

April 1987

# SMALL BUSINESS ACT :

## NASA's Disadvantaged Business Advocate Not Reporting to Proper Management Level

038-486

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**National Security and  
International Affairs Division****B-222903.12**

April 6, 1987

The Honorable James C. Fletcher  
Administrator, National Aeronautics  
and Space Administration

Dear Dr. Fletcher:

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 National Aeronautics and Space Administration (NASA) was one of the agencies selected.

To determine if NASA was in compliance with the Small Business Act, Section 15(k)(3), we interviewed the OSDBU Director and both current and prior Associate Deputy Administrators. We also reviewed organizational charts, a description of the 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 NASA's OSDBU programs. Our work was performed in May through July 1986 at NASA's Washington, D.C., headquarters and was done in accordance with generally accepted government auditing standards.

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**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.

## NASA Is Not in Compliance With the Law

NASA established its OSDBU on July 19, 1979, with the Director reporting to the Administrator. On February 25, 1982, NASA Management Instruction 1103.25A officially changed the Director's reporting level from the Administrator to the Deputy Administrator. According to the prior Associate Deputy Administrator, the Management Instruction was never implemented. Instead, according to the officials involved, the Director, OSDBU, has reported and continues to report to the Associate Deputy Administrator. This official is also responsible for the Director's annual performance evaluation. Therefore, we conclude that because the Director, OSDBU, does not report to and is not responsible only to the Administrator or Deputy Administrator of NASA, the Director's reporting level is not in compliance with the Small Business Act Section 15(k)(3).

## Recommendation

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

## Agency Comments

In a January 2, 1987, letter commenting on a draft of our report, NASA said that (1) it is now reorganizing to meet the demands of the space shuttle recovery efforts and to centralize management of future programs and (2) unless otherwise legislatively exempted, it will conform its organizational structure to that recommended in our report. Agency comments are included as appendix I.

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

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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,



Frank C. Conahan  
Assistant Comptroller General

# Comments From the National Aeronautics and Space Administration



National Aeronautics and  
Space Administration

Washington, D C  
20546

Reply to Attn of N

JAN 2 1987

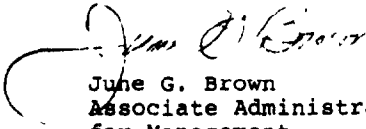
Mr. Frank C. Conahan  
Director  
National Security and International  
Affairs Division  
United States General Accounting Office  
Washington, DC 20548

Dear Mr. Conahan:

Thank you for the opportunity to comment on the GAO draft report entitled, "Small Business Act: NASA's Disadvantaged Business Advocate Does Not Report To the Proper Management Level."

NASA accedes to the GAO interpretation of the Small Business Act that the Director, Office of Small and Disadvantaged Business Utilization is required to report to the Administrator or Deputy. We believe, however, that our previous contrary interpretation finds some support in the legislative history and that, in fact, NASA has been in compliance with the spirit if not the letter of the statute. Specific agency comments are provided in the enclosure to the letter.

Sincerely,



June G. Brown  
Associate Administrator  
for Management

Enclosure

**Appendix  
Comments From the National Aeronautics  
and Space Administration**

**NASA Comments on "Small Business Act: NASA's  
Disadvantaged Business Advocate Does Not Report  
To the Proper Management Level"**

NASA has reviewed the above titled report and accedes to GAO's view that the organization of NASA's Office of Small and Disadvantaged Business Utilization does not fully comply with the Small Business Act.

The draft report candidly admits that GAO personnel "did not evaluate the effectiveness of NASA's OSDBU programs." The primary purpose of Public Law 95-507 which contained the subject reporting requirements was to "increase the dollar volume of small business subcontracts on Federal contracts and generally to improve the Federal contracting environment for small businesses." (Senate Report 95-1070, p. 3). NASA has been eminently successful in carrying out this basic statutory purpose.

The rationale for the reporting requirement which is now contained in Section 15(k)(3) of the Small Business Act was the relative ineffectiveness of small business advocates at certain federal agencies. According to the Senate Report, "small business procurement officers must have direct access to top level agency policy makers to improve their effectiveness as small business advocates." (Senate Report 95-1070, p. 18). NASA has been successful in assuring such access and in establishing and maintaining an effective small business program.

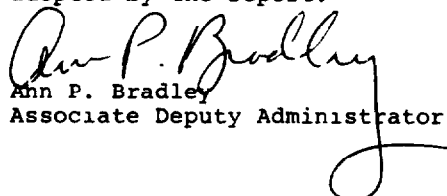
The report cites the legislative history of Section 15(k)(3) to support the conclusion that Congress intended to mandate a direct reporting relationship between the OSDBU Director and the agency head or deputy. We agree that the statute and parts of the legislative history can be fairly read in that manner. We note, however, the following language in the legislative history: "The Director will report to the agency head or an individual, such as an Under Secretary, in a position of comparable authority." (Senate Report 95-1070, p. 19). We believe that this language arguably permits the supervisory function to be vested in the NASA Associate Deputy Administrator. While the Associate Deputy Administrator is the NASA management official immediately below the Administrator and Deputy, circumstances in recent years have resulted in the incumbent of that position being the second highest official in the agency for much of the time. The position of Deputy Administrator was vacant from 1983 until November 1985. Almost immediately thereafter the Deputy Administrator became the Acting Administrator. Not until May 1986 were both positions filled simultaneously. The Report points out that NASA's formal organization as exemplified by NASA Management Instruction 1103.25A calls for the Director of OSDBU to report to the Deputy Administrator. In fact, most indicia of supervision are in the Associate Deputy Administrator. The de facto effect of reporting to the Associate Deputy Administrator has resulted in substantial, if not technical, compliance with the statute for

**Appendix  
Comments From the National Aeronautics  
and Space Administration**

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most of the past several years due to the circumstances described above.

In view of the Report's findings NASA will accede to GAO's interpretation of the statute mandating the Director OSDBU to report to the Administrator or his Deputy. NASA is reorganizing in response to the Roger's Commission recommendations in order to meet the demands of the Space Shuttle recovery efforts and to centralize management of future programs. It is not clear that direct reporting by the Director OSDBU to the NASA Administrator is consistent with NASA's current organizational needs. Nonetheless, unless otherwise legislatively exempted, NASA will conform its organizational structure to the interpretation adopted by the report.

  
Ann P. Bradley  
Associate Deputy Administrator

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