

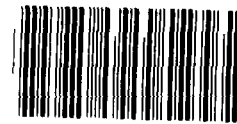
GAO

Report to the Secretary of Energy

May 1987

SMALL BUSINESS ACT

Energy's Disadvantaged Business Advocate Not Reporting to Proper Management Level



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**Resources, Community, and
Economic Development Division****B-222903.8****May 26, 1987****The Honorable John S. Herrington
The Secretary of Energy****Dear Mr. Secretary:**

In letters dated January 14 and May 2, 1986, the Chairman, House Committee on Small Business, requested that we review 13 agencies to determine their compliance with Section 15(k) of the Small Business Act. In subsequent discussions, the Chairman's office defined the primary concern as the agencies' compliance with Section 15(k)(3), which describes the required reporting level for each agency's Director, Office of Small and Disadvantaged Business Utilization (OSDBU). The Department of Energy was one of the agencies selected.

To determine if Energy was in compliance with the Small Business Act, Section 15(k)(3), we interviewed officials in the Department's Office of General Counsel and OSDBU, and reviewed organizational charts, a description of OSDBU Director's responsibilities, the Director's performance evaluation, and management instructions concerning the Office's establishment, mission, reporting level, and current operations. To determine the required reporting relationship for the Director, OSDBU, we also reviewed the Small Business Act and its legislative history. We did not evaluate the effectiveness of Energy's OSDBU programs. Our work was performed from April through October 1986 at Energy's Washington, D.C., headquarters and was done in accordance with generally accepted government auditing standards.

**The Director, OSDBU, Must
Report to the Agency Head
or Deputy**

The Small Business Act requires each federal agency with procurement powers to establish an OSDBU and requires that the agency head appoint a Director for this office. Section 15(k)(3) requires that the Director shall be responsible only to and report directly to the agency head or deputy. Other provisions of the act describe the Director's duties and responsibilities.

The legislative history of Section 15(k) of the Small Business Act shows that Congress intended to mandate a direct reporting relationship between the OSDBU Director and the agency head or deputy. A 1978 report by the Senate Select Committee on Small Business noted that officials who were responsible for advocating small business participation

in federal procurements often did not hold high enough positions in the agency to be effective.

The purpose of Section 15(k)(3) is to provide the Director immediate access to the agency's top policymakers and thus maximize the Director's effectiveness as an advocate of small and disadvantaged businesses.

Energy Is Not in Compliance With the Law

Energy established its OSDBU on January 15, 1979. On March 21, 1979, a Director was appointed who reported directly to the Deputy Secretary, but was also under the day-to-day operational control of the Director, Procurement and Contracts Management (now called Procurement and Assistance Management). In a previous report (GAO/EMD-79-83, June 26, 1979) GAO concluded that the Director, OSDBU, reporting to both the Director, Procurement and Contracts Management, and the Deputy Secretary did not fully comply with legal requirements.

In March 1983, the Director, OSDBU, sent a letter to the Secretary of Energy which stated that, in effect, the Director did not report to the proper organizational level, and requested action to correct this condition. In a September 13, 1983, memo on how OSDBU should operate, the Secretary informed the Director, OSDBU, that he would be reporting to the Secretary, coordinating this reporting through a Special Assistant for Policy and Programs. In addition, the memo explained that in order for Energy's small and disadvantaged business programs to succeed, there must be a close relationship with the procurement function, and that the established relationship must be continued. Also, the memo noted that OSDBU would remain physically within the procurement directorate which would continue to provide administrative management and support (for such areas as budget, travel, and personnel actions). According to the memo the procurement directorate would also (1) provide normal day-to-day operational review of OSDBU activities, (2) coordinate all controlled correspondence and other correspondence dealing with procurement matters, (3) review requirements before they are placed in field offices, and (4) provide input to the OSDBU Director's performance evaluation. Further, the Secretary noted that no organization can be a total "free agent" and he had decided that his responsibility for OSDBU could be best carried out using the above guidelines.

Currently, the Director, OSDBU, still reports to two officials—the Secretary and the Director, Procurement and Assistance Management. The 1986 mission and function statement for Energy's OSDBU states that the

Director reports directly to the Office of the Secretary and is responsible only to the Secretary. However, it also states that the Director receives day-to-day operational review by the Director, Procurement and Assistance Management.

The degree of close supervision and management as well as input to the performance evaluation indicate that the Director, OSDBU, is not reporting directly to and is not responsible only to the Secretary or Deputy Secretary of Energy. Therefore, we conclude that because the Director, OSDBU, is essentially responsible to the Director, Procurement and Assistance Management, the Director's reporting level is not in compliance with the Small Business Act, Section 15(k)(3)

Agency Comments

In a March 31, 1987, letter commenting on a draft of our report (see appendix), Energy said that (1) it continues to believe that the Secretary has sufficient delegation authority under the provisions of the Department of Energy Organization Act, Section 642, to indicate how he wishes specific OSDBU functions to be carried out (which encompasses the administrative and support activities cited in our report), (2) a change is being made to clarify the Director's reporting which will continue his reporting to a principal Energy Department officer, (defined in the Department of Energy Organization Act, Section 202 as the Secretary, Deputy Secretary, or Under Secretary), (3) it will still be necessary to provide day-to-day administrative support to OSDBU through its procuring activities, and (4) this organizational arrangement is in full compliance with the language and spirit of the act.

Section 15(k)(3) of the Small Business Act is a specific statutory restriction on the otherwise broad powers of the Secretary, and Section 642 of the Department of Energy Organization Act does not give the Secretary the authority to alter or abridge the requirements of the Small Business Act, Section 15(k)(3). In addition, compliance with the act cannot be achieved until the Director, OSDBU, is free of the management and supervision now being provided by the Director of Procurement. We agree that administrative support which provides OSDBU requested resources can come from any part of the Department. However, in addition to providing administrative support, the procurement directorate's relationship with the OSDBU Director is supervisory in nature. Therefore, until this management of OSDBU activities is removed the Department cannot achieve compliance with the act.

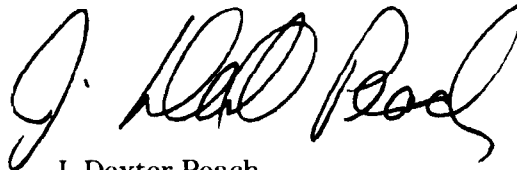
Recommendation

To bring Energy into compliance with Section 15(k)(3) of the Small Business Act, we recommend that the Secretary require the Director, OSDBU, to be responsible only to and report directly to the Secretary or Deputy Secretary of Energy.

As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations. This statement must be submitted to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report. A similar statement must be submitted to the Senate and House Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report

As arranged with the Chairman's office, we are sending copies of this report to the Chairman, House Committee on Small Business; the Director, Office of Management and Budget; and other interested parties upon request.

Sincerely yours,



J Dexter Peach
Assistant Comptroller General

Comments From the Department of Energy



Department of Energy
Washington, DC 20585

March 31, 1987

Mr. J. Dexter Peach
Assistant Comptroller General
Resources, Community, and Economic
Development Program
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Peach:

The Department of Energy (DOE) appreciates the opportunity to review and comment on the General Accounting Office draft report entitled "Small Business Act: Energy's Disadvantaged Business Advocate Not Reporting to the Proper Management Level."

The draft report discusses this agency's compliance with Section 15(k)(3) of the Small Business Act (Pub. L. 95-507). Section 15(k) establishes in each Federal agency having procurement powers an office to be known as the "Office of Small and Disadvantaged Business Utilization" (OSDBU), and provides in subsection (k)(3) that the management of each such office shall be vested in an officer or employee of the agency "responsible only to, and reporting directly to, the head of such agency or to his deputy." The draft report questions this Department's compliance with the reporting requirements established by this provision.

The legislative history of Public Law 95-507 indicates that Congress intended that the head of the Office of Small and Disadvantage Business Utilization should have direct access to top level agency policymakers. (Senate Report No. 95-1140, 95th Cong., 2nd. Sess. 9 (1978)) As noted in your draft report (pages 3 and 4), the September 13, 1983, memorandum of the Secretary of Energy and the OSDBU mission and functions statement show that the Director currently reports to the Office of the Secretary. However, day-to-day administrative and related support are provided to OSBDU as noted in your report. This management strategy recognizes the necessity for OSBDU and the procuring activities to have a close coordination and working relationship, and we continue to believe that the Secretary has sufficient delegation authority under the provisions of Section 642 of the Department of Energy (DOE) Organization Act (Pub. L. 95-91) to indicate how he wishes specific OSDBU functions to be carried

Now on pages 2 and 3

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out. This encompasses the day-to-day administrative and related support activities cited in your report.

However, at this time, a change is being made to clarify the reporting structure relating to the Department of Energy Director of the Office of Small and Disadvantaged Business Utilization. When that clarification is made, the Department's OSDBU Director will continue to be reporting directly to a principal officer of the Department (defined by section 202 of the DOE Organization Act to include the Secretary, the Deputy Secretary, and the Under Secretary). The General Counsel's Office of the Small Business Administration has informally advised us that the Act was intended to encompass such a reporting arrangement. Obviously, it will still be necessary to provide day-to-day administrative support through DOE's procuring activities. We believe that this organizational arrangement is in full compliance with the language and spirit of Pub. L. 95-507.

Sincerely,



Harry L. Peebles
Acting Assistant Secretary
Management and Administration

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