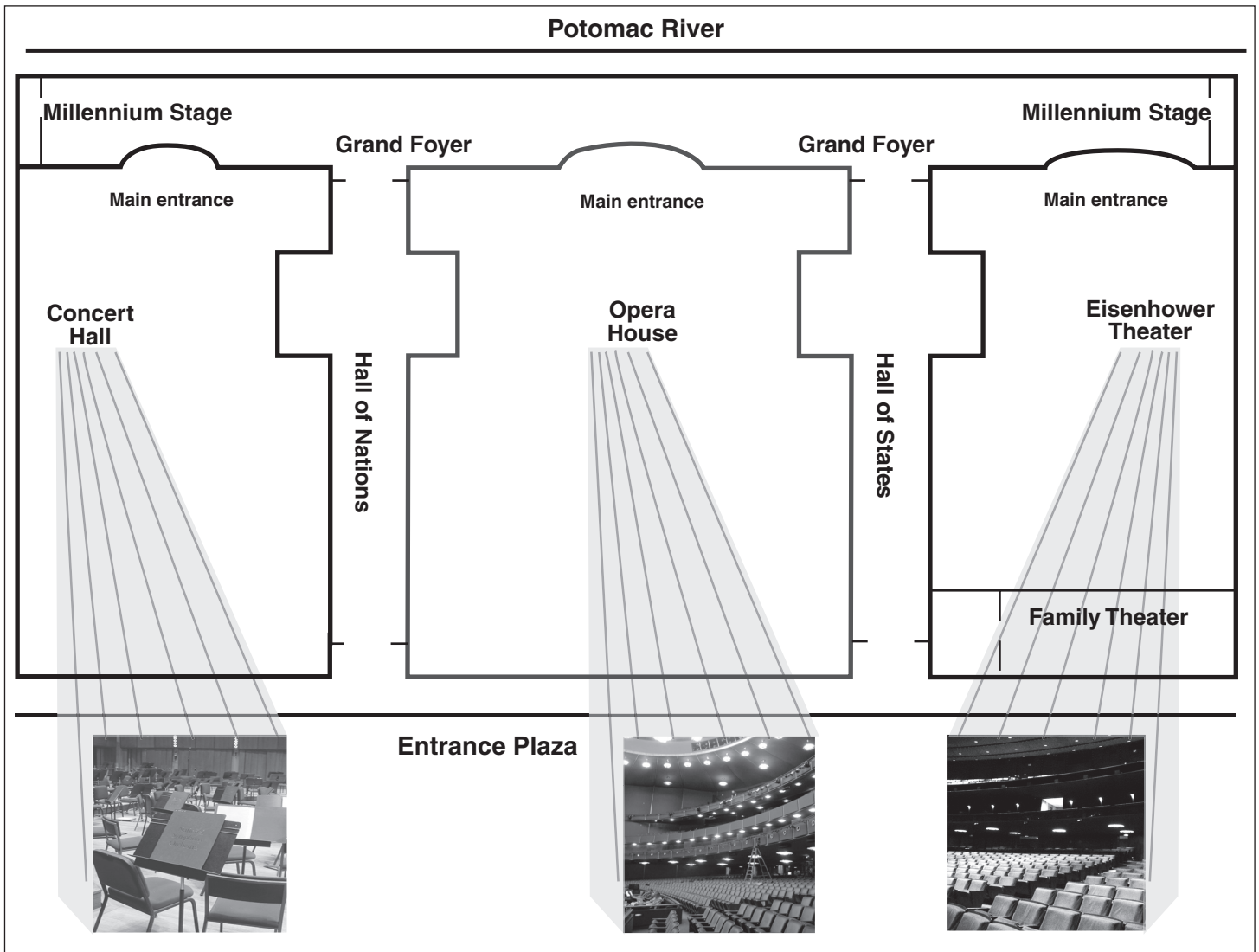
We provided a draft of this report to the Kennedy Center for review and comment. In written comments on the draft report, the Kennedy Center generally agreed with our findings and two of our three recommendations. Specifically, the Kennedy Center agreed to (1) improve the CBP in several areas and (2) review and revise, if necessary, procedures on how the Operations Committee is to carry out its responsibilities and to provide the CBP to the Operations Committee in a more timely fashion. The Kennedy Center disagreed with our recommendation that it improve compliance with the FAR provision regarding alternative contracting methods and that it establish the guaranteed maximum government price for a capital project before proceeding with construction. We disagree with the Kennedy Center's assessment because we continue to believe that construction

manager at risk is not covered by the FAR and that establishing a guaranteed maximum price prior to proceeding with work limits the government's risk of cost overruns. Therefore, we are retaining the recommendation. See appendix III for the Kennedy Center's comments and our responses.

Background

The Kennedy Center opened in 1971 and is located on 17 acres along the Potomac River in Washington, D.C. The center houses numerous theater, exhibition, and rehearsal spaces; public halls; educational facilities; offices; and meeting rooms in about 1.1 million square feet of space. The plaza level is the primary focus for patrons and tourists, including three main theaters, the Grand Foyer, the Hall of States, and the Hall of Nations. Access to other areas, such as the roof terrace level, is provided through the Grand Foyer, Hall of States, and Hall of Nations. Figure 1 provides a diagram of the Kennedy Center's plaza level.

Figure 1: Diagram of the Kennedy Center's Plaza-Level Public Spaces and Theaters



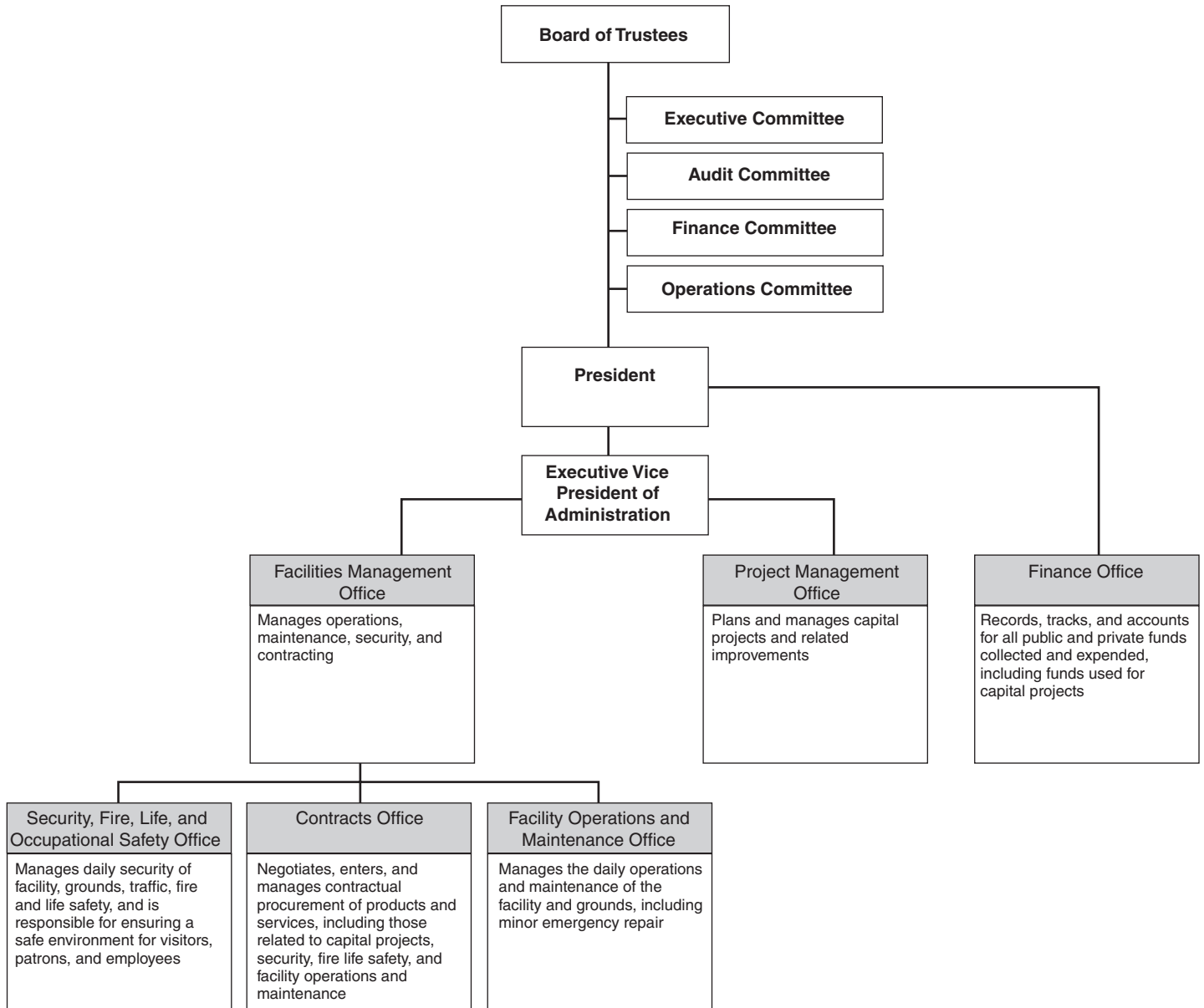
Sources: Kennedy Center (data) and GAO (photos).

The National Cultural Center Act of 1958 established the National Cultural Center as a bureau within the Smithsonian Institution and created a board responsible for constructing and administering the nation's performing arts center. The John F. Kennedy Center Act of 1964 renamed the National Cultural Center as the John F. Kennedy Center for the Performing Arts. The

Kennedy Center is also a nonprofit organization with the authority to solicit and accept gifts. In 1972, Congress authorized the National Park Service to provide maintenance, security, and other services necessary to maintain the building, while making the Kennedy Center Board of Trustees responsible for performing arts activities at the Kennedy Center. Under this arrangement, the Kennedy Center facility incurred a backlog of capital repairs, in part because responsibility for identifying and completing capital repairs and improvements at the center was unclear. Legislation was enacted in 1990 that directed the National Park Service and the Board of Trustees to enter into a cooperative agreement clarifying their responsibilities for the maintenance, repair, and alteration of the center, but the parties were unable to reach an agreement. In 1994, legislation was enacted that gave the Board of Trustees sole responsibility for carrying out capital improvements at the Kennedy Center. One purpose of the 1994 legislation was to provide autonomy for the overall management of the Kennedy Center, including better control over its capital projects, and to renovate the center.

Under the Kennedy Center Act, the Kennedy Center Board of Trustees currently consists of 59 trustees: 23 are *ex officio* trustees, appointed by virtue of the office or position they hold, including congressional members, and 36 are general trustees appointed by the President of the United States. Each presidentially appointed trustee serves a term of 6 years. As the center's chief decision-making body, the Kennedy Center Board of Trustees is responsible for maintaining the Kennedy Center as a living memorial to President John F. Kennedy and executing other functions required of the board under the act. The Kennedy Center Act requires the Board of Trustees to develop and annually update a CBP; plan, design and construct each capital project at the center; and prepare a budget. The board's policies and procedures manual, which includes the board's bylaws, states that board responsibilities include approving the annual CBP updates, reviewing management's performance in implementing capital projects, and reviewing and approving the center's annual capital project budget. The Kennedy Center Board of Trustees has a number of standing committees, including Executive, Audit, Finance, and Operations committees to assist with the board's work. The Operations Committee is responsible for overseeing the general operations of the center, as well as all capital projects. Figure 2 shows the organization of the Kennedy Center, which includes the Board of Trustees and the center's management structure as it applies to capital projects.

Figure 2: Organization of the Kennedy Center for Selected Positions and Offices



Source: GAO analysis of Kennedy Center data.

As part of its responsibility under the 1994 legislation, the center published its first CBP in 1995, describing the goals of a long-term renovation effort, including addressing fire safety and disabled access code deficiencies, replacing inefficient building systems, and improving visitor services. This original building plan anticipated that the proposed capital projects would be completed in two stages. Projects in the first stage—fiscal years 1995 through 1999—would address critical security and life safety measures and improve accessibility. Projects undertaken in the second stage—fiscal years 2000 through 2009⁹—would eliminate the backlog of deferred capital repair projects. In 1995, the Kennedy Center anticipated undertaking critical fire safety projects by the end of fiscal year 1999. However, to minimize disruption to performances, the Kennedy Center changed its approach to making capital improvements. Rather than undertaking broad-scale projects that could disrupt the entire center, the Kennedy Center chose to renovate the center incrementally while keeping the rest of the center open and operating.

The center receives annual federal appropriations for capital projects based on the CBP and also for the operation, maintenance, and security of the facility. The funds appropriated for capital projects remain available to the Kennedy Center until they are expended. To implement its CBP, the Kennedy Center has received about \$216 million since fiscal year 1995. This includes \$35.3 million transferred from the National Park Service and the Smithsonian Institution and about \$180.5 million in appropriated funds. In fiscal year 2006, the Kennedy Center received \$13 million in federal funds for capital improvement projects and \$17.8 million for the operation, maintenance, and security of the facility.¹⁰ According to a Kennedy Center official, this amount represents about 18 percent of the Kennedy Center's

⁹The 2002 building plan shows projects being completed in fiscal year 2008.

¹⁰The Kennedy Center's appropriation for fiscal year 2006 is contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, P.L. 109-54, 119 Stat. 499, 546 (2005). P. L. 109-54 appropriated to the Kennedy Center \$13 million for capital improvements and \$17.8 million for operations and maintenance. However two rescissions for fiscal year 2006 will affect the final amounts that the Kennedy Center will receive for capital improvements and for operations and maintenance. Section 439 of P.L. 109-54, 119 Stat. 499, 559 (2005) provided for an across-the-board rescission of 0.476 percent of the budget authority provided for fiscal year 2006 for any discretionary appropriation in the act, which would include the Kennedy Center appropriation. The second rescission is an across-the-board rescission of budget authority equal to 1 percent for most agencies in any other fiscal year appropriation act, which also includes the Kennedy Center. See Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, P.L. 109-148, 119 Stat. 2680, 2791 (2005).

anticipated fiscal year 2006 total operating expenses. The Kennedy Center generates the majority of its revenues from performances at the center, contributions, and investments. The center's federal appropriations are not used for performance-related expenses.

The law governing facility construction or alteration at the Kennedy Center requires that the center be in compliance with nationally recognized model building codes and other applicable nationally recognized fire safety codes to the maximum extent feasible.¹¹ As is the case for federal agencies, the Kennedy Center is the authority that makes the final determination on whether the center is complying with the fire safety code.¹² The Kennedy Center policy on building codes states that, where feasible, the center will comply with the International Building Code (2003), International Fire Code (2003), and selected provisions of the National Fire Prevention Association Life Safety Code (NFPA 101) (2003).

The John F. Kennedy Center Act Amendments of 1994 amended the Kennedy Center Act to designate the center as a federal entity for purposes of the Inspector General Act of 1978 (IG Act), as amended. The Kennedy Center Act states that only federally appropriated funds are subject to the requirements of a federal entity under the IG Act. The Kennedy Center Act authorizes the Smithsonian Institution OIG to audit and investigate activities of the Kennedy Center involving federal appropriated funds, on a reimbursable basis, if requested by the Board of Trustees. In July 2006, the Kennedy Center finalized an MOU with the Smithsonian OIG for audits of federal funds used for capital projects.

¹¹40 U.S.C. §3312.




¹²Under certain laws, the Kennedy Center is treated as a federal agency.

The Kennedy Center Has Taken Steps to Implement Our Oversight, Fire Safety, and Capital Project Recommendations, but More Work Remains

Recently, we recommended that the Kennedy Center increase oversight of its management of federal funds, ensure the fire safety of the center, and better align its management of capital projects with best practices.¹³ While the Kennedy Center has fully or partially implemented all 12 of our recommendations, more work is needed to fully implement some recommendations in the areas of fire safety and management of capital projects. In particular, the Kennedy Center has taken steps to (1) address fire code deficiencies at the Millennium Stages, such as providing marked exit routes for occupants; (2) ensure that doors in key areas provide adequate separation from fire; (3) develop as-built drawings of the center; and (4) provide timely and accurate information about capital projects to stakeholders (see fig. 3).

¹³GAO-05-334.

Figure 3: Kennedy Center's Progress in Implementing Our Recommendations

Categories	Recommendation	Status
 Oversight	Work with an independent federal government oversight organization.	●
 Fire safety	Seek peer review by a knowledgeable third party of the egress and fire-modeling study.	●
	Implement fire-modeling peer review recommendations, including marked exit routes for occupants at the Millennium Stages.	◐
	Develop and implement a program to manage the storage of combustible materials.	●
	Install a smoke control system that is integrated with a sprinkler system and smoke detectors over the Millennium Stages.	◐
	Ensure that doors in key areas provide adequate separation from fire.	◐
 Management of capital projects	Design and implement comprehensive contract and project management policies and procedures.	●
	Take steps to control cost growth and schedule changes in future capital projects.	●
	Design and implement comprehensive financial policies and procedures to address several specific areas.	●
	Establish and enforce a documents retention policy that allows for accountability of the Kennedy Center's federal funds.	●
	Develop as-built drawings and better track changes to the center.	◐
	Provide more timely and accurate information about capital projects to stakeholders.	◐
<p>● Recommendation has been implemented.</p> <p>◐ Steps have been taken to implement the recommendation, but more work is needed.</p> <p>○ Recommendation has not been implemented.</p>		

Source: GAO.

The Kennedy Center Has Contracted for Audits of Its Management of Federal Fund Expenditures

In April 2005, we reported that the Kennedy Center had limited external reviews of how it maintains assurance regarding appropriate management of federal funds. Specifically, we found that the costs of four federally funded Kennedy Center capital projects exceeded the original budgeted costs and that a lack of comprehensive policies and procedures limited the Kennedy Center's ability to adequately manage federal funds. In addition, in April 2005, we reported that the Kennedy Center had not reported annually to Congress and the Office of Management and Budget (OMB) on its audit and investigative activities as required by the IG Act.¹⁴ To increase oversight of the Kennedy Center's management of federal funds, we recommended in April 2005 that the Kennedy Center work with an independent federal government oversight organization, such as the Smithsonian Institution OIG, for audits of the center's use of federal funds.¹⁵

In response to our recommendation, the Kennedy Center hired a nongovernmental organization in August 2005 to develop a risk assessment and audit plan to assist the Kennedy Center Board of Trustees in its oversight of the center's management of federal funds. Specifically, the risk assessment and audit plan were created for the Facilities Management Office (FMO) and Project Management Office (PMO) because the Kennedy Center receives federal funds to support the activities of both offices. FMO manages operations, maintenance, and contracting, and PMO is one of three offices that conduct capital projects for the center.¹⁶ The risk assessment was designed to provide a summary of the center's potential risks for facilities and project management, including the specific risks the

¹⁴See IG Act of 1978, as amended, 5 U.S.C. § app. 3, section 8G, and 2005 and 2006 List of Designated Federal Entities and Federal Entities, at 71 Fed. Reg. 24872 (Apr. 27, 2006).

¹⁵The Kennedy Center Act provides that only federally appropriated funds are subject to the requirements for a federal entity under the IG Act of 1978 (5 U.S.C. App. 3). As a federal entity, the Kennedy Center is not required to establish an OIG; however, the center is required to report annually to Congress and OMB on its audit and investigative activities (See IG Act of 1978, as amended, 5 U.S.C. § app. 3, section 8G, and 2005 and 2006 List of Designated Federal Entities and Federal Entities, at 71 Fed. Reg. 24872 (Apr. 27, 2006)). The Kennedy Center Act authorizes the Kennedy Center to request the Smithsonian OIG to conduct audits related to the expenditure of federal funds on a reimbursable basis (20 U.S.C. §76l(d)).

¹⁶The Kennedy Center conducts capital projects primarily through three offices—Project Management, Contracts, and Finance. The Contracts Office is under the Facilities Management Office and negotiates, enters into, and manages procurements of products and services, including those related to capital projects.

center faces in its use of federal funds. One such risk identified for project management is that capital projects could incur cost and time overruns if the project budget or schedule does not sufficiently allow for contingencies. The nongovernmental organization also prepared an audit plan, which was based on the center's potential facilities and project management risks. This audit plan was designed to address the key risk issues identified in the risk assessment and provide a strategy for another organization to review each risk. For example, to address the potential for cost and schedule overruns, an audit of the center's project management process was proposed.

On May 16, 2006, the Kennedy Center awarded a contract to a nongovernmental organization to implement the audit plans for FMO activities. A Kennedy Center official told us that the nongovernmental organization began the FMO audit work several days after the contract was awarded. On July 25, 2006, the Kennedy Center finalized an MOU for the Smithsonian Institution OIG to conduct audits, on a reimbursable basis, of PMO activities. Specifically, the Smithsonian Institution OIG will conduct two audits on aspects of the center's capital project management process. The Smithsonian OIG expects that these two audits will take about 1 year. In addition, the Smithsonian Institution OIG will submit proposals to the Kennedy Center Board of Trustees for subsequent audit coverage. As we reported in April 2005, ongoing oversight of the center's use of federal funds is necessary to maintain assurance that they are managed appropriately. Therefore, to ensure ongoing oversight of the center's use of federal funds, it is important that the board examine and pursue future audit proposals from the Smithsonian OIG.


The Kennedy Center Has Taken Some Steps to Implement Our Fire Safety Recommendations, but More Work Is Needed

In April 2005, we reported that the Kennedy Center did not appear to meet some fire safety code requirements. Specifically, we identified problems with the performance-based approach the center used to overcome a deficiency in the number of emergency exits at the center,¹⁷ and we identified other code deficiencies in the center that were not covered by the performance-based approach. First, we found that the Kennedy Center had not fully implemented the conditions associated with its performance-based approach, which included installing sprinklers at the Millennium

¹⁷Fire code allows an entity to provide an alternative to complying directly with fire code. This alternative, which allows people to exit the building safely in case of fire, is called a performance-based approach.

Stages and developing and implementing a program to manage the storage of scenery, props, and other combustible materials. In addition, the Board of Trustees had not accepted and adopted the terms of the performance-based approach as described in fire code. Since these steps had not been taken, we concluded that the performance-based approach was not yet valid for satisfying fire code. We also found that the fire-modeling study, on which the Kennedy Center's performance-based approach was based, had not undergone a peer review. Peer review of modeling studies is a common industry practice outlined in fire code. In addition, we concluded that a peer review was particularly important for the Kennedy Center because the center lacked sufficient on-staff expertise to adequately interpret and evaluate the modeling study, and the Kennedy Center's fire safety decisions were not subject to external review. Other fire code deficiencies remained to be addressed. For example, we found that there were no fire-rated doors in some areas that contain key emergency systems, and the Millennium Stages did not have two different, marked exit routes for occupants or an integrated smoke control, sprinkler, and smoke detector system over the stage area, as required by fire code. As a result, we recommended that the Kennedy Center improve its compliance with applicable fire codes in a number of ways (see fig. 4).

Figure 4: Kennedy Center's Progress in Implementing Our Fire Safety Recommendations

Category	Recommendation	Status
 Fire safety	Seek peer review by a knowledgeable third party of the egress and fire-modeling study.	●
	Implement fire-modeling peer review recommendations, including marked exit routes for occupants at the Millennium Stages.	◐
	Develop and implement a program to manage the storage of combustible materials.	●
	Install a smoke control system that is integrated with a sprinkler system and smoke detectors over the Millennium Stages.	◐
	Ensure that doors in key areas provide adequate separation from fire.	◐
<p>● Recommendation has been implemented.</p> <p>◐ Steps have been taken to implement the recommendation, but more work is needed.</p> <p>○ Recommendation has not been implemented.</p>		

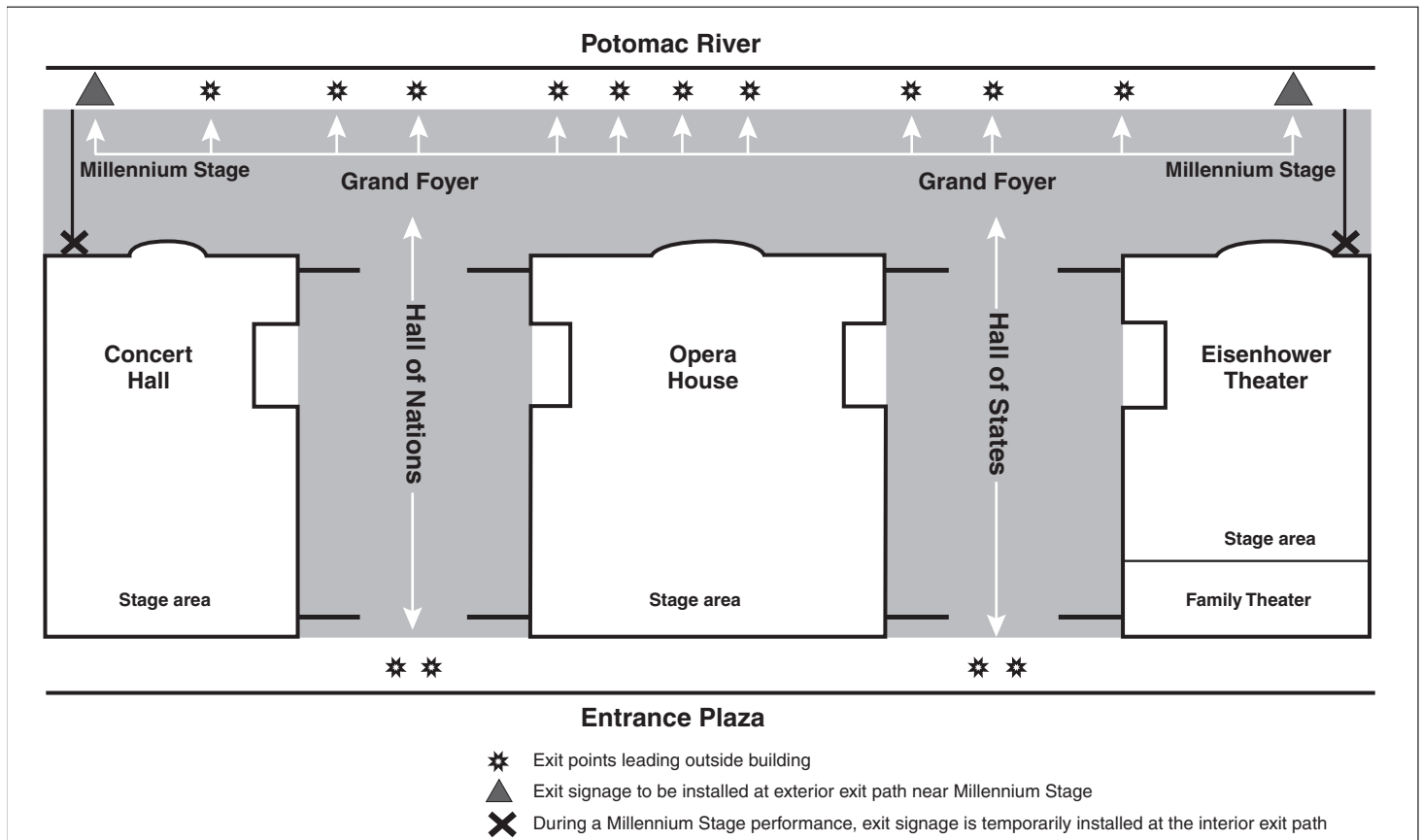
Source: GAO.

- The Kennedy Center has implemented our recommendation to obtain a peer review of its fire-modeling study.* In April 2005, we recommended that the Kennedy Center seek a peer review of its fire-modeling study of the Grand Foyer, Hall of States, and Hall of Nations to determine if the study could be substituted for certain prescriptive fire code solutions. In July 2005, the Kennedy Center initiated two separate peer reviews, one with GSA and another with a nongovernmental fire protection consultant firm. Both peer reviews provided comments and expressed concerns about the assumptions used in the center's study. In response to the peer reviewers' comments and concerns, the Kennedy Center improved and updated its fire-modeling study, which was finalized in March 2006. The revised, peer-reviewed modeling study concludes that patrons can exit the Kennedy Center before it becomes untenable provided that (1) fire protection from the Lower Gift Shop is provided and (2) exit signs are installed in the Grand Foyer, Hall of States, and Hall of Nations. The Kennedy Center Board of Trustees is the authority responsible for determining if a performance-based design meets its objectives, as described in fire code. The Chairman of the

Kennedy Center Board of Trustees stated that after the updated study is finalized, the board will determine if it meets design objectives and then will formally accept the study and adopt its terms. Although the updated study was finalized in March 2006, the Board of Trustees has yet to formally accept the study and adopt its terms. The board's approval of the assumptions and conditions of the updated study is the final step in fully implementing our recommendation.

- *The Kennedy Center has implemented our recommendation to manage the storage of combustible materials.* In April 2005, we recommended that the Kennedy Center meet the objectives of its performance-based study by developing and implementing a program to manage the storage of scenery, props, and other combustible materials. In April 2005, the Kennedy Center developed and implemented a policy to manage fuel load by limiting the storage of scenery, stage props, and other combustible materials. To implement this policy, a Kennedy Center official conducts compliance inspections using a fire and life-safety checklist prior to each new show.
- *The Kennedy Center has taken steps to implement our recommendation to address the code deficiencies at the Millennium Stages.* In April 2005, we recommended that the Kennedy Center, in accordance with fire code, install an integrated smoke control, sprinkler, and smoke detector system over each Millennium Stage area and provide two different, marked exit routes for occupants at each Millennium Stage. The Kennedy Center believes the Millennium Stages have sufficient fire protection systems in place based on the results of its performance model. The revised, peer-reviewed modeling study concludes that smoke exhaust and sprinkler protection are not needed for the Millennium Stages provided the conditions of the revised modeling study are met. The Kennedy Center plans to adequately separate the Lower Gift Shop and the plaza-level public spaces as part of its life-safety improvements by spring 2007. Second, a Kennedy Center official said that exit signage is temporarily installed to mark the interior exit path during Millennium Stage performances and that the center plans to begin installing exit signs on the external doors in the Grand Foyer by the end of September 2006 (see fig. 5). Once the two conditions of the revised modeling study have been met, the Kennedy Center will have fully implemented our recommendation.

Figure 5: Location of Exit Signage at the Millennium Stages



Sources: Kennedy Center; GAO.


- The Kennedy Center has taken some steps to implement our recommendation to ensure that doors in key areas provide adequate separation from fire.* In April 2005, we recommended that the Kennedy Center comply with fire safety code by ensuring that fire-rated doors are installed in key areas to provide adequate separation from fire. In March and May 2006, the Kennedy Center had a fire protection inspector assess the fire rating of the doors in the fire pump room, Fire Command Center and Concert Hall exits. The fire protection inspector found that these doors needed some repairs in order to obtain the fire-rating label. In response, the Kennedy Center repaired the doors in the fire pump room and Fire Command Center and, therefore, the fire protection inspector was able to certify that these doors provide adequate separation from

fire. In addition, the Kennedy Center is making the necessary repairs to the doors at the Concert Hall exits to ensure that they provide adequate separation from fire. A Kennedy Center official stated that he plans to have the Concert Hall exit doors repaired, inspected, and labeled as fire-rated by the end of December 2006. Once the Concert Hall exit doors have been repaired, inspected, and labeled as fire-rated, the Kennedy Center will have fully implemented our recommendation.

The Kennedy Center Has Taken Some Steps to Implement Best Practices to Improve Its Capital Project Management, but More Work Is Needed

In April 2005, we reported that although the Kennedy Center achieved its goal of renovating four key federally funded capital projects, costs exceeded budget estimates for each project. Project cost growth resulted from modifications made during the renovation process, in part, because the Kennedy Center lacked knowledge of the building's site conditions. Modifications led to overtime charges paid to meet tight construction schedules. In addition, the center may have paid more than necessary by negotiating contract modification values after work was completed. A lack of comprehensive policies and procedures limited the Kennedy Center's ability to adequately safeguard federal funds. In addition, the Kennedy Center did not always communicate timely or accurate information on project cost growth and schedule delays to its board or Congress. In April 2005, we made several recommendations to better align the Kennedy Center's capital project management with best practices (see fig. 6).

Figure 6: Kennedy Center's Progress in Implementing Our Recommendations to Better Align Its Capital Project Management with Best Practices

Category	Recommendation	Status
 Management of capital projects	Design and implement comprehensive contract and project management policies and procedures.	●
	Take steps to control cost growth and schedule changes in future capital projects.	●
	Design and implement comprehensive financial policies and procedures to address several specific areas.	●
	Establish and enforce a documents retention policy that allows for accountability of the Kennedy Center's federal funds.	●
	Develop as-built drawings and better track changes to the center.	◐
	Provide more timely and accurate information about capital projects to stakeholders.	◐
<p>● Recommendation has been implemented.</p> <p>◐ Steps have been taken to implement the recommendation, but more work is needed.</p> <p>○ Recommendation has not been implemented.</p>		

Source: GAO.





- *The Kennedy Center has implemented our recommendation to design and implement contract and project management policies and procedures in accordance with prescribed federal guidance. In January 2006, the Kennedy Center designed and implemented contract and project management policies and procedures to guide various activities related to the acquisition of goods and services for its capital improvements program. The contract and project policies and procedures were drawn from the FAR, which generally applies to federal contracting activities. We did not assess the effectiveness of these policies and procedures because they were recently implemented.*
- *The Kennedy Center has implemented our recommendation to control cost growth and schedule changes in the Family Theater by setting more flexible construction schedules and improving its management of contract modifications. In February 2006, the Kennedy Center implemented a contract and project management policy that requires contract modification values to be negotiated before work is completed.*

For this report, we performed a limited assessment of the center's implementation of this policy based on a review of some Family Theater contract modifications. We found that the Family Theater was completed on schedule and with limited cost growth. In particular, contractors did not proceed with additional work until it was approved by the contracting officer, and overtime was not paid to accelerate the schedule. The Kennedy Center's progress in setting more flexible schedules and improving its management of contract modifications on larger federally funded projects, such as the Eisenhower Theater, will better indicate whether the center can effectively control cost growth and schedule changes. The Kennedy Center estimates that the construction period for this project will be from spring 2007 through summer 2008.

- *The Kennedy Center has implemented our recommendation to design and implement financial policies and procedures to strengthen financial management controls in several specific areas (see fig. 7).* In January 2006, the Kennedy Center designed and implemented financial policies and procedures for activities funded by federal appropriations. The financial policies and procedures were drawn from various laws and regulations, including the FAR. Our analysis found that the Kennedy Center has implemented our recommendations to ensure that complete, up-to-date costs are recognized and used to prepare financial reports and that payments to other federal agencies are consistent with the Economy Act agreement.¹⁸ In addition, the Kennedy Center implemented a procedure to ensure that receipt information is recorded and compared with field inspection reports to verify the validity of invoices prior to payment. The Kennedy Center also developed and effectively implemented new policies and procedures to ensure that (1) invoices contain sufficient detail to support their accuracy and validity and (2) invoices match with inspection reports and previously paid invoices to prevent duplicate payments. A more detailed discussion of our analysis of the Kennedy Center's implementation of its financial policies and procedures can be found in appendix II.

¹⁸31 U.S.C. §§1535 and 1536.

Figure 7: The Kennedy Center's Full Implementation of Financial Policies and Procedures in Several Specific Areas

Category	Recommendation	Status
 Management of capital projects: financial policies	Design and implement comprehensive financial policies and procedures to address several specific areas to ensure that:	
	complete up-to-date costs for construction and other services are recognized and used to prepare financial reports and manage project costs;	●
	for Economy Act transactions, payments to other federal agencies are for actual costs consistent with the Economy Act agreement;	●
	receiving reports are prepared when goods or services are received to verify the validity of invoices;	●
	invoices contain sufficient detail to support their accuracy and validity; and	●
invoices match with inspection reports and previously paid invoices to prevent duplicate payments.	●	
<p>  Recommendation has been implemented.  Steps have been taken to implement the recommendation, but more work is needed.  Recommendation has not been implemented. </p>		

Source: GAO.

- The Kennedy Center has implemented our recommendation to establish and enforce a documents retention policy that allows for accountability of the center's federal funds.* In June 2006, the Kennedy Center established and enforced a documents retention policy and issued a procedures manual for federal and nonfederal documents based on guidance from several sources, including the Internal Revenue Service, NARA, and the Smithsonian Institution. In conjunction with this manual, the center developed and implemented a computerized system to assist in the storage, retrieval, and destruction of all records.
- The Kennedy Center has taken some steps to implement our recommendation to better develop as-built drawings and better track future changes to the center.* In January 2006, the Kennedy Center created a project management policy that requires as-built drawings of any new construction improvements to the building. As-built drawings of the new construction will allow the center to better track future

changes to these areas. However, this policy does not require the center to integrate the individual new construction as-built drawings into one master set of centerwide drawings nor does it require updating as-built drawings as additional changes to the center are made. A Kennedy Center official told us that the center agrees that as-built drawings of the entire center are needed to prevent costly unforeseen site conditions; however, assembling and updating a master set of as-built drawings is expensive and not a Kennedy Center priority. Nevertheless, since incomplete knowledge of site conditions has contributed to cost overruns in the past, it remains important for the Kennedy Center to start assembling and consistently updating a comprehensive set of as-built drawings of the entire center.

- *The Kennedy Center has taken some steps to implement our recommendation to provide timely and accurate information about capital projects by detailing their budget, scope, and cost and providing to stakeholders an annual reconciliation of the status of all planned, delayed, eliminated, and actual projects.* We found that the 2005 CBP is better than previous versions because it includes the details of, and explanations for, project budget changes since the 2004 CBP. The 2005 CBP also includes the actual and projected obligations for each capital project by fiscal year through 2008, the last year of the CBP. Figure 8 illustrates how the Kennedy Center's 2005 CBP conveys actual and projected obligations for the Eisenhower Theater for this period. These actions are responsive to our recommendation that the Kennedy Center provide more timely and accurate information to Congress and the Board of Trustees on the status of all planned and actual projects.

Figure 8: Excerpt from The Kennedy Center’s 2005 CBP Showing Eisenhower Theater Budget Changes from the 2004 CBP and Projected Obligations, in Dollars

3.3 EISENHOWER THEATER RENOVATION	Obligations Prior to FY 2005:	\$370,682
	FY 2005 Obligations:	\$800,000
	FY 2006 Obligations (Projected):	\$3,100,000
	FY 2007 Obligations (Projected):	\$11,000,000
	FY 2008 Obligations (Projected):	\$500,000
	Total Obligations (Projected):	\$15,770,682

The Eisenhower Theater renovation project is currently in the schematic design phase. The renovation of the theater will address life safety concerns, upgrade finishes and make the theater fully accessible. In addition, the dressing rooms will be renovated. The 2002 Comprehensive Plan took an approach to the project that included a three-phase construction period of multiple years that is no longer viewed as feasible or cost effective. It is now anticipated that the construction period will be from spring 2007 through summer 2008. During the next phase of planning, the schematic design will be finalized and another cost estimate will be performed, at which point the project budget will be further refined.

Eisenhower Theater Renovation: Comparison with Previous CBP						
	2004	2005	2006	2007	2008	Period Total
2004 CBP	370,682	200,000	200,000	12,488,000	2,500,000	15,758,682
2005 CBP	370,682	800,000	3,100,000	11,000,000	500,000	15,770,682

The budget has not changed substantively since the last CBP, although the distribution of funds over the planning period has been altered to provide funding to allow the design to proceed earlier.

Source: Kennedy Center.

Note: The Kennedy Center’s 2005 CBP section titled “Eisenhower Theater Renovation: Comparison with Previous CBP” does not show that the numbers indicate dollars.

In some instances, we found that the 2005 CBP did not provide timely or accurate information about federally funded capital projects. First, the 2005 CBP does not include original budgets for several federally funded projects, which would be needed to compare actual costs with originally budgeted costs to identify project cost overruns. Without this information, the Kennedy Center Board of Trustees and Congress lack accurate information to monitor and evaluate whether federally funded capital projects have been implemented effectively and efficiently. Second, the 2005 CBP remains unnecessarily difficult to understand. Specifically, it describes its capital renovation efforts in two different sections of the report. The first section provides an assessment of the different parts of the center and makes recommendations for improvement, and the second section lays out specific CBP capital projects and budgets. However, there is no crosswalk between the recommendations and the federally funded capital projects, making it difficult to identify how, or if, each project addresses specific facility issues. For example, although the 2005 CBP establishes a project numbering system, it does not use the numbering system in the other sections of the report to link specific projects to the issues discussed, making it difficult to understand how each project addresses these issues.

In addition, the center has not provided accurate or timely information to the Kennedy Center Board of Trustees or OMB about the cost of federally funded capital projects. The Kennedy Center sends monthly reports to OMB that provide detailed information, project by project, on budgets and schedules. However, we identified eight capital project budgets in the December 2005 OMB reports that do not match the capital project budgets in the most recent CBP, which was finalized in December 2005. For example, the most recent CBP shows that the total projected obligations for the Eisenhower Theater are about \$15.8 million, whereas the OMB report lists the project budget at about \$16.8 million. While one of these two budget figures may be accurate, it is impossible for stakeholders to know which is accurate because the publication date for both is the same, December 2005.

The Kennedy Center Will Not Complete All Planned Capital Renovations within CBP Budgets and Time Frames

The Kennedy Center's 2005 CBP indicates that the center will need additional budget resources to complete the federally funded projects remaining in its CBP and that the terrace-level renovations will be deferred until after the CBP ends in 2008. However, the 2005 CBP fails to calculate the sum of individual project cost changes, making it difficult to determine the overall impact of these changes. We found that the total budget for the 22 planned, ongoing, or recently completed projects in the 2005 CBP has increased by \$10 million, or 21 percent, since 2004, bringing the total cost of the remaining CBP projects to \$58 million. The 2005 CBP indicates that the Kennedy Center completed the Family Theater renovation on schedule in 2005 with limited cost growth and plans to begin renovating the Eisenhower Theater in 2007. However, the 2005 CBP also indicates that Kennedy Center deferred most terrace-level renovations that had originally been planned for the CBP, including renovations to the Terrace Theater, Theater Lab, States and Nations Galleries, and Atrium. In addition, the Kennedy Center has acknowledged, since the 2005 CBP was issued, that more budget increases and project deferrals may be necessary before the CBP is scheduled to end in 2008.

Estimated Costs for Remaining CBP Projects Have Increased by \$10 Million, or 21 Percent, Since 2004

In accordance with our April 2005 recommendation, the 2005 CBP now reconciles the budget changes from the 2004 CBP to the 2005 CBP for the 22 planned, ongoing, or recently completed projects in the CBP, allowing readers to more easily track budget changes for individual projects.¹⁹ However, these new reconciliations fail to calculate the sum of individual project changes, making it difficult to determine their overall impact on the CBP budget through 2008. Our analysis shows that the cost of the remaining CBP has increased about \$10 million, or 21 percent, since 2004, bringing the total cost of the remainder of the CBP from about \$48 million to \$58 million for fiscal years 2006 through 2008.²⁰ Although the budgets for a number of projects have changed since the 2004 CBP, our analysis shows that the net increase of about \$10 million was generally attributable to large increases in the following five projects:

¹⁹However, as we previously noted, it is impossible to identify how some project budgets have shifted without original budgets.

²⁰The \$10 million increase includes about \$2.5 million in cost growth for projects in fiscal year 2005.

-
- *The Site Improvements* project budget increased by \$4.2 million, or 71 percent, from the 2004 CBP. The 2005 CBP indicated that the Kennedy Center needed additional funds to address unforeseen site conditions, construction problems, and outstanding contractor claims. Although not detailed in the 2005 CBP, outstanding contractor claims on the Site Improvements project may cost millions of dollars in federal funds to settle, according to a Kennedy Center official. The project includes improvements to the service tunnel, plaza, west fascia and safety railing, garage, and the streets surrounding the Kennedy Center.
 - *The Toilet Room Renovation* project budget increased by \$2.3 million, or 94 percent, from the 2004 CBP. The 2005 CBP indicated that the Kennedy Center had expected the project to proceed several years earlier than currently scheduled, the planned project costs have since escalated, and further increases are anticipated. This project will focus on upgrading the toilet rooms throughout the center, including finishes, equipment, and flooring of toilet rooms throughout the center.
 - *The Level A Back-of-House Renovations* project budget increased by \$2 million, or 97 percent, from the 2004 CBP. According to the 2005 CBP, the budget increased because work was rescheduled to coincide with related renovation efforts, such as theater renovations, and changed market conditions. This project's goal is to renovate offices, training rooms, locker rooms, backstage areas, dressing rooms, wardrobe areas, and other miscellaneous nonpublic spaces.
 - *The Curtain Wall/Door Replacement* project budget increased by \$1.5 million, or 28 percent, from the 2004 CBP. The 2005 CBP indicated that the budget grew because of project deferrals, market conditions, and extremely high inflation in recent construction costs. This project will replace the acoustical glazing on the curtain (nonweight bearing) walls for the west plaza level, hall entrances, and roof terrace-level.
 - *The Hazardous Materials Abatement* project budget increased by about \$900,000, or 72 percent, from the 2004 CBP. The 2005 CBP indicated that the budget increase was due to the asbestos abatement associated with the Eisenhower Theater project. Originally, the Kennedy Center planned to leave the asbestos undisturbed and unabated, but later decided to remove it. The 2005 CBP indicates that the scope of the project increased when planning for the Eisenhower Theater revealed a greater need for abatement than was previously anticipated.

Most Plaza-Level Renovations Have Been Completed, but the Eisenhower Theater Renovation Is Still in the Planning Stage

According to the 2005 CBP, the Kennedy Center still plans to complete renovations to the major performance and public spaces located on the plaza level within the CBP time frame. The plaza level includes interpretive displays about John F. Kennedy and the Kennedy Center and consists primarily of four theaters—the Opera House, Concert Hall, Eisenhower Theater, and Family Theater (formerly the AFI Theater)—and of three main public spaces—the Grand Foyer, Hall of States, and Hall of Nations. We reported in 2005 that the Kennedy Center had completed renovations to the Concert Hall, Opera House, and plaza-level public spaces but that the projects all experienced cost growth because of management and construction problems.²¹

The 2005 CBP indicates that the conversion of the AFI Theater into the Family Theater was completed in 2005, within established time frames and with limited cost growth (see fig. 9). The cost of the project was about \$9.1 million—an amount that included cost growth, due to change orders, that was within the amount allocated for contingency. With seating for 320 people, the Family Theater renovation project was smaller in scale than other theaters on the plaza level. Kennedy Center management officials said that the lower grade finishes of the AFI Theater reduced the need to retain acoustic integrity and allowed for more detailed investigations during the project's design stage. These investigations likely limited the number and severity of unexpected site conditions, which contributed to cost overruns for the Concert Hall and Opera House renovations.

²¹GAO-05-334.

Figure 9: AFI Theater before and after Its Conversion to the Family Theater



Sources: GAO; Kennedy Center.

We also found that the Kennedy Center was more careful in the way it handled contract modifications during the construction of the Family Theater, which may have contributed further to limiting cost overruns on the project. In addition, Kennedy Center management officials said that the use of a different contracting approach, called construction manager at risk (CMAR), helped the Kennedy Center complete the project within budget and on schedule. Under a CMAR arrangement, a construction manager is hired as a general contractor to provide services during project design and then take over construction as the general contractor. We do not believe

that the use of CMAR had a significant impact on the final cost or timeliness of the Family Theater's construction. This is because CMAR contractors increase the price of their bid to compensate for the additional risk they take on as part of the contract. In addition, we found that the Kennedy Center's use of CMAR did not comply with the FAR.²² Specifically, the Kennedy Center did not obtain a required deviation from the FAR, and it authorized contractor work to begin on the Family Theater before establishing the guaranteed maximum price of the project. These actions undermined the Kennedy Center's claim of compliance with the FAR. In addition, the center's negotiation of prices after work had begun placed the government at increased risk of cost overruns.

The last major project on the plaza level is the renovation of the Eisenhower Theater, which will address life safety concerns, upgrade finishes, and make the theater accessible to the disabled. With seating for a total of 1,100 people in three tiers, the Eisenhower Theater is larger than the former AFI Theater. The 2004 CBP indicated that the Eisenhower Theater renovation work would begin in fiscal year 2007, assuming adequate funding, a schedule that was reiterated in the 2005 CBP. The project's budget was stable through the 2004 and 2005 CBPs at about \$15.8 million. However, since December 2005, the project's cost has increased \$900,000, or 6 percent, because of what the Kennedy Center describes as escalating construction costs, among other things.²³ The 2005 CBP also indicated that the Kennedy Center would need to calculate another cost estimate once the schematic design is completed. Continued cost growth may hamper the Kennedy Center's ability to complete the Eisenhower Theater renovation within the CBP's budget and time frame. The President of the Kennedy Center told the Board of Trustees' Operations Committee in September 2005 that the Eisenhower Theater renovation was then in jeopardy because of funding concerns.

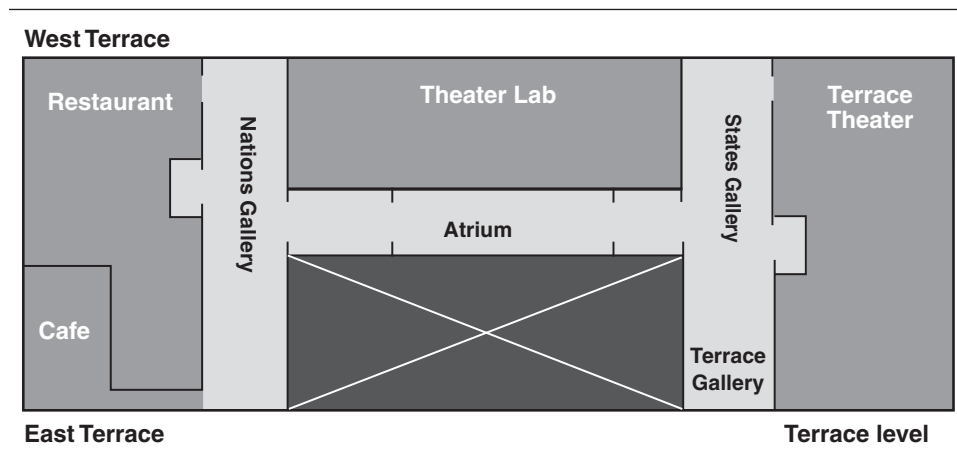
²²The Kennedy Center follows FAR when procuring contracts utilizing appropriated funds. If the center elects not to follow FAR, it must seek a FAR deviation. FAR Subpart 1.4, Deviations (January 2006).

²³The budget for the Eisenhower Theater renovation actually increased by about \$2.1 million, but about \$1.2 million of that increase was caused by the Kennedy Center's shifting resources from the Hazardous Materials Abatement project to the Eisenhower Theater renovation.

The Kennedy Center Will Not Complete Terrace-Level Renovations by the End of the CBP as Planned

Although the Kennedy Center's original goal for the CBP was to completely renovate the Kennedy Center and meet all life safety and accessibility requirements by the end of 2008, we concluded in 2004 that it was unlikely that the Kennedy Center would be able to meet that goal because of increasing project costs and time lines.²⁴ Nevertheless, the Kennedy Center indicated in 2004 that it still intended to complete the vast majority of the projects in the CBP. However, the 2005 CBP shows that the center now plans to defer most terrace-level renovations beyond the end of the CBP. The terrace level of the Kennedy Center sits above the plaza level and comprises the Terrace Theater, the Theater Lab, States and Nations Galleries, Atrium, and two restaurants.²⁵ (See fig. 10).

Figure 10: Diagram of the Kennedy Center's Terrace-Level Public Spaces and Theaters



Sources: Kennedy Center; GAO.

According to the 2005 CBP, sprinklers were extended into the Terrace Theater in 2005, and the remaining life safety deficiencies will be addressed as part of the Roof Terrace Life Safety Project. The 2005 CBP does not describe the Roof Terrace Life Safety Project; but allocates \$4.5 million for

²⁴See [GAO-04-933](#).

²⁵We do not address the condition of the restaurants, since they are outside the scope of the CBP.

the project and schedules the bulk of the work for fiscal year 2007. This budget and schedule, however, are likely to change, possibly slipping until after 2008. The budget for the Roof Terrace Life Safety Project was estimated in 2002, before the scope was set or any detailed planning or design work had been conducted. The 2005 CBP further notes that the Roof Terrace Life Safety Project may be deferred to ensure that the Eisenhower Theater renovation can continue on schedule. Given the recent cost growth in that project, deferral of the Roof Terrace Life Safety Project seems increasingly likely. The scope of the Roof Terrace Life Safety Project has still not been set, making it difficult to evaluate the feasibility or adequacy of the project. The 2005 CBP indicates that the project will extend sprinklers to the States and Nations Galleries, protect the Terrace Theater exit stairway from fire, and consider other projects unrelated to life safety during planning.

Apart from the Roof Terrace Life Safety Project, the 2005 CBP indicated that the Kennedy Center is deferring or placing a low priority on other terrace-level projects. Specifically, the Kennedy Center is deferring the following projects:

- *Terrace Theater renovation.* Originally scheduled for fiscal year 2005, the major portions of the Terrace Theater renovation have been deferred beyond the time frame of the CBP,²⁶ including associated renovations to the auditorium, lobby, hallways, backstage areas, and some technical systems. With seating for 513 people, the Terrace Theater is the largest performance space on the terrace level. It was opened in 1978 and is in need of renovation because it does not currently offer accessibility for the disabled throughout the auditorium and suffers from other deficiencies in acoustics and finishes.
- *Theater Lab renovation.* Originally scheduled for fiscal year 2001, renovations of the Theater Lab—a 398 seat theater—have mostly been deferred, including previous plans to address deficiencies related to disabled access, acoustics, and support spaces.
- *Terrace-level public spaces.* Originally scheduled for fiscal year 2000, repairs of known architectural and finish deficiencies throughout the terrace-level public spaces will not be done as part of the CBP. Affected

²⁶The Kennedy Center added handrails and sprinklers to the Terrace Theater as part of the CBP.

spaces include the States and Nations galleries and the atrium. According to the 2005 CBP, the terrace-level public spaces suffer from a number of problems—including deteriorated floor tiles, poor accessibility to restrooms, inadequate circulation patterns, and muddled acoustics—that will only be considered as funding allows.

Since the 2005 CBP was issued, the Kennedy Center has indicated that additional deferrals will be necessary. The President's fiscal year 2007 budget provides \$4.9 million less than was projected in the 2005 CBP. If this amount becomes the final budget, the Kennedy Center will further defer or reduce several projects whose costs have grown, including the Curtain/Wall Door Replacement, Toilet Room Renovation, and Level A Back-of-House renovation. In addition, the Eisenhower Theater renovation's cost growth may necessitate additional deferrals to other projects. Because the CBP will not be completed in 2008 as planned, the Kennedy Center has hired a consulting firm to survey the Kennedy Center and recommend center upgrades that have not yet been completed, with a goal of extending the CBP's implementation period to 2012. A Kennedy Center official told us that projects not completed by 2008 as planned will be included in this new building survey.

The Kennedy Center Board of Trustees Has Delegated Its Responsibility for Federally Funded Capital Projects, but Has Provided Limited Oversight

Under the Kennedy Center Act, the Board of Trustees is responsible for developing and annually updating the CBP; planning, designing, and constructing capital projects; and preparing a budget. Consistent with the practices of other governing boards, the Kennedy Center Board of Trustees has delegated these responsibilities to management. Although a board can delegate responsibilities to management, it remains responsible for overseeing management's work. We found that the Kennedy Center Board of Trustees provides limited oversight of its federally funded capital projects. Specifically, we found no evidence that the board, as required by its policies and procedures manual, approves the annual updates to the CBP, reviews management's performance in implementing capital projects, or approves the annual capital project budget. Furthermore, the Kennedy Center Board of Trustees has provided limited oversight to ensure that its appropriated funds are used efficiently, effectively, and in compliance with applicable laws. Three factors limit the board's oversight of federally funded capital projects. First, it lacks procedures on how to carry out its responsibilities for federal funds. Second, attendance at board and Operations Committee meetings has been low, and the Operations Committee has met infrequently and at irregular intervals. Third, the board

does not receive information needed to evaluate whether federally funded capital projects have been implemented efficiently.

The Kennedy Center Board of Trustees Provides Limited Oversight of Federally Funded Capital Projects

According to the Kennedy Center Act, it is the board's responsibility to develop and annually update the CBP, which serves as the center's long-term capital planning document. The board has delegated the annual update of the CBP to the center's PMO and a consulting firm.²⁷ Although such delegation is not uncommon for a governing board, we found that the Kennedy Center provides limited oversight of its federally funded capital projects in a number of ways. Our analysis of board meeting minutes and information packets, from January 2000 through January 2006, and interviews with Kennedy Center officials revealed no evidence that the board reviews or approves CBP projects and budgets as it is responsible for doing, according to its policies and procedures manual. A center official told us that each trustee of the board does not receive the CBP: only trustees on the Operations Committee are in receipt of this document. The Chairman of the Board told us that because of its large size, the board rarely discusses policy issues at board meetings. Instead, the chairman stated, full board meetings are used as a forum for announcements about upcoming programs and events. Without an opportunity to review the CBP, the board cannot ensure that federally funded capital projects planned for construction at the center are in accordance with the requirements of the Kennedy Center Act and that the expenditure of federal funds is reasonable.

Both the Kennedy Center Act and the board's policies and procedures manual assign budgeting responsibilities to the board for appropriations. Under the act, the board is responsible for preparing a budget in accordance with specified federal statutes, and under the manual, the board is responsible for approving the Kennedy Center's budget, which includes private and federal funds. The President of the Kennedy Center stated that management verbally presents the proposed federal appropriation request to the board, which is the federal portion of the center's budget, for approval. In addition, the President of the Kennedy Center told us that the Operations Committee also approves the proposed federal appropriation request for the center's capital projects and

²⁷Although a full architectural/engineering survey by an outside consulting firm is planned every 4 to 5 years in accordance with typical industry practices, the CBP is updated by the center's PMO annually.

operations and maintenance. However, in our analysis of board and Operations Committee meeting minutes from January 1998 through September 2005, we found no evidence that the board or its Operations Committee had approved the center's proposed federal appropriation request. For example, in the September 2005 Operations Committee meeting minutes, a Kennedy Center official reported to the trustees of the Operations Committee that the center's fiscal year 2007 request for appropriations had already been submitted to OMB. In addition, the Chairman of the Board of Trustees and the Chairman of the Operations Committee told us that they were not certain if the board approved the federal portion of the center's budget. However, although this report does not include a review of the center's private funds, our analysis of board meeting minutes found that the Kennedy Center Board of Trustees approves the center's budget for trust funds.

In contrast, we found that the Smithsonian Institution Board of Regents—which also oversees federal appropriations for capital projects and trust funds, oversees several arts organizations, and has its board membership defined by legislation—does review and approve the federal portion of its budget.²⁸ Our analysis of Smithsonian Institution Board of Regents meeting minutes found that this board first reviews the Smithsonian Institution's budget request for appropriated funds. Next, the Board of Regents votes to approve the budget request before it is presented to OMB. Finally, the resolution made by the Board of Regents states that any changes made to this federal request for appropriated funds can be made only with the approval of the Board of Regents or the Executive Committee. Since the Smithsonian Institution Board of Regents has been authorized to plan and construct numerous facilities with federal funds, the board's review and approval of the Smithsonian Institution's federal budget request is important to ensure that the request for the money is consistent with its responsibilities under the law.

According to the Kennedy Center board's policies and procedures manual, it is the board's responsibility to "formulate the organization's policies and review management's performance in achieving them," as well as, "assist the Chairman in selecting, monitoring, appraising, advising, stimulating, and rewarding the President." However, in our analysis of board and Operations Committee meeting minutes, as well as in interviews with

²⁸The Smithsonian Institution Board of Regents also approves the Institution's budget for nonfederal funds.

members of management and board members, we found no evidence that the board formally evaluates management's performance or monitors the president's implementation of federally funded capital projects. In addition, the Operations Committee, which receives most of the information on capital projects, does not receive the information it needs to evaluate federally funded capital projects. For example, the Operations Committee does not receive key indicators, such as the original versus the actual budget and schedule, to determine if all federally funded capital projects are implemented on time and within budget. The President of the Kennedy Center told us that he annually writes his self-assessment and presents it to the Chairman of the Board and to the Personnel Committee. However, the President of the Kennedy Center and the Chairman of the Board told us that there are no formal evaluation criteria. In particular, there is no standard or goal to measure the president's performance in implementing federally funded capital projects. In lieu of formal criteria, the Chairman of the Board told us that he uses his intuition to assess the president's overall performance, including the president's implementation of capital projects.

In contrast, a Smithsonian Institution official said that the Smithsonian Institution Board of Regents evaluates the secretary's performance annually. According to this official, the secretary, with the Board of Regents' approval, sets goals each year that include the secretary's ability to complete capital projects on time and within budget. At the end of the year, the Board of Regents rates the secretary's performance, comparing outcomes with the secretary's established goals. In addition, several experts on nonprofit boards noted that a formal, periodic, and comprehensive evaluation of a nonprofit organization's chief executive is needed to ensure that the organization's goals are reached. Furthermore, a routine evaluation of a chief executive's work allows the board to see if its decisions are being properly executed by management. The board and chief executive need to agree on the purpose and process of a formal performance evaluation, including the primary criteria to be used for review, such as the chief executive's annual goals and objectives for the organization.

Several Factors Limit the Board's Oversight of Federally Funded Capital Projects

Like other organizations that receive federal funds, the Kennedy Center Board of Trustees must ensure that appropriated funds are used as productively as possible, achieve intended goals and objectives, and are spent in compliance with applicable laws. However, several factors limit the Kennedy Center Board of Trustees' oversight for federally funded capital projects.

The Board and Its Operations
Committee Lack Procedures on
How to Carry Out Their
Responsibilities for Federally
Funded Capital Projects

The Kennedy Center Act generally describes the board's responsibilities for capital projects, such as its duty to maintain the functionality of the center at current standards of life, safety, security, and accessibility. Although, the act is not specific about how the board is to carry out its responsibility for federally funded capital projects, it authorizes the board to create bylaws, rules, or regulations, as it deems necessary, to administer its responsibilities under the Kennedy Center Act. When the Kennedy Center Act was amended in 1994 to give the board sole responsibility for capital projects, the board used this authority to create the Operations Committee—a committee of the board—to help it carry out this responsibility.

The board's policies and procedures manual provides information on the board's responsibilities, the center's organizational structure, and performance activities. In addition, the board has created bylaws that describe the general duties of board members, officers of the board, and a certain number of committees of the board. However, neither the manual nor the bylaws describe how the board or its Operations Committee is to administer its responsibility under the Kennedy Center Act for federally funded capital projects. This lack of procedures hinders the board and its Operations Committee in assessing whether federal funds for capital projects have been spent efficiently, effectively, and legally. In addition, a board expert stated that committees need clear direction to perform well and to avoid confusion and conflict over their responsibilities and the amount of authority delegated to them. This board expert also stated that carefully written policies are needed to help avoid unnecessary confusion and conflicts.

The board's lack of procedures for carrying out its Kennedy Center Act responsibilities relating to federally funded capital projects has led to a number of different interpretations by Kennedy Center trustees and a management official on how the board accomplishes its responsibilities for federally funded capital projects and on the Operations Committee's overall responsibility. For example, the board has created and relies on the Operations Committee to assist in the oversight of federal funds spent for capital projects. Although a Kennedy Center management official, a previous trustee, and a current trustee stated that the Operations Committee had some jurisdiction over capital projects, they did not agree on the committee's responsibilities and how it accomplishes its responsibilities. The previous trustee stated that the responsibility of the Operations Committee is to keep Members of Congress that are trustees abreast of how capital projects are progressing. The current trustee stated

that the Operations Committee's responsibility is strictly one of oversight for capital projects and that any policies relating to capital projects are made by the board's Executive Committee. The Kennedy Center management official stated that the Operations Committee's responsibility is to make policies relating to capital projects and oversee the implementation of these policies. Furthermore, we reported in 1998 that the Operations Committee provided policy guidance, resolved the most serious issues requiring board input, and functioned as the eyes and ears of center operations.

Board Meeting Attendance Rates Have Been Low, and the Operations Committee Has Not Met Regularly

Since most of a board's responsibilities are carried out at board and committee meetings, it is important for a board and its committees to hold meetings regularly and for board members to attend these meetings. However, we found that attendance at board and Operations Committee meetings has been low and that the Operations Committee has met infrequently and at irregular intervals. Low attendance rates and infrequent committee meetings limit the board's ability to monitor and review management's implementation of federally funded capital projects.

Despite congressional and board efforts to develop more active trustees and increase attendance rates, trustee attendance rates at regularly scheduled board meetings have been low. In 1994, when Congress amended the Kennedy Center Act and gave the board sole responsibility for capital projects, it also reduced the term length of trustees from 10 to 6 years. Congress believed that the shorter term would result in the selection of trustees who would be more active members of the board. Despite this change, the percentage of trustees attending each board meeting from 1995 through 2005 has ranged between 29 and 58 percent. The Executive Committee first tried in 1997 to improve attendance at board meetings by reducing the annual number of meetings from four to three because of low attendance. Then in 2000, a private consulting firm, hired by the Kennedy Center, found that the board's governance could be strengthened by creating mechanisms to ensure more balanced involvement from all trustees. The consulting firm recommended that the center use attendance at meetings as a requirement for retaining board membership. In response, the board instituted an attendance policy that requested trustees to attend a minimum of three full board or committee meetings annually to retain their trustee status. However, despite these efforts, attendance rates at board meetings have never been above 58 percent. Trustees told us that the volunteer nature of board membership and the geographic location of members' residences have led to poor attendance rates. Another trustee said that many trustees see their appointments as "honorific" and that their

main responsibilities are to make donations to and raise funds for the center. The trustee further stated that the majority of decisions are made by the president and not by the board.

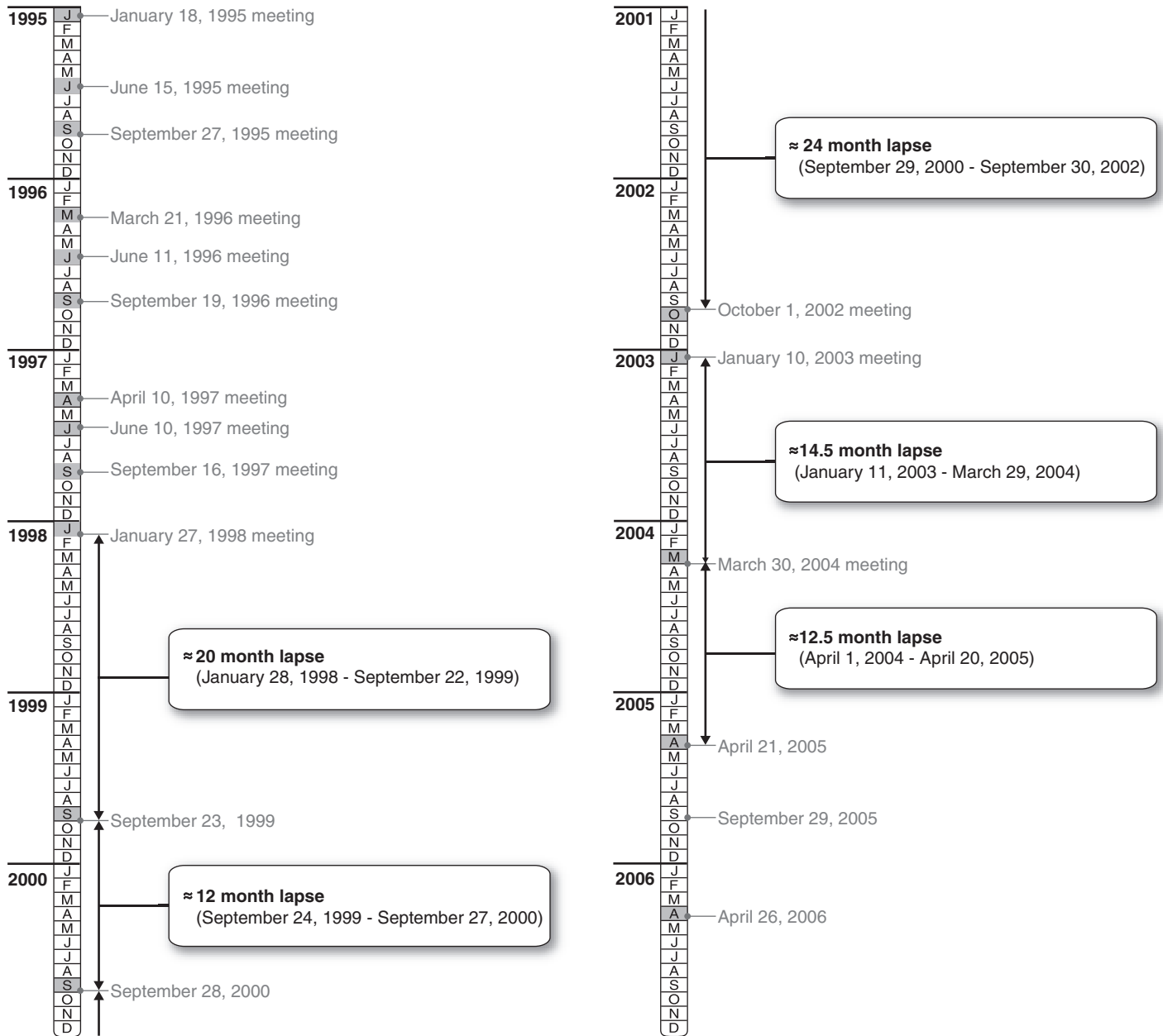
In analyzing attendance rates for meetings of the Smithsonian Institution Board of Regents, we found that from January 2000 through September 2005, the median attendance rate at board meetings was 69 percent and ranged from about 47 percent to 94 percent (i.e., one-half of these meetings had attendance rates above 69 percent). In contrast, from April 2000 through September 2005, the median attendance rate at regularly scheduled Kennedy Center Board of Trustees meetings was 49 percent and ranged from about 37 percent to 58 percent.

In addition, we found that some Kennedy Center trustees send designees to represent them at board and committee meetings. Board experts with whom we spoke expressed different opinions about trustees sending designees to represent them at board and committee meetings. For example, some experts stated that sending a designee to a board or committee meeting is not conducive to board governance and is contrary to volunteerism. However, another expert told us that there could be situations in which the use of a designee would be appropriate, provided the designee's responsibility and authority is clarified in the board's bylaws. We found that it is unclear what responsibility and authority designees have for carrying out the board's responsibilities under the Kennedy Center Act. Currently, neither the board's policies and procedures manual nor its bylaws address designees' responsibility or authority. We found that the Lincoln Center for the Performing Arts—which is also a performing arts organization with a governing board of comparable size—has defined the responsibility and authority of its Board of Directors and of designees in its bylaws. For example, the bylaws state that any Lincoln Center board member entitled to a vote at a meeting may appoint any other person to act as such member's proxy in that member's capacity. In addition, each designee's authority shall be revocable at the pleasure of the member who appointed the designee, and the designee can serve no longer than 11 months from date of appointment unless otherwise stated by the member.

The Operations Committee has also met infrequently, and attendance at its meetings has been low. In 1994, when the board was given responsibility for the center's capital projects, the board created the Operations Committee to ensure the appropriate use of federal funds spent for capital projects at the Kennedy Center. However, the Operations Committee's ability to ensure the appropriate use of federal funds has been hindered by

the infrequent meetings and low trustee attendance rates. From 1995 to 1998, the Operations Committee met three times a year. However, from 1998 through 2005, the Operations Committee met inconsistently and infrequently, even though several federally funded capital projects were in progress at the Kennedy Center (see fig. 11). For example, during the most recent period without a committee meeting, which lasted about 12 months, center management obligated about \$21 million for 13 federally funded capital projects. The Operations Committee Chairman told us that currently the committee meets twice a year and that this is sufficient to oversee capital projects.

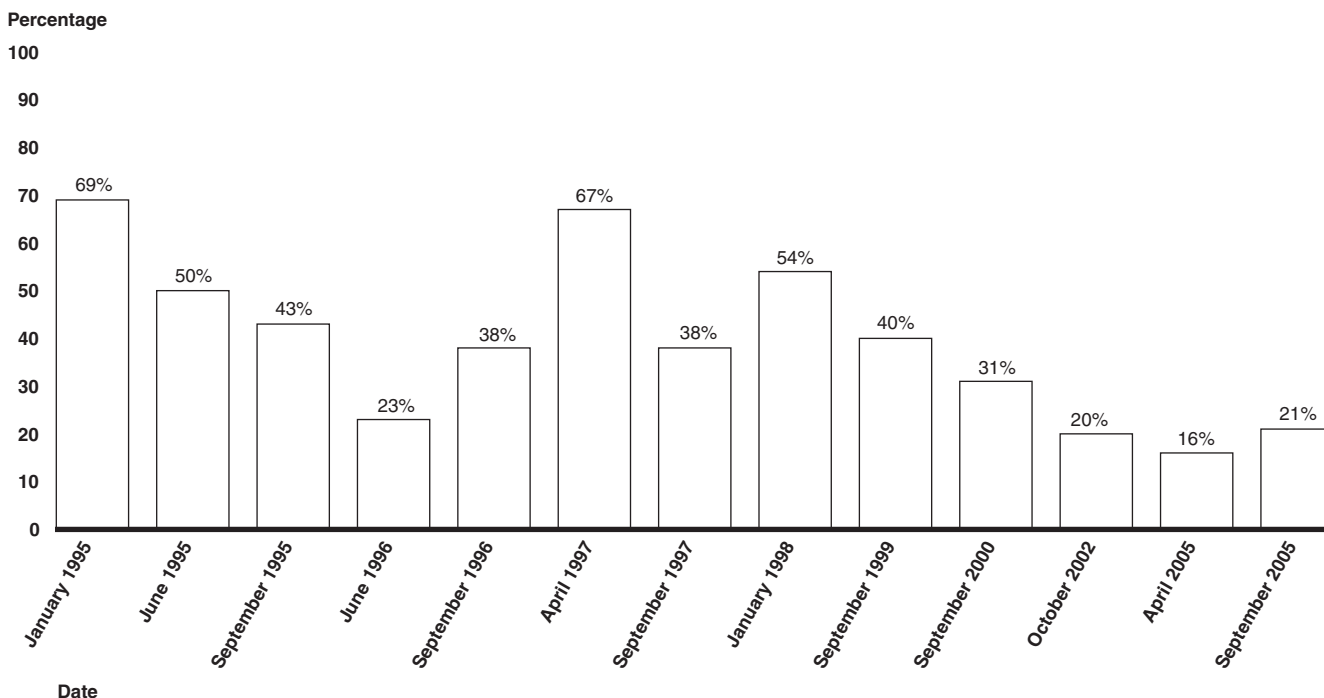
Figure 11: Intervals between Operations Committee Meetings, January 1995 through April 2006



Source: GAO analysis of Kennedy Center Operations Committee meeting minutes.

In addition, trustee attendance rates at Operations Committee meetings have been low. From January 1995 through April 2006, there were 18 Operations Committee meetings, of which attendance records were available for 13. Of these 13 meetings, 10 had attendance rates of 50 percent or less (see fig. 12). A former Operations Committee Chairman stated that, because the Operations Committee was composed of ex-officio congressional members, it was difficult to schedule a time when members could be present.

Figure 12: Attendance Rates at Operations Committee Meetings, January 1995 through April 2006



Source: GAO analysis of Operations Committee information packets.

Note: The Operations Committee met 18 times from January 1995 through April 2006. However, attendance data were available for only 13 of these meetings, as indicated in figure 12.

Lack of Information Has Prevented the Board and Its Operations Committee from Monitoring the Implementation of Federally Funded Capital Projects

In general, to measure if a capital project has been successfully implemented, a board or committee would need information on (1) the actual cost of the project versus the budgeted cost, (2) the actual schedule of the project versus the original schedule, and (3) if the project provided the benefits intended.²⁹ Providing these types of information to the board pressures the project team to meet the established cost, schedule, and performance goals for the project.

Although the Operations Committee receives some of this information on federally funded capital projects, we found that it lacks key information needed to ensure that the project team is implementing capital projects within cost and schedule goals. The Operations Committee is to meet twice a year, and its trustees receive an information packet before each meeting. In reviewing meeting packets for January 2000 through September 2005, we found that these packets generally included information on ongoing federally funded capital projects, such as the amount of previous, actual, and projected obligations for each capital project, by fiscal year, and a description for each capital project. This information is useful to understand current and future obligations for each project. However, the meeting packets did not include the baseline cost and schedule estimates that would indicate if an ongoing project is within the budget or on schedule. Without baseline cost and schedule estimates, the Operations Committee and subsequently the board cannot identify project cost growth or schedule changes. For example, our analysis found that during a January 2003 Operations Committee meeting, a Kennedy Center official stated that the site improvement project would not require more than \$40 million in federal funds. However, in April 2005, an Operations Committee information packet indicated that the center had obligated approximately \$49.8 million for the site improvement project. The most recent CBP states that the total anticipated federal portion of the project's cost will be about \$54.7 million, or about \$15 million more in federal funds than center management officials told the Operations Committee in 2003. Although the Operations Committee had received information anticipating that additional funds would be needed for the site improvement project, it did not simultaneously receive information on the project's original budgeted cost, which would have indicated the degree of cost growth on the project. Without information on original budgeted costs, the committee cannot hold

²⁹GAO, *Executive Guide: Leading Practices in Capital Decision Making*, GAO/AIMD-99-32 (Washington, D.C.: December 1998).

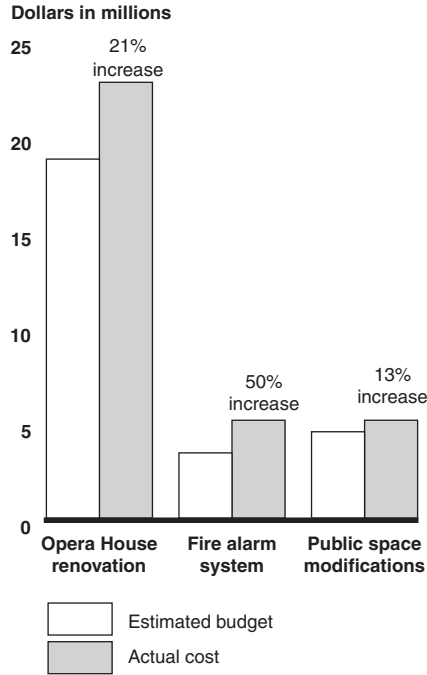
management accountable for the successful implementation of capital projects paid for with federal funds.

The President of the Kennedy Center stated that the Operations Committee does receive information on capital projects that enables it to compare actual costs with budgeted costs and schedules. However, our analysis of Operations Committee meeting packets from January 1998 through September 2005 found no indication that Operations Committee members received information for comparing the actual cost with the original budgeted cost. Additionally, although the center's most recent Operations Committee packet, dated April 2006, contains the original budgeted costs for 6 capital projects, this information is missing for the remaining 17 capital projects listed. Thus, although this packet provides improved budget information to stakeholders, it does not allow trustees to monitor the implementation of all federally funded capital projects. In addition, when we spoke with the Operations Committee Chairman about the board's use of budgeted versus actual information, he stated that he leaves it up to management to ensure that costs are within established budgets.

As we have reported previously, the implementation of a capital project's success is determined primarily by whether the project was completed on schedule, within budget, and provided the benefits intended.³⁰ Without this information the Operations Committee is unable to assist the board in its oversight of the federal funds spent for capital projects. For example, in April 2005, we reported that since 2003, each of the three federally funded capital projects that we reviewed had experienced cost overruns, one as great as 50 percent (see fig. 13). However, we did not find any evidence that the board or its Operations Committee was informed of these cost overruns, such as the Opera House's \$4 million cost increase. For example, two trustees that served on the board during the implementation of these projects told us that they did not know of any capital projects that had cost overruns. One of these trustees said that the Opera House renovation was on budget.

³⁰GAO/AIMD-99-32.

Figure 13: Budgeted and Actual Costs of Selected Federally Funded Kennedy Center Capital Projects



Source: GAO analysis of Kennedy Center data.

In addition to the information packets, the Operations Committee receives the center’s annual CBP. Previously, we mentioned that the center’s 2005 CBP is better than previous versions because it includes the details of, and explanations for, project budget changes since the 2004 CBP. The 2005 CBP also includes the actual and projected obligations for each capital project, by fiscal year, through the end of the CBP in 2008. However, the 2005 CBP does not provide original project budgets for all capital projects. Therefore there is no way to quantify how well the project’s implementation matched the center’s original comprehensive plan. In addition, we found that trustees of the Operations Committees did not receive the most recent CBP in a timely manner. For example, the Operations Committee received the most recent CBP in January 2006, about 4 months after the center’s fiscal year 2007 budget was submitted to OMB. Without an opportunity to review the CBP before the budget is submitted to OMB, the committee cannot ensure that federally funded capital projects planned for construction at the center are authorized by the Kennedy Center Act.

Conclusions

We have made numerous recommendations to the Kennedy Center within the past 9 years to improve its use and oversight of the federal funds that it receives, and the Kennedy Center has made significant improvements. Specifically, the Kennedy Center has made considerable progress over the past year in implementing our recommendations to improve fire safety and project management and to better align its activities with capital project best practices. Nevertheless, although some of our recommendations have not been fully implemented, it is critical that the Kennedy Center fully implement our recommendations and ensure that these changes become permanent.

Changes to the Kennedy Center's contracting practices and CBP provide good illustrations of the progress that the Kennedy Center has made and the work that remains. Since 1993, when we first began reporting on its capital improvement plan, the Kennedy Center has made a number of important improvements to its contracting management practices and to the CBP. For example, in 2005, the Kennedy Center added project-by-project reconciliations to the CBP as recommended in order to illustrate changes in project budgets and schedules over time. However, the Kennedy Center placed federal funds at risk by not fully complying with the FAR, and the CBP does not yet fully disclose the overall financial impact of project changes. During a time when the Kennedy Center is deferring many of its terrace-level renovations, the price of the CBP's implementation is growing because of steep increases in the costs of some of the remaining projects. While many of the key facts are included in the 2005 CBP, putting the whole picture together requires gathering and analyzing information from previous and current versions of the CBP to ascertain how budget changes to individual projects affect the overall CBP budget through 2008.

Much of our Kennedy Center work has found insufficient oversight for federally funded capital projects. Although the board has delegated much of the day-to-day work of running the center to the center management, the board retains ultimate responsibility for safeguarding funds and holding the center management accountable for its actions. Yet the board is providing limited oversight of its federal funds spent on capital projects; it does not approve CBP updates, does not review management's performance in implementing capital projects in a structured way, and does not meet regularly. It may be telling that the board provides more oversight of its nonappropriated funds, including programming revenue and investment income. More detailed, transparent, and timely information on how federal funds have been budgeted and spent would allow the board to hold center

managers accountable for completing federally funded capital projects on time and within budget estimates.

Recommendations for Executive Action

1. To improve compliance with the FAR, the Chairman of the Board of Trustees should direct the President of the Kennedy Center to properly obtain the required FAR deviation when using the construction manager at risk contracting method. In addition, the Kennedy Center should establish the guaranteed maximum government price for a capital project before proceeding with construction.
2. To improve the information the Kennedy Center provides to Congress and the Board of Trustees, the Chairman of the Board of Trustees should direct the President of the Kennedy Center to improve the Comprehensive Building Plan by taking the following two actions:
 - Clearly identify the overall impact that changes to individual project budgets from the previous year will have on the overall plan's budget.
 - Clarify which federally funded projects the Kennedy Center intends to complete as part of the plan and which ones will be deferred. In doing so, establish clear scope and budget estimates for the Roof Terrace Life Safety project for the 2006 update of the Comprehensive Building Plan.
3. To strengthen the Kennedy Center Board of Trustees' role in overseeing federally funded capital projects and to improve the board's ability to carry out its responsibilities under the Kennedy Center Act, we recommend that the Chairman and Trustees of the Board take the following two actions:
 - Develop and implement procedures on how the board and its Operations Committee are to carry out their duties under the Kennedy Center Act and their responsibilities for overseeing federal funds, including a clarification of the roles and responsibilities of the Operations Committee;
 - Ensure that the board receives detailed, transparent, and timely information on how federal funds for capital projects have been budgeted and spent on capital projects, such as information on original versus actual project budgets and schedules.

Agency Comments and Our Evaluation

We provided a draft of this report to the Kennedy Center for its review and comment. The Kennedy Center provided written comments, which appear in appendix III, together with our responses. In general, the Kennedy Center agreed with the draft report's findings and with two of the report's three recommendations. The Kennedy Center agreed to (1) improve the CBP in several areas and (2) review and revise, if necessary, procedures on how the Operations Committee is to carry out its responsibilities and to provide the CBP to the Operations Committee in a more timely fashion. The Kennedy Center disagreed with our recommendation to better comply with a provision of the FAR and establish the guaranteed maximum government price for a capital project before proceeding with construction. However, based on our discussions with a GSA official, we are retaining the recommendation. The CMAR contracting method is not covered by the FAR and, consequently, requires a deviation. We also believe that the Kennedy Center could have limited the government's risk of cost overruns by establishing the guaranteed maximum price for the project before authorizing the contractor to begin. The Kennedy Center provided technical comments and clarifications, which we have incorporated as appropriate throughout this report.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to interested congressional committees, the Chairman of the Kennedy Center Board of Trustees, and the President of the Kennedy Center. We will also make copies available to others on request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff has any questions, please contact me at (202) 512-2834 or goldsteinm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. See appendix IV for a list of the major contributors to this report.

A handwritten signature in black ink, appearing to read 'M. Goldstein', with a long horizontal flourish extending to the right.

Mark L. Goldstein
Director, Physical Infrastructure Issues




Scope and Methodology

This report responds to your request that we conduct a study on The John F. Kennedy Center for the Performing Arts' (Kennedy Center) management and oversight of federal funds spent for Kennedy Center projects. Our objectives were to determine (1) the progress the Kennedy Center has made in implementing the recommendations in our April 2005 report, (2) the status of capital projects and the planned spending of federal funds for capital projects as indicated by the Kennedy Center's most recent comprehensive building plan, and (3) the Kennedy Center Board of Trustees' responsibilities for federally funded capital projects and the extent to which the board fulfills these responsibilities.¹

To determine the progress Kennedy Center has made in implementing the recommendations in our April 2005 report, we interviewed Kennedy Center management officials and reviewed Kennedy Center documents (see fig. 14 for a list of our April 2005 recommendations). Specifically, to assess the steps taken to implement the first of these recommendations—that the Chairman of the Kennedy Center Board of Trustees increase oversight of its management of federal funds by working with an independent federal government oversight organization—we analyzed the Kennedy Center's risk assessment and internal audit plan for the ongoing oversight of the center's use of federal funds. In addition, we interviewed Kennedy Center management officials to determine how the Kennedy Center intends to implement its internal audit plan. We also reviewed the John F. Kennedy Center Act, as amended, and the Inspector General Act of 1978, as amended.

¹For this report, we did not examine the Kennedy Center's use of nonfederal funds to finance capital improvements. In particular, we did not review the center's use of private funds or bonds in the garage and site improvements projects.

Figure 14: Recommendations to the Kennedy Center in Our April 2005 Report

Categories	Recommendation
 Oversight	Work with an independent federal government oversight organization.
 Fire safety	Seek peer review by a knowledgeable third party of the egress and fire-modeling study.
	Implement fire-modeling peer review recommendations, including marked exit routes for occupants at the Millennium Stages.
	Develop and implement a program to manage the storage of combustible materials.
	Install a smoke control system that is integrated with a sprinkler system and smoke detectors over the Millennium Stages.
	Ensure that doors in key areas provide adequate separation from fire.
 Management of capital projects	Design and implement comprehensive contract and project management policies and procedures.
	Take steps to control cost growth and schedule changes in future capital projects.
	Design and implement comprehensive financial policies and procedures to address several specific areas.
	Establish and enforce a documents retention policy that allows for accountability of the Kennedy Center's federal funds.
	Develop as-built drawings and better track changes to the center.
	Provide more timely and accurate information about capital projects to stakeholders.

Source: GAO.

To assess the steps taken by the Chairman of the Kennedy Center Board of Trustees to implement our April 2005 recommendations on fire safety, we analyzed the two peer reviews of the Kennedy Center's fire-modeling study used as a substitute for prescriptive code solutions that were conducted by the General Services Administration (GSA) and a nonfederal entity. Additionally, we interviewed Kennedy Center management and GSA officials to determine the actions taken to implement recommendations from the two peer reviews. To further assess the steps taken to ensure fire

safety, we reviewed the Kennedy Center's policy and procedure for managing the storage of combustible materials; reviewed the Kennedy Center's inventory of doors in key areas that needed to be fire rated; and toured the Kennedy Center to visually examine the exit signage installed at the Millennium Stages during a performance. We also interviewed a Kennedy Center management official to determine how the Kennedy Center implements its combustibles policy and procedure; the time frame for inspecting and installing fire-rated doors in key areas; and the installation of exit signs in the Grand Foyer at the Millennium Stages.

To assess the steps taken by the Chairman of the Kennedy Center Board of Trustees to implement our April 2005 recommendations on managing capital projects, we interviewed Kennedy Center management officials and analyzed Kennedy Center documents. Specifically, to determine how the Kennedy Center provides more timely and accurate information about capital projects to stakeholders, we reviewed the Kennedy Center's 2004 and 2005 comprehensive building plans (CBP); fiscal year 2007 budget justification to Congress; information packets and minutes from Board of Trustees and Operations Committee meetings (for 2004 through 2006); and the monthly reports the Kennedy Center sends to the Office of Management and Budget (OMB) that provide information on capital projects. To evaluate the steps taken by the Kennedy Center to control cost growth and schedule changes in future capital projects, we conducted a limited assessment of Family Theater contract modifications. The contract modifications we reviewed each had cost changes over \$15,000 and in total represented about 58 percent of all cost changes for this project. We examined these contract modifications to evaluate whether the contractors' proposals were fair and reasonable; the Kennedy Center had established the scope and cost for the modifications before directing the contractor to proceed with the work; and the Kennedy Center paid overtime to accelerate the project's schedule. To obtain information on the construction manager at risk (CMAR) method of delivery, we reviewed the Federal Acquisition Regulation (FAR), GSA policy, and industry standards. We contacted GSA officials and an industry official. To assess the steps taken by the Kennedy Center to strengthen financial management controls, we analyzed the Kennedy Center's contract, financial, and project management policies and procedures as they relate to the recommendations in our April 2005 report. In addition, we discussed with Kennedy Center management officials the time frame for implementation and the federal guidance used for the development of its contract, financial, and project management policies and procedures. While we did not assess the implementation of the Kennedy Center's contract and project

management policies and procedures because they were recently implemented, we were able to assess the adequacy of the Kennedy Center's financial policies and procedures that relate to our specific financial recommendations. We reviewed the financial policies and procedures and spoke with management officials to verify that the policies and procedures contained guidance to address our recommendations. Specifically, we reviewed receipt information contained on recent invoice certification forms, and we also reviewed invoices paid from the Project Management Office contractor files where we had noted exceptions in our April 2005 report. To determine the status of the Kennedy Center's document retention policy, we interviewed Kennedy Center management officials to discuss the steps taken to establish and enforce a policy. In addition, we spoke with National Archives and Records Administration (NARA) officials about the requirements for a federal records management policy, and we reviewed legislation and regulations relating to NARA. To determine the status of the Kennedy Center's steps to better track future changes to the center, we spoke with Kennedy Center management officials and reviewed the center's project management policy that addresses as-built plans.

To determine the status of capital projects and the planned spending of federal funds for capital projects as indicated by the Kennedy Center's most recent CBP, we reviewed the Kennedy Center's initial 1995 CBP and its 2004 and 2005 updates to the plan. Specifically, we examined the changes in the 2005 CBP made since the 2004 CBP and developed a list of projects the Kennedy Center plans to delay or defer and the additional funds needed. To determine the accuracy of some of the data in the 2005 CBP, we reviewed the monthly reports the Kennedy Center sends to OMB; the Kennedy Center's fiscal year 2007 budget justification to Congress; and the President's fiscal year 2007 budget for the Kennedy Center. In addition, we spoke with Kennedy Center management officials to obtain justifications for the projects it intends to delay or defer.

To determine the Kennedy Center Board of Trustees' responsibilities for federally funded capital projects and the extent to which the board fulfills these responsibilities, we analyzed Board of Trustees and Operations Committee documents; appropriation laws; the John F. Kennedy Center Act, as amended; the CBP and its various updates; and the monthly reports the Kennedy Center sends to OMB. Specifically, to examine the extent to which the board fulfills its responsibilities for federally funded capital projects we reviewed Board of Trustees and Committee information packets and meeting minutes from January 1995 through April 2006 to determine how a variety of capital projects were overseen by the board.

These projects included, but are not limited to, the Opera House renovation, fire alarm system replacement, public space modifications, site improvements project, and Family Theater. In addition, we interviewed current and previous trustees from the board and its Operations and Executive Committees. We spoke with two previous and four current trustees about the board's responsibilities for overseeing federal funds, including the types of information used to make decisions on capital projects. In addition, we spoke with congressional staffers that are designees for two Kennedy Center Trustees and the President of the Kennedy Center. We selected trustees for interviews by first constructing a list of trustees that served on the board from 1995 to 2006. We chose 1995 because it was the year that Congress transferred responsibility for capital projects from the National Park Service to the Kennedy Center Board of Trustees. From this list, we selected previous and current trustees of the board and its Operations and Executive Committees who were either chairpersons or had not missed more than one board meeting per year of their tenure. In addition, we interviewed Kennedy Center executives to understand management's role in the supervision of capital project costs and schedules and management's responsibilities to the Board of Trustees.

We calculated Board of Trustees and Operations Committee attendance rates and meeting frequencies using the information packets, which included meeting minutes, sent to trustees before scheduled board and committee meetings from January 1995 through April 2006. For the Board of Trustees meetings, we calculated attendance rates by comparing the number of trustees present at each regularly scheduled meeting with the total number of trustees designated under the Kennedy Center Act. For Operations Committee meetings, we calculated attendance rates by comparing the number of trustees present at each meeting with the information packet distribution list and the board's policies and procedures manual. We calculated Operations Committee meeting attendance rates for the 13 of 18 meetings for which we had distribution lists. To ensure that the Kennedy Center provided us with all of the Board of Trustees and Operations Committee information packets and meeting minutes from January 1995 through April 2006, we cross referenced the materials we received against a list that was verified for a previous GAO report² and against the Board of Trustees' annual list of scheduled meetings. We are confident that we have accounted for all Board of Trustees and Operations Committee information packets and meeting minutes from 1995 through

²GAO-04-334.

2006 and therefore believe that the attendance rate and meeting frequency data are reliable for the purposes of this report. To calculate attendance rates for the Smithsonian Institution Board of Regents, from January 2000 to September 2005, we compared the number of regents present and absent at each regularly scheduled board meeting with the total number of regents set forth in law relating to the Smithsonian Institution. In some instances, we found that the number of regents attending and absent from meetings did not match the number of regents set forth in the law. For example, there were times when a vacancy on the board occurred while legislation to appoint a regent was pending. In these instances, we had Smithsonian Institution officials verify that during some board meetings, the number of regents attending and absent from these meetings did not match the number of regents set forth in law. Therefore, we believe that the attendance rate data are reliable for the purposes of this report.


To obtain information on board governance practices, we interviewed academics, board organizations, and officials of other arts organizations. We reviewed relevant articles on board governance to select the academic and board organizations. To obtain information on how other boards govern, including their responsibilities for overseeing capital projects, we interviewed officials and reviewed documents from other arts organizations, including the Lincoln Center for the Performing Arts, the Los Angeles Music Center, the National Gallery of Art, and the Smithsonian Institution. We selected these organizations because they all have some features in common with the Kennedy Center, including authorizing legislation; capital projects; board member composition; organizational mission; and federal funding.

We conducted our work in Los Angeles, California; New York City, New York and Washington, D.C., between October 2005 and August 2006 in accordance with generally accepted government auditing standards.

Kennedy Center’s Implementation of Our Recommendation to Design and Implement Financial Policies and Procedures

In April 2005, we recommended that the Kennedy Center strengthen financial management controls by designing and implementing financial policies and procedures in accordance with prescribed federal guidance. Specifically, we recommended that the financial policies and procedures address several areas, as detailed in figure 15. In January 2006, the Kennedy Center designed and implemented financial policies and procedures for activities funded by federal appropriations. The financial policies and procedures were drawn from various laws and regulations including the FAR. As shown in figure 2 and as discussed in the remainder of this appendix, the Kennedy Center has fully implemented our financial recommendations in several specific areas.

Figure 15: Implementation Status of our Financial Recommendations in Several Specific Areas

Category	Recommendation	Status
 Management of capital projects: financial policies	Design and implement comprehensive financial policies and procedures to address several specific areas to ensure that:	
	complete up-to-date costs for construction and other services are recognized and used to prepare financial reports and manage project costs;	●
	for Economy Act transactions, payments to other federal agencies are for actual costs consistent with the Economy Act agreement;	●
	receiving reports are prepared when goods or services are received to verify the validity of invoices;	●
	invoices contain sufficient detail to support their accuracy and validity; and	●
	invoices match with inspection reports and previously paid invoices to prevent duplicate payments.	●
<p>● Recommendation has been implemented. ◐ Steps have been taken to implement the recommendation, but more work is needed. ○ Recommendation has not been implemented.</p>		

Source: GAO.

As figure 15 indicates, we recommended that the Kennedy Center recognize and use complete up-to-date costs for construction and other services to prepare financial reports and manage project costs. In response

Appendix II
Kennedy Center's Implementation of Our
Recommendation to Design and Implement
Financial Policies and Procedures

to our recommendation, the Kennedy Center now submits monthly progress reports on its obligations for services and capital federal expenditures to OMB. For each capital project, the reports contain the month's anticipated, actual, and total up-to-date obligations made with federal funds. The center uses a cash basis to report costs in monthly financial reports on capital federal expenditures, which is acceptable to OMB. Therefore, this recommendation has been implemented.

In our previous report, we recommended that for Economy Act transactions, payments to other federal agencies be for actual costs consistent with the Economy Act agreement. In response to our recommendation, the Kennedy Center established a policy that requires other federal agencies to clearly indicate that they are charging the center for actual costs incurred, under an Economy Act agreement. In addition, the policy includes an example of a letter that provides clear guidance to contracting staff on the language needed to ensure that an agency is charging the center for actual costs incurred. Therefore, this recommendation has been implemented.

We recommended that financial policies and procedures ensure that receiving reports are prepared when goods or services are received to verify the validity of invoices. In response to our recommendation, the center's procedures direct staff to enter receiving information on an invoice certification form—once the invoice is received—and to compare construction invoices to the architect's field inspection reports. We examined recent invoice certification forms and found that they contained the project title and the period of performance. Each invoice certification form we reviewed also included a schedule of values detailing (1) the work being billed and (2) the percentage of work completed to date. The project title and the period of performance provide the information necessary to tie the construction services performed to the invoice and to Kennedy Center records. Therefore, this recommendation has been implemented.

We recommended that financial policies and procedures ensure that invoices contain sufficient detail to support their accuracy and validity. In response to our recommendation, the center's procedures direct staff to contact the vendor if additional detail is needed to support information on goods or services billed. We reviewed recent invoices and found that they now contain sufficient detail to support the accuracy and validity of the amounts invoiced. Therefore, this recommendation has been implemented.

Appendix II
Kennedy Center's Implementation of Our
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Financial Policies and Procedures

Finally, we recommended that the financial policies and procedures ensure that invoices are matched against inspection reports and previously paid invoices prior to payment to prevent duplicate payments. In response to our recommendation, the center's procedures direct staff to consider whether goods and services have been billed on a previously approved invoice. This procedure also directs staff to look for any charges outside the period of billing and provides further detail instructing staff on data sources to consider in determining if payment has already been made. Therefore, this recommendation has been implemented.

Comments from the John F. Kennedy Center for the Performing Arts

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

The John F. Kennedy Center for the Performing Arts

August 24, 2006

Mr. Mark L. Goldstein
Director, Physical Infrastructure Issues
United States Government Accountability Office
441 G St. NW
Washington, DC 20458

WASHINGTON, D.C. 20566-0001
202 416-8010
FAX 202 416-8018

Dear Mr. Goldstein:

On behalf of the Trustees and the staff of the John F. Kennedy Center for the Performing Arts, I want to thank you and your team from the Government Accountability Office for forwarding the draft report, "Some Progress Made on GAO Recommendations, but Oversight Challenges Still Exist," received August 7, 2006. We appreciate the time and efforts of the GAO team that completed this evaluation.

While there are several specific issues raised in this report that we will address in this response, it is important to state at the outset that the Kennedy Center has addressed every recommendation made by the GAO in April 2005. We acknowledge that, in a few cases, implementation of your recommendations will only be completed in the coming months. However, comprehensive programs to address GAO's recommendations have been initiated in every instance.

It is also essential to indicate that the Center has made great strides in budgeting for and managing capital projects. Over the past two years, we have completed six major projects. Every one has been completed for less than budgeted amounts. The construction of our new Family Theater, with a nine million dollar budget, was the largest of these projects and was completed at \$300,000 less than the budgeted cost. The Kennedy Center is proud that it has made such great strides in its capital project management capability.

With regards to the specific recommendations for executive action included in this draft report:

1. The Center has been and will continue to be in compliance with the FAR. In our opinion, a FAR deviation is not required when using a Construction Manager at Risk (CMAR) contracting method. Prior to executing the Family Theater contract, we consulted with GSA, which informed us at the time that they do not implement deviations for CMAR projects. We also learned that the U.S. Army Corps currently utilizes CMAR without processing deviations. We therefore believe that our actions conform to current thinking on CMAR contracting methods.

Simply put, differences of opinion on this subject exist because the FAR does not explicitly address CMAR. However, we believe the CMAR approach is consistent with the contracting deliveries outlined in FAR 16.101 (for incentive contracting) and in FAR 2.101 (for best value selection). Furthermore, according to the FAR, the contractor must be responsible for performance and cost, with profit and fee tailored to the uncertainties involved in the contract performance, all of which are consistent with the approach taken under CMAR.

Regarding the timing for the establishment of the guaranteed maximum price (GMP) for a CMAR project, we disagree that the GMP must be established prior to initiating construction, and we

See comment 1.

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certainly disagree with the assertion that the timing of the Family Theater GMP increased the risk of cost overruns. As defined by the American Institute of Architects (AIA) Document A121/CMc, the GMP is the sum of the cost of the work and the Construction Manager's fee. One of the benefits of a CMAR contract is that transparency is enhanced and therefore, because the Construction Manager's books, including subcontractor bids, are open to the owner, flexibility exists in the exact timing for finalizing the GMP. In addition, the Center's authorization to award strategic trade contracts prior to finalization of the GMP provided a financial benefit to the project, particularly for the steel contract. By awarding the contract several months prior to finalizing the GMP, prices were locked in and further escalation in a rapidly changing market was avoided. Given the extreme escalation that existed in early 2005, this action was clearly in everyone's best interests and put the Center at no additional risk. The Construction Management Association of America (CMAA), the source of the "industry standards" referenced by GAO, reviewed and endorsed the Center's process, particularly the willingness to share the risk with the contractor to save taxpayer dollars prior to setting the GMP.

2. The Center will continue to improve the information provided to Congress and the Board of Trustees by:

- More clearly identifying how changes in project budgets (due to changes in scope, appropriations levels and/or economic conditions) will affect the overall comprehensive building plan. This information is provided in the Operations Committee notebooks, but it will now also be included in the comprehensive building plan (CBP).
- Identifying the projects that will be deferred due to changes in scope, appropriations levels or economic conditions. This information is provided in the Operations Committee briefings, but will also be incorporated into the CBP.

3. In response to the recommendation to strengthen the Board's oversight of federally funded capital projects, the Center will:

- Review and revise, if necessary, the policies and procedures of the Operations Committee to communicate more clearly the responsibilities of the Committee.
- Realign the schedule of the annual updates of the Comprehensive Building Plan (CBP) for review and approval by the Operations Committee in advance of the budget cycle.

The format of the information provided to the Operations Committee regarding capital project budgets at various stages of the development of the projects has already been changed for the next meeting in September to communicate in a more transparent fashion the budgets at various stages of project development from preliminary estimates to final project budgets.

The details of the report are addressed below.

Progress in Implementing Oversight, Fire Safety and Capital Project Recommendations

On Page 14, Figure 3, the report identifies six recommendations as being partially complete; the steps taken to complete these recommendations are detailed on the following pages.

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See comment 2.

1. *Work with an independent federal government oversight organization.*

The Center engaged an independent audit firm in May 2006 and the Smithsonian Institute Office of the Inspector General (SOIG) in July 2006 to conduct the recommended audits delineated in the fall 2005 risk assessment. More specifically, the risk assessment advised that proposed audits of the Facilities Management Office (FMO) should be treated as a priority. It was considered to be most expeditious and cost effective to expedite implementation of the audit recommendation by contracting an independent firm, reporting directly to the Board, to conduct those FMO audits. The independent, non-governmental firm could be contracted quickly and could begin the audits immediately after contract award. As illustration, the audit work was initiated approximately sixty days after the solicitation date, whereas, the Memorandum of Understanding with the SOIG was not signed until approximately five months after the initial meeting. In addition, the independent organization, through a variety of on-staff subject matter experts, has access to specialized resources that can be tasked to conduct the audit without delay. Conversely, the SOIG must hire staff specifically for this engagement; therefore it will take some time for the SOIG to staff up. In addition, the independent organization is more cost effective, as illustrated by the fact that the audits for which the SOIG has been engaged will cost significantly (44% or \$91,000) more than estimated in the risk assessment.

In the implementation of this recommendation the Center believes that it has acted prudently, expeditiously, and used its limited resources most efficiently to enable independent oversight.

2. *Implement fire-modeling peer review recommendations, including marked exit routes for occupants at the Millennium Stages.*

The Center has completed implementation of six of the nine recommendations contained in the peer-reviewed fire modeling study. The status of work on the three remaining recommendations is as follows:

1. *Provide exit signage in the Grand Foyer, Hall of States and Hall of Nations*

Exit signs will be installed at the glass doors leading to the Plaza. A design team will be under contract within the next month. Installation will proceed as soon as design is complete and a construction contract awarded.

2. *Provide a separation between the Lower Gift Shop and the Hall of States and Hall of Nations by providing automatic-closing devices on the existing doors.*

These devices are being installed as part of the Motor Lobby Renovation Project that is currently underway. The project will be completed in the spring of 2007.

3. *Maintain a minimum 1-hour separation between the three main theaters and the Grand Foyer.*

The remaining work is part of the Eisenhower Theater Renovation Project, which is currently in design, with construction scheduled to begin in May 2007.

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See comment 3.

3. *Install a smoke control system that is integrated with a sprinkler system and smoke detectors over the Millennium Stages.*

As noted on Page 19 of the GAO report, the revised, peer-reviewed modeling study concludes that smoke exhaust and sprinkler protection are not needed on the Millennium Stages provided the recommendations of the study are implemented. As discussed above, the Center will have fully implemented these recommendations at the completion of the Eisenhower Theater Renovation Project. However, the Center believes that this GAO recommendation should be closed because there is no code requirement to install a smoke control system that is integrated with a sprinkler system and smoke detectors over the Millennium Stages.

4. *Ensure that doors in key areas provide adequate separation from fire.*

As noted on Page 20 of the GAO report, the Center has engaged Underwriters Laboratories (UL) to inspect the doors identified as deficient in GAO's 2005 report. Since the initial inspection, repairs have been made to the Fire Command Center and Fire Pump Room doors, and new fire-rating labels were applied. Doors to the Concert Hall exits that do not have existing fire-rated labels will also be certified and labeled by UL upon completion of necessary repairs. This work will be completed within the next four months.

5. *Develop as-built drawings and better track changes to the Center.*

We agree with GAO that it would be beneficial to create the most complete as-built documentation available. However, we differ on the methods. While it would be ideal to assemble all existing documents into a single set, it is ultimately a convenience that provides no additional information to users. We estimate it would cost at least \$200,000 to achieve this convenience.

Similarly cost prohibitive is GAO's suggestion of "assembling" new as-built documentation where none exists in order to uncover hidden conditions, similar to those that have created construction change orders in the past. Doing so would cost millions of dollars and take public areas out of service for many months at a time. As we stated in our response to GAO-05-334, it is not cost effective to discount the existing as-built drawings and implement a full destructive investigation in order to create as-built drawings. The Center still maintains that the creation of such as-built drawings is not cost effective. Furthermore, GAO's response in 2005 was:

...when existing as-built drawings do not exist or are proven to be inaccurate, as the Kennedy Center has indicated, it may help reduce the risk of cost increase or schedule delays to investigate the actual site conditions, which is sometimes destructive to building finishes. ...where destructive investigation is not feasible, the Center should consider incorporating additional cost and schedule contingencies in its budget estimates to reflect the increased risk of unforeseen conditions being discovered during construction.

In fact, this is exactly the procedure instituted in the management of our capital projects: destructive investigation is conducted when it will not impact the aesthetics or functionality of the space and cost and schedule contingency is included with every project. Both of these procedures were well illustrated in the implementation of the Family Theater project and were, in fact, cited in the current report.

See comment 4.

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The Center will continue to proceed in this more responsible manner: we will address each area with selective destructive investigation, when possible, during a project's design phase and maintain a cost and schedule contingency for the possibility of encountering unknown conditions. In addition, we will collect and document comprehensive information on mechanical, electrical, and plumbing systems in the current development of the 2006 CBP, adding to our knowledge of existing building systems and confirming the accuracy of the existing drawings.

6. Provide more timely and accurate information about capital projects to stakeholders.

The Center will adjust the format and organization of the CBP and will include historical budget information in future publications to assist in monitoring and evaluating projects. It must be noted, however, that the comparison of preliminary cost estimates, sometimes generated years before a project is initiated, to the final cost of a project do not necessarily indicate ineffective or inefficient management. As is conveyed in all Operations Committee materials and in the CBP updates, "variability is expected in the project estimates as they progress from preliminary project concepts to fully developed project designs. All estimates are preliminary and may be revised upon further study." The 2005 CBP further discusses the complexities associated with project budgeting:

The development of a project budget is an evolving process. The nature of public projects is such that the funding cycle is often created over a long planning horizon, sometimes as much as five to ten years. This situation makes exact budgeting difficult at the time when the project funding is requested. ...[T]he construction budget in many cases cannot be correctly estimated until the preliminary design and investigation is complete. The construction costs are further refined during the final design work. Thus, the final project budgets are developed through an iterative process. Beyond the basic nature of the development of project costs, other outside factors may also affect project costs, such as construction market conditions or availability of materials. For example, since late 2003 the construction market has experienced a steep increase in steel prices and miscellaneous metal costs due to a worldwide shortage in steel availability.

In fact, Downey and Scott, a local Washington D.C. construction estimating firm, estimates construction escalation was 15.2% in 2004, 11% in 2005 and is estimating 7.5% in 2006 and beyond. These factors indicate a recent unprecedented spike in market escalation that is well above the typical three to four percent utilized for planning five years ago. Such escalation was certainly not predictable in 2002, let alone in 1995 when the first CBP was written. Therefore, it would only be prudent for the Center to increase the budget projections for projects that were conceived several years ago, rather than carry budget numbers that are known to be unrealistic.

Several other statements and conclusions in the report also need clarification:

The total project expenditures delineated in the 2005 CBP did increase over those in the 2004 CBP, due to a variety of factors. First, the 2004 plan was based on appropriation levels \$7.2 million lower than our authorization for the period 2004 to 2007. The 2005 plan reflected appropriation levels equal to our full authorization for the period, in keeping with our initial budget request for 2007. Second, in response to recommendations in the 2005 GAO report, the Center updated its budgets to adjust for escalation and provide adequate contingency funds.

See comment 5.

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See comment 6.

The report also states that the cost of the Family Theater Renovation “included cost growth within the amounts budgeted for the project.” This is wholly inaccurate. The project was completed approximately \$300,000 under budget, therefore there was no cost growth. Change orders are a given in any project, therefore should certainly not be construed as cost growth. In this project, change orders were in fact far less than the contingency provided for the project.

See comment 7.

With respect to the statement that the Center will not complete the Terrace-level renovations by 2008, we find the conclusion unwarranted and perplexing. The Roof Terrace Life Safety Project is proceeding as scheduled in the 2005 CBP. The scope of the project was developed in April 2006 and is the basis for an architectural contract awarded August 11, 2006. The “originally scheduled” dates to which GAO refers with respect to other Terrace level spaces, such as the Theater Lab and Terrace Theater renovations, are those which were planned in the 1995 CBP. The assumption that a schedule developed over eleven years ago could still be viable in the current economic climate is unreasonable and naïve for numerous reasons already cited.

See comment 8.

See comment 9.

In fact, the most important factor that has prohibited the Kennedy Center from completing all of the projects detailed in 1995 by the end of FY2008, and the single biggest reason that recent CBPs have differed from year to year, is that appropriation levels for the Kennedy Center have not matched authorized levels in recent years. This has made capital planning extremely difficult. In fact, despite reduced appropriation levels in 2005 – 2007, all *life safety* projects delineated in 1995 will be completed by the end of 2008, a confirmation of the Center’s priorities. During a time of extreme escalation coupled with appropriations lower than authorized funding, it is unreasonable to criticize the Center for not completing all capital renovations as initially planned years ago.

See comment 10.

Furthermore, GAO states that “because the CBP will not be completed in 2008 as planned, the Kennedy Center has hired a consulting firm to survey the Kennedy Center and recommend Center upgrades that have not yet been completed with a goal of extending the CBP implementation period to 2012.” This betrays a fundamental philosophical deviation from best practices of facility management. Capital planning should never end. If a finite planning period were established, the Center would quickly deteriorate to a similar state as in the early 1990’s when a capital project plan did not exist. The importance of ongoing planning was also recognized in the Kennedy Center Act, which directed the Board to “develop, and update annually, a comprehensive building needs plan.” It would be irresponsible for the Center not to continue to have a CBP to provide the roadmap for building maintenance in a manner consistent with other national Presidential memorials and befitting the Nation’s largest performing arts center. The tone and argument of the report suggests that GAO is critical of the notion of ongoing capital planning; the Center hopes that is not the case.

See comment 11.

In response to GAO’s comment regarding irregularly scheduled Operations Committee meetings, the Center made changes after the 2005 report. In past years, attempts were made to schedule meetings to accommodate Congressional members’ schedules and were cancelled if conflicting circumstances dictated that attendance would be low. Meetings are no longer cancelled.

However, we do not agree with the attendance calculation method used in the report. We are grateful to Congressional members’ willingness to serve on the Kennedy Center Board and prefer to accommodate the numerous demands on their time by allowing them to name a designee to attend meetings in their stead. Attendance at meetings by designees ensures that Kennedy Center business is reported back to the principals. If Congressional members’ designees are included in the attendance calculations, Operations Committee attendance ranges from 43 percent to 86 percent. Additionally, lack of attendance at meetings does not necessarily indicate that the

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See comment 12.

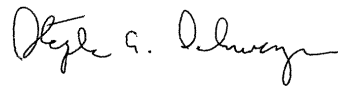
trustees are not informed or engaged. Meetings and conversations occur frequently between staff members and trustees, outside the formal trustee and committee meetings, to update members and receive their guidance and feedback. In addition, all trustees and committee members receive the information provided at the meetings as well as minutes of the meetings.

In short, the Board of the Kennedy Center takes very seriously its responsibility to keep our building, a Federal asset and a Presidential memorial, in the best condition possible. We continue to work to manage our capital projects program more effectively and efficiently. We believe that the results from the past two years of projects indicates substantial progress. And we appreciate the insight and recommendations from the GAO, which will assist us in continuing to strengthen our operations.

Sincerely,



Michael M. Kaiser
President



Stephen A. Schwarzman
Chairman

The following are GAO's comments on the John F. Kennedy Center for the Performing Arts' (Kennedy Center) letter dated August 24, 2006.

GAO Comments

1. We disagree with this interpretation. Construction manager at risk is not covered by the FAR; and, consequently, a deviation must be authorized and justified in the contract file. We also continue to believe that establishing a Guaranteed Maximum Price (GMP) prior to proceeding with work limits the government's risk of cost overruns. During the audit, we spoke with an official in the GSA Office of the Chief Architect who advises GSA staff on construction issues. The GSA official said that a GMP should be established in order to effectively use the construction manager at risk project delivery method and a deviation from the FAR is required. Because the Kennedy Center stated in its comments that it consulted with GSA and was told that it did not need a deviation for the contract, we reconfirmed the situation with GSA and were advised again that a deviation is required because of the use of the GMP.
2. We updated the report to indicate that the Kennedy Center and the Smithsonian Office of the Inspector General finalized a memorandum of understanding, in July 2006, that establishes audits of federal funds used for capital projects. In addition, we incorporated into the report, the Kennedy Center's rationale for selecting a nongovernmental organization to audit the federal funds used for operations and maintenance activities.
3. The revised, peer-reviewed modeling study concludes that smoke exhaust and sprinkler protection are not needed on the Millennium Stages, provided that the conditions of the revised modeling study are met. Once the two conditions of the revised modeling study have been met, the Kennedy Center will have fully implemented our recommendation to install smoke exhaust and sprinkler protection at the Millennium Stages.
4. We disagree with the Kennedy Center's approach to this recommendation, which is to assemble all existing as-built drawings into a single set. The Kennedy Center can accomplish our recommendation in a cost-efficient way by integrating the as-built drawings from each successive capital project into a master plan for the center and by updating the drawings as additional changes to the center are made. This would ensure that the Kennedy Center is tracking

future changes to the center and using the most up-to-date drawings of site conditions. Our report notes that it is important for the Kennedy Center to start assembling and consistently updating a comprehensive set of as-built drawings of the entire center to prevent costly unexpected site conditions.

5. We agree that the difference between a project's original budget and the final cost does not, by itself, necessarily indicate ineffective or inefficient management. However, we do believe that the Kennedy Center Board of Trustees and Congress need information on project cost overruns in order to monitor and evaluate whether federally funded capital projects have been implemented effectively and efficiently.
6. We believe our point is accurate and have further clarified the report to indicate that the cost of the Family Theater project was about \$9.1 million, which includes cost growth, due to change orders, that was within the amount allocated for contingency.
7. The most recent Operations Committee meeting was held on April 2006; and as of this meeting, the Roof Terrace Life Safety Project scope was not developed. In addition, neither our review of Kennedy Center documents nor discussions with Kennedy Center officials indicated that the scope of the Roof Terrace Life Safety Project was developed. Although the Kennedy Center states that the scope of the Roof Terrace Life Safety project was developed in April 2006, they did not provide the details of this scope in their agency comments.
8. The Kennedy Center has deferred many of the terrace-level projects that were planned for the CBP beyond the scheduled completion of the plan in 2008, which significantly reduced the scope of the CBP.
9. See comment 6.
10. We agree that an ongoing capital plan is essential for the maintenance of the Kennedy Center as a presidential memorial and national performing arts center. The report notes that the Kennedy Center has hired a consulting firm to survey the center and recommend upgrades that have not been completed. This survey will cover years 2008 through 2012. We added into the report that a Kennedy Center official told us that the new survey will include projects listed in the CBP that were not completed in 2008 as planned, as well as new projects.

Therefore, we consider the survey an extension of the original CBP. Although the extended CBP may include new projects to facilitate ongoing capital planning, it will include deferred projects that were originally scheduled to be completed in 2008.

11. We did not include designees' attendance in our calculations of board and Operations Committee attendance rates for several reasons. First, membership on the Kennedy Center Board of Trustees is set forth in the Kennedy Center Act and does not include designees. Therefore, we based our calculations on the attendance records for those persons legally serving as trustees. In addition, since designees have no legal authority for making decisions, including those with respect to federally funded capital projects, we did not consider their participation in board and committee meetings. Lastly, in analyzing board meeting minutes, we found instances in which a trustee sent more than one designee to a meeting. In these cases, attendance rates would be inflated if designees were included in the attendance calculations. As noted in the report, we found that it is unclear what responsibility and authority designees have for carrying out the board's responsibilities under the Kennedy Center Act, which limits the board's oversight of federally funded capital projects.

12. We agree that a lack of attendance at board and committee meetings does not necessarily indicate that a trustee is not informed or engaged. However, during our audit we found, as noted in the report, that with respect to capital projects, trustees were not informed of project cost overruns, project budgets, or proposed projects. For example, as highlighted in the report, in April 2005, we reported that since 2003, each of the three federally funded capital projects that we reviewed had experienced cost overruns, one as great as 50 percent. However, we did not find any evidence that the board or its Operations Committee was informed of these cost overruns, such as the Opera House's \$4 million cost increase. For example, two trustees that served on the board during the implementation of these projects told us that they did not know of any capital projects that had cost overruns. One of these trustees said that the Opera House renovation was on budget.

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