



August 2017

SMALL BUSINESS CONTRACTING

Actions Needed to
Demonstrate and
Better Review
Compliance with
Select Requirements
for Small Business
Advocates

GAO Highlights

Highlights of [GAO-17-675](#), a report to the Committee on Small Business, House of Representatives

Why GAO Did This Study

Section 15(k) of the Small Business Act requires federal agencies with procurement powers to establish an OSDBU to advocate for small businesses. The National Defense Authorization Act for Fiscal Year 2013 established additional requirements for OSDDBUs and required SBPAC to review OSDBU compliance with section 15(k) requirements.

GAO was asked to review compliance with selected requirements of section 15(k). GAO examined (1) the extent to which selected federal agencies demonstrated compliance with 13 requirements for OSDDBUs and (2) SBPAC review process results. GAO selected a sample of 10 agencies, based on contracting obligations, to review a reporting requirement for OSDBU directors. For the other 12 requirements, GAO surveyed OSDBU directors at 24 agencies, selected based on contracting obligations (100 percent response rate). To review and augment survey responses, GAO also analyzed guidance and documents and interviewed OSDBU directors.

What GAO Recommends

GAO makes 20 recommendations, including that agencies not demonstrating compliance with section 15(k) requirements comply or report to Congress on why they have not, and that SBA should provide more detailed guidance for the new SBPAC review process than exists for the current process. Agency responses to the recommendations varied. As discussed in the report, GAO maintains that implementation of its recommendations is warranted.

View [GAO-17-675](#). For more information, contact William B. Shear at (202) 512-8678 or shearw@gao.gov.

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Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates

What GAO Found

Demonstrated compliance with selected section 15(k) requirements for the Office of Small and Disadvantaged Business Utilization (OSDBU) varied across the 24 agencies GAO surveyed. Five agencies demonstrated compliance with all the requirements, four agencies demonstrated compliance with all but one requirement, and 15 agencies did not demonstrate compliance with two or more requirements. Examples of GAO findings include the following:

- Four OSDBU directors did not report directly to the agency head or deputy (the one requirement for which GAO reviewed only 10 agencies).
- Five agencies did not demonstrate compliance with a requirement for collateral duties of OSDBU directors.
- Six agencies did not demonstrate compliance with a requirement for compensation and seniority of OSDBU directors.
- Twenty-three agencies demonstrated compliance for four requirements on OSDBU director experience, supervisory duties of the OSDBU director, identifying and addressing significant bundling of contracts (consolidation of two or more procurement requirements into a solicitation for a single contract), and providing assistance on payments.
- Fifteen agencies demonstrated compliance with a requirement to respond to notifications that solicitations unduly restricted the ability of small businesses to compete for contracts.

Noncompliance with section 15(k) requirements may limit the extent to which an OSDBU can advocate for small businesses. For example, OSDBU influence in agencies might be limited if directors reported to lower levels of management. Directors with other duties might be less able to carry out all section 15(k) duties.

Results of the Small Business Procurement Advisory Council's (SBPAC) annual review of compliance with section 15(k) requirements differed from GAO's assessments. The Small Business Administration (SBA) chairs SBPAC, and its members are nearly all OSDBU directors. All agencies in the most recent review scored 94–98 percent. But where GAO's review considered the same section 15(k) requirements as the SBPAC review, GAO found some agencies had not demonstrated compliance with multiple requirements. Other than reviewing documentation agencies choose to provide, SBA's guidance for the review panel does not indicate any other means by which reviewers could obtain or clarify information. GAO's review included follow-up discussions with agency officials to obtain or clarify information. SBA has been developing a new review process, but preliminary information GAO reviewed indicates the process will be similar to the current one. According to federal standards for internal control, management should use quality information to make informed decisions. Under the new process, the review results (which SBA uses in another process that determines an agency's overall grade for small business contracting) also will carry twice as much weight as under the current process—underscoring the importance of the review results. A new review process substantially similar to the old one (especially in relation to guidance) may not provide a reliable indicator of OSDBU compliance with section 15(k) requirements.

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Abbreviations

Air Force	Department of the Air Force
Army	Department of the Army
CAO	Chief Acquisition Officer
Commerce	Department of Commerce
DLA	Defense Logistics Agency
DOD	Department of Defense
Education	Department of Education
Energy	Department of Energy
EPA	Environmental Protection Agency
HUD	Department of Housing and Urban Development
Interior	Department of the Interior
Labor	Department of Labor
NASA	National Aeronautics and Space Administration
Navy	Department of the Navy
OPM	Office of Personnel Management
OSDBU	Office of Small and Disadvantaged Business Utilization
SBA	Small Business Administration
SBPAC	Small Business Procurement Advisory Council
SES	Senior Executive Service
SPE	Senior Procurement Executive
SSA	Social Security Administration
State	Department of State
Treasury	Department of the Treasury
USAID	U.S. Agency for International Development
USDA	U.S. Department of Agriculture
VA	Department of Veterans Affairs

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August 25, 2017

The Honorable Steve Chabot
Chairman
The Honorable Nydia Velázquez
Ranking Member
Committee on Small Business
House of Representatives

In fiscal year 2016, small businesses accounted for almost \$100 billion in federal contracts. To help increase small businesses' visibility among federal agencies, in 1978 Congress amended the Small Business Act to require that all federal agencies with procurement powers establish an Office of Small and Disadvantaged Business Utilization (OSDBU), which would advocate for small businesses in procurement and contracting processes.¹ OSDBUs would be managed by a director. Section 15(k)(3) of the act, as amended, requires that OSDBU directors generally be responsible only to and report directly to agency heads or their deputies.² The purpose of this provision is to help ensure that OSDBU directors have direct access to their agencies' top decision makers to advocate effectively for small businesses. Subsequent amendments have specified minimum seniority or pay levels for directors, enumerated qualifying prior work experience, specified who would sign the director's performance appraisals, and outlined the responsibilities of the position.

Section 15(k), as amended, also establishes a number of functions for which OSDBU directors are responsible. These functions include identifying proposed solicitations that bundle contract requirements;

¹The provisions regarding OSDBUs have been amended multiple times throughout the years, including in the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. No. 112-239, § 1691, 126 Stat. 1632, 2087 (2013)); the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. No. 114-92, § 870, 129 Stat. 726, 938 (2015)); and the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. No. 114-328, §§ 1812, 1813, 1821, 130 Stat. 2000, 2652, 2654 (2016)). We did not include amendments in the National Defense Authorization Act for Fiscal Year 2017 because the statute was amended during our review.

²For purposes of this report, all references to section 15(k) will refer to section 15 of the Small Business Act, codified at 15 U.S.C. § 644(k). In 1988, Congress amended section 15(k)(3) and allowed the secretary of Defense the discretion to designate the officials to whom the Defense OSDBU director should report. Pub. L. No. 100-656, § 603, 102 Stat. 3853, 3888 (1988).

working with agency acquisitions officials to revise solicitations to increase the probability of small business participation; and assisting small businesses in obtaining payments from agencies.³ Additionally, OSDBUs are to provide senior agency officials with advice and comments on acquisition strategies and market research.

In three earlier reports (2003, 2004, and 2011), we reviewed federal agencies' compliance with the section 15(k)(3) requirement on reporting to agency heads or their deputies.⁴ In these reports, we also examined the extent to which OSDBU directors viewed the functions listed in section 15(k) as duties of their offices. In the 2011 report, we found that 7 of the 16 agencies in our review were not in compliance with the requirement for the OSDBU director to report to the head or deputy head of the agency. Since then, all 7 of the agencies have implemented our recommendation to comply with the reporting requirement that was in effect at the time of our review.

You requested that we evaluate how OSDBUs have implemented the requirements of section 15(k). For this report, we examined (1) the extent to which selected federal agencies with procurement powers demonstrated compliance with five requirements of section 15(k) relating to the OSDBU director (including reporting relationships, qualifications, and supervisory duties); (2) the extent to which selected federal agencies demonstrated compliance with eight section 15(k) requirements for carrying out selected OSDBU functions or activities; and (3) the Small Business Procurement Advisory Council review of OSDBU compliance with section 15(k) requirements.

³The Small Business Reauthorization Act of 1997 defines the bundling of contract requirements as the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract likely to be unsuitable for award to a small business due to (1) the diversity, size, or specialized nature of the elements of the performance specified; (2) the aggregate dollar value of the anticipated award; (3) the geographical dispersion of the contract performance sites; or (4) any combination of the factors described. Pub. L. No. 105-135, § 412, 111 Stat. 2592, 2617 (1997), codified at 15 U.S.C. § 632(o).

⁴See GAO, *Small and Disadvantaged Business: Some Agencies' Advocates Do Not Report to the Required Management Level*, [GAO-03-863](#) (Washington, D.C.: Sept. 4, 2003); *Small and Disadvantaged Businesses: Most Agency Advocates View Their Roles Similarly*, [GAO-04-451](#) (Washington, D.C.: Mar. 22, 2004); and *Small Business Contracting: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required*, [GAO-11-418](#) (Washington, D.C.: June 3, 2011).

We reviewed a total of 14 section 15(k) requirements and primarily focused on 5 requirements relating to OSDBU directors and 8 relating to OSDBU functions.⁵ We reviewed 24 agencies (civilian and military), which were selected based on contracting obligations.⁶

- For the section 15(k)(3) requirement relating to OSDBU directors reporting to a head or deputy head of an agency, we reviewed whether 10 agencies demonstrated compliance (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration). We selected the 10 agencies based on contracting obligations (6 each had more than \$10 billion in obligations, and 4 each had fewer) and also for variety. Of the 6 agencies with more than \$10 billion in obligations, we selected 3 Department of Defense (DOD) components and 3 non-DOD agencies.⁷ To determine whether agencies demonstrated compliance, we analyzed documents such as reports, position descriptions, and performance appraisals and interviewed OSDBU directors and other agency officials.
- To determine if agencies demonstrated compliance with other provisions of section 15(k)—four that relate to other requirements for OSDBU directors (such as rank and responsibilities), eight that relate to OSDBU functions or activities, and one that relates to reports to

⁵Our review of individual agencies' demonstrated compliance encompasses 13 requirements. As discussed in this report, an additional requirement, section 15(k)(16), requires agencies to submit an annual training and travel report to Congress. During the course of our review, the Small Business Administration (SBA) established new procedures to submit a consolidated report to Congress, rather than having each agency submit an individual report. Due to the new procedures, we do not include this requirement in the summary tables or agency appendixes.

⁶Of the 24 agencies, 23 were selected due to high contracting obligations; each of the 23 procured more than \$900 million in goods and services in fiscal year 2015, and together, they accounted for 87 percent of all federal contracting obligations. We selected the 24th agency, the Office of the Secretary within the Department of Defense, due to its role as a policy office within the Department of Defense.

⁷DOD does not have a single OSDBU director for the department. The services (the Departments of the Air Force, Army, and Navy and the Defense Logistics Agency) and other DOD command units have established separate OSDBUs, each headed by a director. These organizational units carry out procurement for most of DOD. For purposes of this report, we refer to the five DOD components we reviewed (the four services plus the Office of the Secretary) as agencies. The DOD agencies, as well as some other agencies in our report, refer to their OSDBU as the Office of Small Business Programs. For simplicity, we use OSDBU for all agencies in this report.

Congress—we surveyed OSDBU directors at 24 agencies.⁸ The response rate to our survey was 100 percent. We also reviewed agency information such as policy documents and position descriptions and interviewed OSDBU directors and other agency officials.

In cases in which supporting documentation was not available, we made the determination based solely on the agency’s survey response and/or follow-up with agency officials. We also reviewed documentation and data related to the Small Business Administration’s (SBA) scorecard for small business procurement and the peer review process of the Small Business Procurement Advisory Council and spoke with SBA officials about this program. We compared SBA’s “OSDBU organization” success factor scores to the compliance information we obtained from our review to determine whether these scores correlated with our compliance determinations. Appendix I contains additional information on our scope and methodology, including the types of evidence considered to find that an agency demonstrated compliance.⁹

We conducted our work from May 2016 to August 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The federal government has a long-standing policy to maximize contracting opportunities for small businesses. For example, the Business Opportunity Development Reform Act of 1988 amended the Small Business Act to establish an annual government-wide goal of awarding at least 20 percent of prime contract dollars to small businesses. The Small Business Reauthorization Act of 1997 further amended the Small Business Act to increase the goal to at least 23 percent. To help meet this

⁸Section 15(k)(13) does not mandate that the OSDBU provide training to small businesses, but we include the permissive training language in 15 U.S.C. § 644(k)(13) in our discussion of “requirements” and reviewed the agencies’ training offered under this provision.

⁹We used the Federal Procurement Data System-Next Generation to analyze fiscal year 2015 data on federal agencies’ contracting activity. We determined that the data were reliable for the purposes of our work.

goal, SBA annually establishes prime contract goals for various categories of small businesses for each federal agency. Although SBA is responsible for coordinating with executive branch agencies on this goal, agency heads are responsible for achieving small business goals for their agencies. As previously discussed, in 1978 Congress also established an OSDBU in each federal agency with procurement powers. These offices are intended to advocate for small businesses within the agencies and thus also work with agencies to achieve contracting goals.

Duties of OSDBU directors and functions of OSDBUs. The Small Business Act, as amended, establishes a number of requirements related to the functions and duties of OSDBUs. For instance, section 15(k)(3) generally establishes a direct reporting relationship between the OSDBU director and the agency head or deputy head. Other requirements in the act specify that the director must have supervisory authority over staff performing certain duties, implement and execute the functions and duties under the relevant sections of the Small Business Act, and identify proposed solicitations that involve the bundling of contract requirements.

The National Defense Authorization Act for Fiscal Year 2013 further amended the Small Business Act to include provisions that specify minimum seniority and pay levels for OSDBU directors, require that their performance appraisals be signed by the agency head or deputy head, and require that the OSDBU director have certain prior experience.¹⁰

- Section 15(k)(2) specifies that the OSDBU director must be appointed to a position in the Senior Executive Service (SES), or in certain cases be compensated at not less than the minimum rate of basic pay for grade GS-15 of the General Schedule.
- Section 15(k)(3) specifies that the agency head or deputy head generally be solely responsible for the performance appraisals of the director.
- The act also added a number of additional requirements to the duties of the OSDBU director, and specified that the director not hold any other title, position, or responsibility, except as necessary to carry out the responsibilities of the OSDBU as described in section 15(k).

¹⁰The director of the Office of Small Business Programs within the Office of the Secretary of Defense is responsible only to, and reports directly and exclusively to, the secretary or the secretary's designee (including for performance appraisals).

Some of the required functions of the OSDBU director in section 15(k) of the Small Business Act include the following:

- identifying proposed solicitations that involve significant bundling of contract requirements;
- working with agency acquisition officials, where appropriate, to revise such proposed solicitations to increase the probability of participation by a small business;
- assisting small businesses in obtaining payments from an agency (or prime contractor) with which they have contracted;
- assigning a small business technical adviser to each office with an SBA-appointed procurement center representative (an SBA staff member assigned to federal agencies or contract administration offices and who carries out SBA policies and programs);¹¹ and
- providing the chief acquisition officer and senior procurement executive of the agency with advice and comments on acquisition strategies, market research, and justifications related to certain provisions of the act.¹²

To carry out the functions listed in section 15(k) of the Small Business Act, OSDBU directors provide advice on small business matters and collaborate with the small business community. Some of the primary duties of OSDBU directors include

- advising agency leadership on small business matters;
- providing direction for developing and implementing policies and initiatives to help ensure that small businesses have the opportunity to compete for and receive a fair share of agency procurement;
- providing agency acquisition and program personnel with leadership and oversight of education and training related to small business contracting;
- conducting reviews of small business programs; and

¹¹Duties of procurement center representatives include reviewing proposed acquisitions and making recommendations and conducting periodic reviews of their assigned contracting activities for compliance with small business policies. 48 C.F.R. § 19.402(c).

¹²See appendix II for more information on section 15(k) requirements included in this review.

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- serving as the agency liaison to SBA, including providing annual reports on agency activities, performance, and efforts to improve performance.

Reviews by Small Business Procurement Advisory Council. The National Defense Authorization Act for Fiscal Year 2013 amended the statutory requirements of 15 U.S.C. § 644a to require the interagency council known as the Small Business Procurement Advisory Council (SBPAC) to annually review each OSDDBU to determine compliance with section 15(k) requirements.¹³ These reviews are used to help determine SBA's annual scorecard grade for each agency.¹⁴ SBPAC must report the results to the House and Senate Small Business committees. SBA chairs the council, which serves to assist agencies in their acquisition planning efforts. The council is also directed to identify best practices for maximizing small business utilization in federal contracting.

Roles of other procurement officials. OSDDBU directors are not the only officials responsible for helping small businesses participate in federal procurement.

- At the agency level, the heads of procurement departments (sometimes with a title of senior procurement executive) are responsible for implementing the small business programs at their agencies, including achieving program goals.
- Generally, staff in agency procurement departments assigned to work on small business issues (small business specialists) coordinate with OSDDBU directors on their agencies' small business programs.
- Chief acquisition officers provide a focal point for acquisition in agency operations. Key functions of the chief acquisition officers include monitoring and evaluating agency acquisition activities, increasing the use of full and open competition, increasing performance-based contracting, making acquisition decisions, managing agency

¹³SBPAC comprises the SBA administrator or the designee of the administrator, the director of the Minority Business Development Agency, and the head of each OSDDBU in each federal agency having procurement powers.

¹⁴According to SBA, the annual scorecard is used for purposes including measuring how well federal agencies reach their small business and socioeconomic prime contracting and subcontracting goals and reporting agency-specific progress. Scorecard grades are based on the extent to which (or how well) agencies met goals for prime contracts and subcontracts and on their progress plans for meeting goals.

acquisition policy, acquisition career management, acquisition resources planning, and conducting acquisition assessments.

Agencies Demonstrated High Levels of Compliance with Two OSDBU Director Requirements, but Three Other Requirements Had Lower Rates of Compliance

Of the five director-related requirements we reviewed, the level of demonstrated compliance varied, but was not universal for any one requirement (see table 1):

- Four of the 10 agencies we reviewed for the requirement that the director report to the head or deputy head of the agency did not demonstrate compliance.
- Twenty-three of the 24 agencies we surveyed demonstrated compliance for two requirements on director experience and supervisory duties.
- Nineteen of 24 agencies demonstrated compliance with a requirement for collateral duties of the director.
- Eighteen of 24 agencies demonstrated compliance with a requirement for the director's compensation and seniority.

Appendix II discusses the section 15(k) requirements included in this review. See appendixes III–XXVII for our overall determinations of demonstrated compliance with section 15(k) requirements and determinations of demonstrated compliance at each agency.

Not All OSDBU Directors Reported to the Head or Deputy Head of the Agency

Section 15(k)(3) generally requires that the OSDBU director report directly to and be responsible only to the agency head or the deputy head.¹⁵ Documentation we reviewed and discussions we held at 6 of the 10 agencies indicated that the directors reported as required. Other documents such as organizational charts, position descriptions and performance appraisals from the Departments of the Air Force, Army, Labor, Navy, and State and from the National Aeronautics and Space Administration (NASA) support this finding.

The remaining four OSDBU directors reported to officials at lower levels than the agency head or deputy head. Three of the four—at the Departments of Energy and Veterans Affairs (VA) and the Social Security

¹⁵The director of the Office of Small Business Programs within the Office of the Secretary of Defense must report directly to and be responsible only to the secretary or the secretary's designee. 15 U.S.C. § 644(k)(3). Our report did not review the Department of Defense – Office of the Secretary for section 15(k)(3) compliance.

Administration (SSA)—reported to chiefs of staff. At the Department of Education, the OSDBU director reported to the senior policy adviser.

Table 1: Agencies' Demonstrated Compliance with Section 15(k) Requirements Related to OSDBU Director as of May 19, 2017

Agency	Demonstrated compliance with section 15(k)				
	15(k): Director experience	15(k)(2): Compensation/ seniority	15(k)(3): Reporting requirement (head of agency or deputy head) ^a	15(k)(7): Supervisory duties	15(k)(15): Collateral duties
Defense Logistics Agency	✓	☒	N/A	☒	✓
Department of Agriculture	✓	☒	N/A	✓	☒
Department of the Air Force	✓	✓	✓	✓	✓
Department of the Army	✓	✓	✓	✓	✓
Department of Commerce	✓	☒	N/A	✓	✓
Department of Defense – Office of the Secretary	✓	✓	N/A	✓	✓
Department of Education	✓	✓	☒	✓	✓
Department of Energy	✓	✓	☒	✓	✓
Department of Homeland Security	✓	✓	N/A	✓	✓
Department of Housing and Urban Development	☒	✓	N/A	✓	✓
Department of the Interior	✓	✓	N/A	✓	✓
Department of Justice	✓	✓	N/A	✓	✓
Department of Labor	✓	☒	✓	✓	☒
Department of the Navy	✓	✓	✓	✓	✓
Department of State	✓	✓	✓	✓	✓
Department of Transportation	✓	✓	N/A	✓	✓
Department of the Treasury	✓	✓	N/A	✓	✓

Agency	Demonstrated compliance with section 15(k)				
	15(k): Director experience	15(k)(2): Compensation/ seniority	15(k)(3): Reporting requirement (head of agency or deputy head) ^a	15(k)(7): Supervisory duties	15(k)(15): Collateral duties
Department of Veterans Affairs	✓	✓	☒	✓	✓
Environmental Protection Agency	✓	✓	N/A	✓	☒
General Services Administration	✓	✓	N/A	✓	✓
National Aeronautics and Space Administration	✓	✓	✓	✓	✓
Office of Personnel Management	✓	☒	N/A	✓	✓
Social Security Administration	✓	☒	☒	✓	☒
U.S. Agency for International Development	✓	✓	N/A	✓	☒

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization, ✓ = demonstrated compliance, ☒ = did not demonstrate compliance, N/A = not assessed

Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration). Agencies for which we did not assess this requirement are indicated in the table by "N/A."

- **Energy.** The position description states that the director reports directly to the secretary. However, the performance appraisals we reviewed were signed by the deputy chief of staff and the chief of staff.¹⁶ An Energy official stated that the secretary provides input into the OSDBU director's rating.
- **VA.** Based on documentation we received from and discussions we held with VA, the OSDBU director reports to the chief of staff, who signs the performance appraisals. An OSDBU official told us that if a matter required the attention of the secretary, the director would first advise the chief of staff. However, the official stated that the director

¹⁶At the Department of Energy, we reviewed the performance appraisals for the former OSDBU director because the current OSDBU director's tenure started in January 2017.

has all the access to the secretary and deputy secretary that he needs.

- **SSA.** The organizational chart and performance appraisal show that the OSDBU director reports to the chief of staff. Agency officials explained that, since 2013, the commissioner has delegated this duty to the deputy commissioner. As of May 10, 2017, the agency did not have a deputy commissioner because the deputy commissioner was serving as the acting commissioner. In the absence of a deputy commissioner, the responsibilities were transferred to the chief of staff.
- **Education.** The performance appraisal indicates that the OSDBU director reports to the senior policy adviser. An OSDBU official explained that, currently, the agency does not have a deputy secretary and that this duty had been delegated to the senior policy adviser. The official also stated that, in the past, the director typically met with the deputy secretary on a monthly basis and provided an update to the deputy secretary on small business activities.

Twenty-three of 24 Agencies We Surveyed Demonstrated Compliance with Requirements for Director Qualifications and Supervisory Duties, but Five Directors Had Collateral Duties

Levels of demonstrated compliance with three other requirements for directors (experience, supervisory duties, and collateral duties) varied somewhat by requirement at the 24 agencies we surveyed, but were high across all three requirements.

Director experience. Section 15(k) requires that the OSDBU director have prior experience from among a number of enumerated roles (such as federal contracting officer, program manager for a federal acquisition program, or attorney specializing in federal procurement law). Based on their survey responses and follow-up discussion with officials at the agencies, 23 of the 24 agencies demonstrated compliance with the requirement relating to prior experience of OSDBU directors (examples follow).

- **State.** According to the survey response, the OSDBU director has prior experience in program management for a federal acquisition program and also was a small business technical adviser and small business liaison officer.
- **Education.** The survey response from the Department of Education indicated the director had prior experience as a federal contracting officer, contracts administrator, and federal small business contracts manager.

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- **Interior.** Survey responses from the Department of the Interior indicated the director had prior experience as a contracts administrator and small business liaison officer.

The OSDBU director at the Department of Housing and Urban Development (HUD) did not demonstrate compliance. While the OSDBU director had experience in related jobs, the director had not had any of the jobs specifically identified in section 15(k). The survey response cited the director's prior experience as the deputy assistant secretary for operations and management and deputy chief human capital officer. The director also served in several positions in which contracting was a responsibility. An OSDBU official stated that the director has had a long work history in a variety of jobs and felt that the director was prepared for the role of the OSDBU director.

Supervisory duties. Section 15(k)(7) requires that the OSDBU director have supervisory authority over agency personnel to the extent that the functions and duties of such personnel are related to the functions or duties implemented and executed by the OSDBU. Based on the survey responses, follow-up with agency officials, and review of position descriptions, 23 of 24 agencies demonstrated compliance with the requirement relating to supervisory duties of the OSDBU director.

For instance, at the Departments of the Army and Homeland Security, the position descriptions and survey responses we reviewed indicated that the directors have such supervisory authority over agency personnel (to the extent that the functions and duties of the personnel relate to sections 8 and 15 of the Small Business Act).¹⁷ At the Department of Justice, the survey response indicated that the OSDBU director oversees OSDBU staff and has supervisory authority over small business specialists whose duties are related to sections 8 and 15 of the Small Business Act. Also, in a follow-up discussion, an OSDBU official told us that the director works regularly with each small business specialist in executing the department's small business programs.

¹⁷The Small Business Act created many small business programs and requirements. Section 8 creates a system through which small business government contracting is encouraged and outlines certain requirements for agencies contracting with small businesses. Section 8 also includes the women-owned small business procurement program and empowers the Small Business Administration to provide assistance in multiple ways to small businesses. See 15 U.S.C. § 637.

In contrast, the Defense Logistics Agency (DLA) did not demonstrate compliance with the requirement relating to supervisory duties. An official in the OSDBU explained that, while the director appointed small business associates to work in the field, the director does not directly supervise field staff. The office provides policy and program oversight, and the field staff report to deputy commanders at their sites.

Collateral duties. Section 15(k)(15) requires that the person in the position of the director exclusively carry out the duties enumerated in Small Business Act and that the OSDBU director not hold any other title, position, or responsibility, except as necessary to carry out responsibilities under this subsection. Based on the survey responses and follow-up interviews with officials at selected agencies, we determined that 19 of 24 agencies demonstrated compliance with this requirement.¹⁸

The remaining five OSDBU directors or acting directors at the time of our review at the U.S. Department of Agriculture (USDA), Department of Labor, Environmental Protection Agency (EPA), SSA, and U.S. Agency for International Development (USAID) indicated they had collateral responsibilities.¹⁹

- **USDA.** An OSDBU official indicated that the acting director holds another position as the acting assistant secretary for administration. The official indicated that the acting director spends 40–60 hours a week on duties related to the acting assistant secretary position. The official explained that the agency has had an acting OSDBU director since January 2017, when the prior OSDBU director’s position as a political appointee ended. The official stated that past OSDBU

¹⁸The VA OSDBU director has responsibilities that include verification functions for service-disabled veteran-owned small businesses and veteran-owned small businesses. On February 13, 2017, the VA OSDBU director sought a legal opinion from VA’s Office of General Counsel to determine if the performance of the verification function for the 2 small business categories was within the scope of the responsibilities authorized for the OSDBU director under 15 U.S.C. § 644(k)(15). On April 6, 2017, VA’s Office of General Counsel determined that performing the verification function was necessary for the OSDBU director to perform the responsibilities set forth in 15 U.S.C. § 644(k)(4) and 15 U.S.C. § 637, and that performing the verification function was not prohibited by 15 U.S.C. § 644(k)(15).

¹⁹We also assessed the acting OSDBU directors for certain compliance determinations for section 15(k) director requirements, such as reporting to the agency head or deputy head or collateral duties. At the time of our review, two of the five agencies that did not demonstrate compliance—USDA and the Department of Labor—had acting OSDBU directors.

directors worked exclusively as OSDBU directors and that, when the permanent OSDBU director is appointed, that person will not have other duties. The official stated that he does not know when the director position will be filled. He said that the secretary of USDA, who was recently confirmed, would likely make the political appointment.

- **Labor.** Based on information we received from and discussions we held with the Department of Labor, the acting OSDBU director holds other positions and titles, including assistant secretary of management and administration and chief acquisition officer.²⁰ According to a March 2010 department order, the goal of realigning the agency's small business-related functions under the assistant secretary for administration and management is to better integrate small business outreach and small business procurement within the overall procurement function of the department. The assistant secretary for administration and management was appointed to serve as the OSDBU director.
- **EPA.** According to an agency official, the director also oversees two EPA-wide programs: (1) the Disadvantaged Business Enterprise Program, which is designed to increase the use of such businesses in procurements funded under EPA's financial assistance agreements; and (2) the Asbestos and Small Business Ombudsman Program, which advocates for small businesses on regulatory and environmental compliance issues. The official stated that the intent is to increase cost efficiencies and effectiveness in overlapping functions directed at small businesses. The official also stated that sharing resources to accomplish these complementary agendas makes sense for the agency. Further, the official said that the director helps to provide administrative support to the procurement manager for the Disadvantaged Business Enterprise Program. Finally, the Clean Air Act of 1990 requires the OSDBU, through the program ombudsman,

²⁰The Department of Labor refers to the OSDBU director as the director of the Small and Disadvantaged Business Utilization Program.

to monitor activities for the Asbestos and Small Business Ombudsman Program.²¹

- **SSA.** The survey response and follow-up discussion indicated that the OSDBU director held a collateral position as agency coordinator for the Electronic Subcontracting Reporting System. SSA officials explained that, originally, the subcontracting reporting was manually collected. When the reporting went to an electronic collection system, the OSDBU director was named as the agency contact. This resulted in the OSDBU accepting responsibility for this reporting system, which contracting officers use. An OSDBU official stated that the time the director spends on this activity is minimal—occasionally addressing a few e-mails. The official said the system is critical to the director's role, but the coordination work is not critical. The OSDBU official does not view this to be a collateral duty.
- **USAID.** The survey response stated that the OSDBU director oversees the Minority Servicing Institutions Program. In a follow-up meeting, an OSDBU official told us that this activity was not essential to carrying out OSDBU duties. The program involves both advocacy and outreach and has a full-time coordinator. The OSDBU official stated that during most weeks the director spends less than 2–3 hours on activities related to the Minority Servicing Program but on occasion may spend more time on such work. The official added that the OSDBU director overseeing this responsibility made sense from an agency perspective because the OSDBU's role includes promoting and assisting disadvantaged businesses.

²¹According to the Clean Air Act of 1990, the administrator shall direct the agency's OSDBU through the small business ombudsman to monitor the Small Business Stationary Source Technical and Environmental Compliance Assistance Program under this Clean Air Act section. The monitoring activities include (1) rendering advisory opinions on the overall effectiveness of the assistance program, difficulties encountered, and degree and severity of enforcement; (2) periodic reporting to Congress on program compliance with requirements of the Paperwork Reduction Act, Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and Equal Access to Justice Act; (3) reviewing information to be issued by the program to ensure the layperson can understand the information; and (4) having the program serve as the secretariat for the development and dissemination of such reports and advisory opinions. 42 U.S.C. § 7661f(d).

For purposes of our report, we did not include this responsibility as the determining factor for our assessment. Instead, we relied on the Disadvantaged Business Enterprise Program responsibility when making our determination that EPA did not demonstrate compliance with section 15(k)(15).

Most OSDBU Directors Demonstrated Compliance with Requirement for Compensation and Seniority

Section 15(k)(2) generally requires that the OSDBU director be appointed by the agency head to an SES position.²² However, in cases in which the positions of chief acquisition officer and senior procurement executive at an agency are not SES positions, the OSDBU director may be appointed to a position compensated at not less than the minimum rate of basic pay for grade 15 of the General Schedule.

Survey responses and agency documents we reviewed at the 24 agencies show that the positions of most permanent OSDBU directors (18 of 24) were at the SES level.²³ However, 6 OSDBU directors—at USDA, the Departments of Commerce and Labor, DLA, the Office of Personnel Management (OPM), and SSA—held positions at other levels, such as at GS-15, while the chief acquisition officers or senior procurement executives in these agencies held SES-level positions or were executive schedule political appointees who were not in SES positions.

- **USDA.** At the time of our review, the current OSDBU director was an acting director. OSDBU officials at USDA explained that, historically, the permanent director was a political appointee holding an SES position. However, the prior director was a political appointee holding a GS-15 position. The officials explained that the position was temporary (6 months) and that it would have been difficult to fill the position with a member of the SES on a short-term basis. According to the survey, both the senior procurement executive and the chief acquisition officer held SES positions.

²²An SES position is any position in an agency classified above GS-15 or in Level IV or V of the executive schedule, or an equivalent position, not required to be filled by an appointment by the President (with the consent of the Senate). An employee in such a position (1) directs the work of an organizational unit; (2) is held accountable for the success of 1 or more specific programs or projects; (3) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to the goals; (4) supervises the work of employees other than personal assistants; or (5) otherwise exercises important policy-making, policy-determining, or other executive functions, with certain enumerated exceptions. 5 U.S.C. § 3132(a)(2). Therefore, a presidentially appointed, Senate-confirmed position compensated under the executive schedule does not meet the definition of SES.

²³In cases in which the agency had an acting director, we assessed whether agencies demonstrated compliance based on the seniority and compensation of the immediate prior permanent director.

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- **Commerce.** Officials told us that they have been discussing the possibility of converting the OSDBU director position to an SES position and were discussing the process for securing additional resources for this conversion.
 - **Labor.** At the time of our review, Labor had an acting director who held an SES position. We assessed compliance based on the immediate prior permanent OSDBU director. An official from the Department of Labor stated in an e-mail that the prior permanent OSDBU director was a presidentially appointed, Senate-confirmed position compensated under the executive schedule.
 - **DLA.** The survey response and the position description indicated that the director held a General Schedule position (GS-15). According to the survey, the chief acquisition officer and senior procurement executive are SES positions. In a follow-up meeting, agency officials stated that the agency has requested that DOD seek congressional approval to add an SES position for the OSDBU director. They stated that the agency has been waiting for authorization to make this change.
 - **OPM.** An OSDBU official told us that, since the enactment of this requirement in 2013, the director has held a GS-15 position. The agency has been considering making this an SES position, but the official explained that, until the agency administrator position was filled, the agency would not act on this matter.
 - **SSA.** Officials said that, although the law requires the OSDBU director to be an equivalent position to the senior procurement executive, they believe this does not work at SSA. They explained that SSA is a small agency in terms of acquisitions. They further stated that GS-15 is the level appropriate for the OSDBU director.

Ongoing demonstration of noncompliance with section 15(k) OSDBU director-related requirements, described in this section of the report, potentially undermines the intent of the act. Reporting to lower levels of management may result in OSDBU directors not having direct access to top agency management, which may limit their influence. Collateral duties may take time away from the critical functions within section 15(k) duties. While some OSDBU officials believed that these collateral duties are minimal or are appropriate, the agencies have not reported their concerns to Congress. Also, if an OSDBU director holds a General Schedule position and the agency's chief acquisition officer and senior procurement executive are SES positions, the OSDBU director's ability to effectively advocate for small businesses may be affected.

Agency Compliance Varied by Functional Requirement

Levels of demonstrated compliance were high for five of eight functional requirements, but were much lower for the remaining three requirements (see table 2).

- All 24 agencies demonstrated compliance with three section 15(k) areas related to providing advice to officials, providing training to small businesses or acquisition personnel, and receiving unsolicited proposals and forwarding them when appropriate.
- Twenty-three of the 24 agencies demonstrated compliance related to identifying and addressing significant bundling of contract requirements and providing payment assistance to small businesses.
- Ten and eight of the 24 agencies, respectively, did not demonstrate compliance with requirements for assigning small business technical advisers and providing advice on proposed in-sourcing decisions.
- Nine of the 24 agencies did not demonstrate compliance with the requirement to respond to notifications of undue restrictions on the ability of small businesses to compete.

All OSDBUs Demonstrated Compliance with Certain Requirements

Our review of survey responses, agency documents, and interviews with agency officials showed that all 24 agency OSDBUs demonstrated compliance in three areas—providing advice to officials, providing training to small businesses or acquisition personnel, and forwarding unsolicited proposals.

Provide advice to chief acquisition officer and senior procurement executive. Section 15(k)(12) requires that an officer or employee in the position of the OSDBU director must provide the chief acquisition officer and senior procurement executive of the agency with advice and comments on acquisition strategies, market research, and justifications related to the consolidation of contract requirements. All 24 agencies we reviewed demonstrated compliance with the requirement to provide such advice and comments. Survey and follow-up responses from agency officials revealed that the frequency and manner of such advice varied across OSDBUs. Some agencies had meetings with various acquisition personnel to discuss issues for which the OSDBU director provided input to the chief acquisition officer and senior procurement executive. For example, policy documents and survey responses from USDA showed that the director participates in the procurement council that advises the chief acquisition officer and senior procurement executive. Other

agencies had scheduled meetings between the OSDDBU director and the chief acquisition officer, senior procurement executive, or both.

Table 2: Agencies' Demonstrated Compliance with Section 15(k) Requirements for Select OSDDBU Functions as of May 19, 2017

Agency	Demonstrated compliance with section 15(k)							15(k)(17): Respond to notification of an undue restriction on ability of small business to compete
	15(k)(5): Identify and address bundling of contract requirements	15(k)(6): Provide assistance on payments	15(k)(8): Assign small business technical advisers	15(k)(11): Advise on in-sourcing	15(k)(12): Provide advice to CAO and SPE	15(k)(13): Provide training	15(k)(14): Receive unsolicited proposals and forward them when appropriate	
Defense Logistics Agency	✓	✓	✓	☒	✓	✓	✓	☒
Department of Agriculture	✓	✓	✓	✓	✓	✓	✓	☒
Department of the Air Force	✓	✓	✓	✓	✓	✓	✓	✓
Department of the Army	✓	✓	☒	✓	✓	✓	✓	✓
Department of Commerce	✓	✓	☒	☒	✓	✓	✓	☒
Department of Defense – Office of the Secretary	☒	✓	☒	✓	✓	✓	✓	✓
Department of Education	✓	✓	✓	☒	✓	✓	✓	✓
Department of Energy	✓	✓	☒	✓	✓	✓	✓	☒
Department of Homeland Security	✓	✓	✓	✓	✓	✓	✓	✓
Department of Housing and Urban Development	✓	✓	✓	☒	✓	✓	✓	✓
Department of the Interior	✓	✓	✓	☒	✓	✓	✓	☒
Department of Justice	✓	✓	✓	✓	✓	✓	✓	✓
Department of Labor	✓	✓	✓	✓	✓	✓	✓	✓
Department of the Navy	✓	✓	☒	✓	✓	✓	✓	✓
Department of State	✓	✓	☒	✓	✓	✓	✓	☒

Demonstrated compliance with section 15(k)								
Agency	15(k)(5): Identify and address bundling of contract requirements	15(k)(6): Provide assistance on payments	15(k)(8): Assign small business technical advisers	15(k)(11): Advise on in- sourcing	15(k)(12): Provide advice to CAO and SPE	15(k)(13): Provide training	15(k)(14): Receive unsolicited proposals and forward them when appropriate	15(k)(17): Respond to notification of an undue restriction on ability of small business to compete
Department of Transportation	✓	✓	✓	✓	✓	✓	✓	✓
Department of the Treasury	✓	✓	☒	☒	✓	✓	✓	✓
Department of Veterans Affairs	✓	✓	☒	☒	✓	✓	✓	✓
Environmental Protection Agency	✓	✓	✓	✓	✓	✓	✓	✓
General Services Administration	✓	✓	✓	✓	✓	✓	✓	✓
National Aeronautics and Space Administration	✓	✓	✓	✓	✓	✓	✓	☒
Office of Personnel Management	✓	✓	☒	✓	✓	✓	✓	☒
Social Security Administration	✓	☒	☒	☒	✓	✓	✓	✓
U.S. Agency for International Development	✓	✓	✓	✓	✓	✓	✓	☒

Legend: OSDDBU = Office of Small and Disadvantaged Business Utilization, ✓ = demonstrated compliance, ☒ = did not demonstrate compliance, CAO = chief acquisition officer, SPE = senior procurement executive

Source: GAO. | GAO-17-675

Note: To obtain information for determinations on OSDDBU functions, we surveyed OSDDBU directors at 24 agencies about certain OSDDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

Provide training to small businesses. Section 15(k)(13) states that an officer or employee of the OSDDBU may provide training to small businesses and contract specialists. Each of the 24 agencies demonstrated compliance with the requirement. Agencies provided training to contracting personnel, small businesses, or both. The scope of the training varied from presentations to staff on the fundamentals of small business contracting and SBA’s socioeconomic contracting goals to one-on-one coaching with small businesses. One OSDDBU official told us that the agency provided regular, ongoing, ad-hoc small business training

to acquisition and program staff on an almost daily basis as part of its work. Another OSDBU official told us they provided both in-person and virtual training to small businesses and contracting specialists. An additional OSDBU official told us that the OSDBU manages an annual training program that consists of 18 to 25 individual training courses which cover a wide variety of issues from specific small business programs to using third-party contracts.

Receive unsolicited proposals and forward them when appropriate. Section 15(k)(14) requires OSDBUs to receive unsolicited proposals and to forward them, when appropriate, to personnel of the activity responsible for reviewing such proposals. All 24 OSDBUs indicated that, if the office were to receive an unsolicited proposal, they would forward it to appropriate agency personnel. Some OSDBUs indicated that it was a rare occurrence for the OSDBU office to receive an unsolicited proposal. Several agencies, including NASA and HUD, had publicly available procedures and guidelines for submitting an unsolicited proposal to the appropriate office.

Nearly All OSDBUs Demonstrated Compliance with Requirements to Identify Significant Bundling and Provide Payment Assistance

Based on our review of survey responses, policy documents, and interviews with agency officials, 23 of the 24 agencies demonstrated compliance with identifying and addressing significant bundling of contract requirements and with providing payment assistance to small businesses.

Identify and address bundling of contract requirements. Section 15(k)(5) requires OSDBUs to identify proposed solicitations that involve significant bundling of contract requirements and, where appropriate, to work with agency officials to mitigate the effects to small businesses. Twenty-three of 24 OSDBUs demonstrated compliance with this requirement. Most agencies indicated they had policies for the OSDBU to review proposed solicitations and many cited having a certain dollar threshold to review for any bundling. For example, OPM's survey response and submitted policy documentation indicated that small business specialists review all proposed procurements over \$150,000.

One agency did not demonstrate compliance. Within the Department of Defense – Office of the Secretary, the OSDBU director has an oversight role in relation to identifying proposed bundling, rather than an implementation role. According to OSDBU officials, the Office of the Secretary's small business staff work with contracting officers to review proposed acquisitions and mitigate the effects of bundling. However, due

to the size and decentralized nature of contracting at the Office of the Secretary, these personnel are not part of the OSDBU.

Provide assistance on payments. Section 15(k)(6) requires OSDBUs to assist small businesses in obtaining payments, required late payment interest penalties, or information on payments. Twenty-three of 24 OSDBUs helped small businesses seeking assistance with payments, whether from the agency or from a prime contractor (when the small business is a subcontractor).

The types and scope of payment assistance varied, but most agencies had policies to address small business payments. For example, the survey response from the Department of Justice indicated that the agency has a policy to pay small businesses within 15 days of receiving an invoice. An agency official thought this policy greatly reduced the requests for assistance the OSDBU received, but the official noted that, should a small business ask for assistance, the OSDBU would provide assistance as needed. In contrast, SSA did not demonstrate compliance. Officials we interviewed said the OSDBU only assists in limited instances involving a small business seeking help with payment issues, usually by referring the business to the contracting office. The officials said that the OSDBU generally does not get involved when a small business seeks payment from a prime contractor.

Some OSDBUs Did Not Demonstrate Compliance for Assigning Small Business Technical Advisers, Advising on In-Sourcing, and Responding to Notifications of Undue Restrictions

In reviewing information from our survey, follow-up questions, interviews, and policy documentation, we determined that 10 of the 24 agencies did not demonstrate compliance with the requirement for assigning small business technical advisers, and 8 of the 24 agencies did not demonstrate compliance with providing advice on proposed in-sourcing decisions. Nine of the 24 agencies did not demonstrate compliance with the requirement to respond to notifications of an undue restriction on the ability of small businesses to compete.

Assign small business technical advisers. Section 15(k)(8) requires the OSDBU director to assign a small business technical adviser to each office in which SBA has assigned a procurement center representative.²⁴ Fourteen of 24 agencies demonstrated compliance with this requirement, while 10 did not. OSDBU officials frequently cited organizational structure as a barrier to assigning technical advisers. However, we determined that they did not demonstrate compliance, illustrated in the following examples.

- **State.** An agency official stated that the OSDBU director does assign small business technical advisers to offices with an SBA procurement center representative; however, the technical advisers are not full-time employees of the procuring activity and are only assigned to work with the procurement center representative as required. There is 1 procurement center representative assigned to cover all 46 bureaus at the Department of State. Small business technical advisers within the OSDBU are assigned to work with the bureaus based on need. All technical advisers are full-time employees in the OSDBU and have at least 8 years of experience.
- **SSA.** Agency officials commented that the statute was intended for agencies with larger acquisition operations with multiple acquisition offices. SSA is a smaller procurement agency (one acquisition office) and does not assign a technical adviser. The officials stated that the agency does have an adviser position (which is termed the Small and Disadvantaged Business Utilization Specialist), but that position is managed by another office.

²⁴The small business technical advisers must be full-time employees of the procuring activity and well qualified, technically trained, and familiar with the supplies or services purchased at the activity. In addition, the adviser's principal duty must be to assist the SBA procurement center representative in his or her duties and functions relating to 15 U.S.C. § 637 and 644. 15 U.S.C. § 644(k)(8)(A)-(B).

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- **Army and Navy.** The Departments of the Army and Navy told us that their OSDBU directors did not assign small business technical advisers because the technical advisers were hired by and reported to the head of the contracting activity at the procurement center in which they were located. At Navy, an agency official stated that law and regulation disagree on this requirement. The Defense Federal Acquisition Regulation delegated the responsibility to hire technical advisers to the head of contracting. An agency official stated that this is an effective way to implement the Small Business Act. However, when statutory provisions, such as section 15(k), conflict with regulations, such as the acquisition regulation, the statute controls.

Advise on in-sourcing. Section 15(k)(11) requires the OSDBU director to review and advise the agency on any decision to convert an activity performed by a small business to an activity performed by a federal employee (known as in-sourcing). Based on the survey responses and interviews, we determined that 8 agencies did not demonstrate compliance with this requirement. Agencies not demonstrating compliance typically said that OSDBUs did not have a role in reviewing every decision to in-source an activity but that the office might be consulted in some cases, as shown in the following examples.

- **HUD.** An OSDBU official told us that in-sourcing was generally considered a business decision and carried out by the Office of the Chief Procurement Officer, and that the OSDBU was not consulted.
- **SSA.** The officials told us that the budget office handles in-sourcing conversions, but that the budget office might contact the OSDBU regarding in-sourcing on an informal basis.

Respond to notification of an undue restriction on ability of small business to compete. Section 15(k)(17) requires that, when notified by a small business (before contract award) that the small business believes that a solicitation, request for proposal, or request for quotation unduly restricts the ability of the small business to compete for the award, the OSDBU director must (1) submit the notice to the contracting officer, and if necessary, recommend ways to increase the opportunity for competition; (2) inform the agency's advocate for competition; and (3) ensure that the small business is aware of other resources and processes available to address unduly restrictive provisions.

Nine of the agencies did not demonstrate compliance with all of the required steps. OSDBU officials from the nine agencies not demonstrating compliance told us that they would carry out two of the three required follow-up actions. For instance, OSDBU officials at some

agencies told us that, after receiving a notification, the directors would discuss the issue with the contracting officer working on the solicitation or proposal and that they also would ensure the small business was aware of resources to address the issue, but they would not consistently notify the agency's advocate for competition (examples follow).

- **NASA, USDA, and DLA.** The OSDBU officials from these agencies indicated that the goal was to resolve the competition issue at the lowest level possible, meaning directly with the contracting officer, and thus not inform the agency's competition advocate. Additionally, the officials thought that it was more efficient to work to resolve issues at the lowest levels rather than notifying the agency advocate for competition. At USDA, OSDBU officials indicated that, if direct resolution with the contracting officer was unsuccessful, the situation could be elevated, possibly to the level of advocate for competition. Additionally, an OSDBU official at NASA said it was rare to receive notifications of this type because the agency proactively makes solicitations work for small businesses.
- **USAID.** The survey response indicated that the OSDBU does not inform the agency's advocate for competition of the notice. An agency official told us that the office goes directly to the procurement officer and ombudsman to resolve competition issues.

In addition to survey responses about individual functions, a few agencies commented on how staffing levels affected their ability to fully carry out section 15(k) functions. The Department of Commerce said the OSDBU was significantly affected by low staffing levels, limiting it in efforts such as creating and updating small business contracting policies, reviewing broader acquisition policies that may affect small businesses, and conducting training for small businesses. SSA stated that staffing levels prevented the OSDBU from attending outreach events and meeting individually with small business owners due to scheduling conflicts. Additionally, the Air Force indicated that its OSDBU could do more, or have a more robust program implementation, if it had additional staff.

For the agencies we identified as not having demonstrated compliance with certain OSDBU function requirements (such as assigning small business technical advisers or responding to notifications of an undue restriction on competition), some agencies felt that their existing organization structure was a barrier to carrying out an activity or that their goal was to resolve issues at the lowest levels possible without notifying the agency advocate for competition. But continued demonstration of noncompliance with these requirements may undermine the intent of the

provisions and may limit the extent to which OSDBUs can advocate for small businesses. Additionally, by not having a role in carrying out certain section 15(k) requirements, OSDBUs may be unaware of small business matters that might require further attention.

SBA Has Begun to Collect OSDBU Training and Travel Reports for Consolidated Submission to Congress

In addition to the 13 requirements relating to OSDBU directors or to OSDBU functions, we reviewed an additional requirement. Section 15(k)(16) requires that each fiscal year the OSDBU director submit a report to the House Committee on Small Business and the Senate Committee on Small Business and Entrepreneurship describing training provided and training and travel expenditures in the past fiscal year. Most OSDBUs (22 of 24) told us they did not submit these reports to Congress or SBA in past years. Some of the agencies told us in interviews that they had not submitted this report because SBA or the committees had not provided guidance on how to do so. Other agencies indicated they were unaware of this requirement. Two agencies (the Department of Transportation and USAID) indicated that they had submitted fiscal year 2014 and 2015 reports to Congress, and they provided us with copies.

During the course of our review, SBA established new procedures to collect training and travel reports from all the OSDBUs. According to SBA, all of the 24 agencies submitted their fiscal year 2016 reports to SBA, which SBA compiled and submitted as a consolidated report to Congress in June 2017.²⁵

²⁵According to SBA, in an open discussion at the October 2016 SBPAC meeting, an agency OSDBU director suggested that there might be a benefit in SBA collecting and forwarding a summary report on behalf of the OSDBU directors (rather than individual reports of varying formats and submission dates) to satisfy the requirements of section 15(k)(16). SBA concurred that having a single summary report would provide a more coherent report to Congress. At the November 2016 SBPAC meeting, SBA established an agency report submission date of March 7, 2017, and a target date of June 9, 2017, to forward a consolidated report to Congress (after resolving discrepancies, compiling the summary report, and obtaining agency clearances).

Some SBPAC Compliance Review Scores Were Not Consistent with Our Compliance Determinations

We found that some SBPAC peer review scores were inconsistent with our demonstrated compliance determinations (for the section 15(k) requirements we both considered). As required, the SBPAC peer review panel annually conducts reviews of each OSDBU to determine compliance with section 15(k) requirements.²⁶ The review assesses an agency's progress plan by considering seven success factors for achievement of and commitment to small business contracting.²⁷ SBPAC must report the results to the House and Senate Small Business committees. The peer reviews are a form of internal control that is intended to provide some assurance that OSDBUs comply with section 15(k) requirements.

More specifically, for several agencies, our compliance determinations for the section 15(k) requirements related to organizational structure did not align with SBPAC's fiscal year 2016 scores for the "OSDBU organization" success factor (see table 3).²⁸ For example, the Department of Labor's OSDBU organization score was 0.9 (classified by SBA as above average), but we determined that the agency did not demonstrate compliance with two of five section 15(k) requirements related to organizational structure. Similarly, SSA received an OSDBU organization score of 0.8 (satisfactory), but we determined that it had not demonstrated compliance with four of five section 15(k) requirements related to organizational structure. Table 3 provides additional examples of inconsistencies between the SBPAC scores and our determinations. In

²⁶The National Defense Authorization Act for Fiscal Year 2013 amended the statutory requirements of 15 U.S.C. § 644a to require SBPAC to annually review each OSDBU to determine compliance with section 15(k) requirements and report the results to House and Senate Small Business committees. The peer review panel comprises nine OSDBU directors who volunteer to review the agency submissions and assign a numeric score for each success factor, which is averaged to determine an overall score.

²⁷Some success factors closely mirror requirements and areas of section 15(k), while others are more general and do not align with section 15(k) specifically.

²⁸For purposes of comparing SBPAC scores and our determinations, we focused on the organization success factor because it aligned most directly with five section 15(k) requirements—sections 15(k)(2), (k)(3), (k)(7), (k)(8), and (k)(15). As noted earlier, we reviewed 10 agencies in relation to compliance with section 15(k)(3). Other success factors are less directly related to the additional section 15(k) requirements in our review. The nine members of the peer review panel each provide a score of 0.6, 0.7, 0.8, 0.9, or 1.0 for each success factor, and SBA then calculates an average of each success factor score. SBA's peer review panel guidance provides the following grading scale for success factor scores: 1.0 (excellent), 0.9 (above average), 0.8 (satisfactory), 0.7 (below average), and 0.6 (unsatisfactory).

addition, agencies in the most recent review received overall scores (across the seven success factors) of 94–98 percent.

For each success factor, agencies provide SBPAC reviewers with a brief narrative explaining their efforts and can (but are not required to) submit up to three supporting documents. The resulting assessment scores are then used in developing SBA's annual scorecard grade for each agency.²⁹ According to federal standards for internal control, management should use quality information to make informed decisions and evaluate an entity's performance in achieving key objectives.³⁰ Additionally, these standards state that management should design control activities to achieve objectives.³¹

²⁹Scorecards report an overall letter grade (80 percent of which is determined by prime contracting achievement, 10 percent by subcontracting achievement, and 10 percent by an agency's achievement of its progress plan).

³⁰See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

³¹Control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in an internal control system.

Table 3: Peer Review Scores for Organization Success Factor (FY 2016) Compared with GAO Determinations of Compliance for Related Section 15(k) Requirements (as of May 19, 2017), Selected Agencies

Agency	SBPAC peer review score for organization success factor^a (FY 2016)	GAO determinations of compliance and associated subsections of section 15(k) (as of May 19, 2017; out of 4 or 5^b)
Department of Agriculture	1.0 (excellent)	Not demonstrated for 2 of 4: (k)(2) and (k)(15)
Department of Energy	0.83 (satisfactory)	Not demonstrated for 2 of 5: (k)(3) and (k)(8)
Department of Justice	0.83 (satisfactory)	Demonstrated for 4 of 4
Department of Labor	0.9 (above average)	Not demonstrated for 2 of 5: (k)(2) and (k)(15)
Department of State	1.0 (excellent)	Not demonstrated for 1 of 5: (k)(8)
Department of Veterans Affairs	0.8 (satisfactory)	Not demonstrated for 2 of 5: (k)(3) and (k)(8)
Environmental Protection Agency	0.93 (above average)	Not demonstrated for 1 of 4: (k)(15)
Office of Personnel Management	0.83 (satisfactory)	Not demonstrated for 2 of 4: (k)(2) and (k)(8)
Social Security Administration	0.8 (satisfactory)	Not demonstrated for 4 of 5: (k)(2), (k)(3), (k)(8), and (k)(15)

Legend: FY = fiscal year; SBPAC = Small Business Procurement Advisory Council

Sources: Small Business Administration and GAO. | GAO-17-675

Note: This table compares selected agencies for which the SBPAC scores for "organization success factor" were not consistent with our determinations of compliance with similar section 15(k) requirements. We were unable to compare SBPAC scores to our determinations of compliance for the five Department of Defense agencies we reviewed (Office of the Secretary, Defense Logistics Agency, and Departments of the Air Force, Army, and Navy) because the SBPAC scores the Department of Defense as a whole rather than by component.

^aSBA's peer review panel guidance provides the following grading scale for success factor scores: 1.0 (excellent), 0.9 (above average), 0.8 (satisfactory), 0.7 (below average), and 0.6 (unsatisfactory). Individual reviewers provide a score for each success factor, and the scores are then averaged across reviewers to determine an agency's overall score for each success factor. Therefore, some agencies' success factor scores fall in between two categories on the grading scale (e.g., between 0.9 and 1.0). In this table, we identified agencies with scores in between two categories as corresponding to the category to which they were closest.

^bWe reviewed compliance with section 15(k)(3), which generally requires the OSDDBU director to report to the head or deputy head of the agency, for 10 of the 24 agencies in our review. Therefore, only some of the agencies listed in the table were assessed on all five section 15(k) requirements considered for this comparison, while other agencies were assessed on the other four requirements: (k)(2), compensation/seniority of the OSDDBU director; (k)(7), supervisory duties of the OSDDBU director; (k)(8), assigning small business technical advisers; and (k)(15), collateral duties of the OSDDBU director.

For example, SBA provides guidance to peer reviewers and agencies that lists two examples of documentation that agencies may submit to support their compliance with the five 15(k) sections included under the success factor for OSDBU organization. Section 15(k)(3) requires that the OSDBU director's performance appraisal be signed by the agency head, deputy head, or, in the case of DOD, the secretary or secretary's designee. But the only two examples of documentation that are included in the SBA guidance are an organizational chart and an employee job description. Reviewing these two types of documents may allow for some determination of the reporting chain at an agency, but it would not allow for a determination of whether the required official signed a director's performance appraisal.

During our review, we requested these documents and also a copy of the performance appraisal from each agency to support our determination of whether the OSDBU director reported directly to the agency head or deputy head as generally required in section 15(k)(3). Additionally, we discussed the section 15(k) requirements with agency staff to clarify information and assess the extent to which the OSDBU met this requirement. Other than reviewing the documentation provided by agencies, SBA's guidance for the peer review panel does not indicate any other means by which peer reviewers could obtain or clarify information. SBA officials told us they rely on members of SBPAC to oversee the review of their peers and determine thresholds of evidence, and also on the agencies to provide information in good faith. As a result of this approach and as differences between the peer review scores and our compliance determinations suggest, SBPAC scores may not accurately reflect an agency's compliance with section 15(k) requirements.

Planned changes to scoring in the peer review process also may affect the reliability of the scores and information reported about agency achievements in small business contracting. SBA has been updating its SBPAC peer review process and also plans to update its scoring methodology. SBA officials told us the updates to the peer review process will result in an expanded review that addresses 18, and possibly as many as 21, requirements of section 15(k). Officials said they expect that updated peer review panel guidance will be finalized later this year for use with the fiscal year 2017 scorecard and peer review. Preliminary information that SBA provided in a description of changes to the fiscal year 2017 scorecard suggests that the new review process will be similar to the current process.

In response to a requirement in the National Defense Authorization Act for Fiscal Year 2016, SBA also will change its scorecard methodology for fiscal year 2017.³² The provision specifies that an agency's performance towards its prime contracting goals will account for 50 percent of an agency's grade (versus 80 percent in the current formulation). The remaining 50 percent is to be weighted in a manner determined by the administrator of SBA based on certain legal requirements. SBA has preliminarily determined that the remaining 50 percent will be allocated as follows: 20 percent for the results of the peer review of section 15(k) requirements (versus the current 10 percent), 20 percent for subcontracting, and 10 percent for a comparison of awarded contracts on a year-over-year basis.

Applying similar standards to an updated peer review process that is weighted more heavily in calculating agencies' overall SBA scorecard grades could result in a greater lack of reliability in these scorecard grades and information reported to Congress. And without reliable information from the SBPAC peer review, Congress's ability to oversee federal advocacy for small businesses through OSDBUs may be hindered. When we spoke to SBA officials about the differences between the results of the peer review and our review of compliance with section 15(k) requirements, the officials indicated that they have been developing additional guidance and were considering increasing the threshold of evidence used in the peer review but had no firm plans to do so.

Conclusions

Agencies generally demonstrated high levels of compliance with some section 15(k) requirements but less so for others. For a few section 15(k) requirements for which agencies did not demonstrate compliance, staff at some agencies explained that their agencies had carried out the required activities outside of the OSDBU or by using different processes than specified in the requirements. In a few instances, some staff thought that the differing processes were more efficient for their agency. We did not assess whether these different approaches facilitated the execution of required activities, but focused on whether agencies demonstrated compliance with the requirements as described in section 15(k). Continued demonstrated noncompliance with these requirements may undermine the intent of the provisions and may limit the extent to which

³²National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 868, 129 Stat. 726, 933 (2015).

OSDBUs can advocate for small businesses. If agencies still believe that their procedures for certain activities are sufficient to advocate for small business contracts, at a minimum agencies have the obligation to explain their noncompliance to Congress and provide support for their views, including requesting any statutory flexibilities to permit exceptions as appropriate.

With SBPAC reviews potentially constituting 20 percent of agency overall SBA scorecard grades under the revised process, the reliability of the SBPAC peer review takes on greater importance. However, the results of our review often diverged from SBPAC's in areas that overlapped (our review also included section 15(k) requirements that are not part of the peer review). The divergence in results suggests that the process could be enhanced. For instance, current SBA guidance is limited in describing procedures and methods for the peer review. Enhancing SBA's peer review guidance can help increase the reliability of the peer review compliance determinations and provide more consistency with federal internal control standards.

Recommendations for Executive Action

We are making the following 20 recommendations:

To address demonstrated noncompliance with section 15(k) of the Small Business Act, as amended, we are making recommendations to the heads of 19 agencies.

- The Director of the Defense Logistics Agency should comply with sections 15(k)(2), (k)(7), (k)(11), and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
- The Secretary of Agriculture should comply with sections 15(k)(2), (k)(15), and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
- The Secretary of the Army should comply with section 15(k)(8) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
- The Secretary of Commerce should comply with sections 15(k)(2), (k)(8), (k)(11), and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

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- The Secretary of Defense should comply with sections 15(k)(5) and (k)(8) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Secretary of Education should comply with sections 15(k)(3) and (k)(11) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Secretary of Energy should comply with sections 15(k)(3), (k)(8), and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Secretary of HUD should comply with sections 15(k) and (k)(11) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Secretary of the Interior should comply with sections 15(k)(11) and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Secretary of Labor should comply with sections 15(k)(2) and (k)(15) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Secretary of the Navy should comply with section 15(k)(8) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Secretary of State should comply with sections 15(k)(8) and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Secretary of the Treasury should comply with sections 15(k)(8) and (k)(11) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Secretary of Veterans Affairs should comply with sections 15(k)(3), (k)(8), and (k)(11) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

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- The Administrator of EPA should comply with section 15(k)(15) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Administrator of NASA should comply with section 15(k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Director of OPM should comply with sections 15(k)(2), (k)(8), and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Commissioner of SSA should comply with sections 15(k)(2), (k)(3), (k)(6), (k)(8), (k)(11), and (k)(15) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.
 - The Administrator of USAID should comply with sections 15(k)(15) and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

As SBA continues to enhance the SBPAC peer review process, the SBA Administrator in her capacity as head of SBPAC should include more detailed guidelines than those used for the current process to facilitate a more in-depth review of agencies' compliance with section 15(k) requirements.

Agency Comments and Our Evaluation

We provided a draft of this report for comment to the 24 agencies with OSDBU directors in our review as well as SBA. Four agencies that demonstrated compliance with section 15(k) requirements—the Departments of Homeland Security, Justice, and Transportation and the General Services Administration—indicated that they did not have comments. In addition, USDA—which did not demonstrate compliance with three section 15(k) requirements—responded that it did not have comments. We received comments from DOD on behalf of all 5 DOD agencies in our review (Air Force, Army, Navy, DLA, and the Office of the Secretary). Air Force demonstrated compliance with the requirements, and DOD did not comment on our findings for Air Force. DOD partially agreed with our recommendation to DLA and did not agree with our recommendations to Army, Navy, and the Office of the Secretary. Of the 15 non-DOD agencies to which we made recommendations and which provided comments, 5 agreed, 4 partially agreed, 1 agreed in principle, and 5 neither agreed nor disagreed with our recommendations. The

agencies' comments and our responses are summarized below. Unless otherwise noted, these agencies provided comment letters that are reproduced in appendixes XXVIII-XXXXI. SBA and Commerce also provided technical comments that we have incorporated, as appropriate.

- Commerce agreed with four of five parts of our recommendation relating to sections 15(k)(2), compensation/seniority; 15(k)(8), assign small business technical advisers; 15(k)(11), advise on in-sourcing; and 15(k)(17), respond to a notification of an undue restriction on the ability of a small business to compete. Commerce noted that, in response, it intends to change the position of the OSDBU director to an SES position in fiscal year 2018; the OSDBU director is in the process of appointing small business technical advisers; and the agency has been updating the Commerce Acquisition Manual to address procedures for in-sourcing and unduly restrictive solicitations.

However, Commerce disagreed with one part of our recommendation for section 15(k)(5), identify and address bundling of contract requirements. The agency stated that small business set-asides valued over \$150,000 are subjected to a review and approval process that includes the bureau small business specialist, procurement center representative, OSDBU director, and sometimes the senior procurement executive. Commerce also said that when the review package does not indicate a bundling action, the small business specialist and OSDBU may investigate the possibility of bundling based on supporting documentation submitted with the review form. Commerce had not previously provided this information at the time of our review. Based on this new information, we are no longer including this part of our recommendation and have made the relevant changes in the report. The department's comments are reprinted in appendix XXVIII.

- DOD agreed with three of four parts of our recommendation to DLA relating to sections 15(k)(2), compensation/seniority; 15(k)(11), advise on in-sourcing; and 15(k)(17), respond to a notification of an undue restriction on the ability of a small business to compete. It noted that DLA will continue to submit requests to elevate the OSDBU director to an SES position; future in-sourcing actions will be coordinated with the OSDBU as required; and, when notified by a small business of undue restriction on competition, the OSDBU will forward a copy of the notification to the DLA competition advocate as required. However, DOD disagreed with the part of the recommendation for section 15(k)(7), supervisory duties. The agency stated that the headquarters DLA OSDBU director supervises all employees in the headquarters OSDBU. The agency also stated that DLA is a relatively

large agency comprising many subordinate field activities, each of which has a small business office, and a director in each of those offices supervises all the small business professionals within that activity. As noted in the report, a DLA OSDBU official explained that the OSDBU director appointed small business associates to work in the field, but did not directly supervise field staff. Section 15(k)(7) requires that the OSDBU director have supervisory authority over agency personnel to the extent that the responsibilities of such personnel are related to the functions and duties implemented and executed by the OSDBU. We maintain our recommendation.

DOD disagreed with our recommendation relating to section 15(k)(8), assign small business technical advisers, which we made separately to three agencies—the Department of the Army, Office of the Secretary of Defense, and Department of the Navy. It noted that the Defense Federal Acquisition Regulation Supplement delegates the authority to appoint small business technical advisers to the head of the contracting activity. As noted in the report, a DOD official stated that the law and regulation disagree on this requirement. However, when a statutory provision such as section 15(k) and regulations such as the acquisition regulation conflict, the statute controls. We maintain our recommendation.

DOD also disagreed with our recommendation to the Office of the Secretary of Defense relating to section 15(k)(5), identify and address bundling of contract requirements. It noted that no contracting or bundling occurs at the level of the Office of the Secretary of Defense. DOD stated that contracting and bundling occurs in acquisitions conducted at the lower-level components of DOD. As noted in the report, the OSDBU director has an oversight role in relation to identifying proposed bundling, rather than an implementation role. However, section 15(k)(5) requires OSDBUs to identify proposed solicitations that involve significant bundling of contract requirements and, where appropriate, work with agency officials to mitigate the effects on small businesses. If DOD believes that the unique situation of this office warrants its demonstrated noncompliance with this provision, the agency should explain its demonstrated noncompliance to Congress and provide support for the agency's views. Absent this, we maintain our recommendation. The department's comments are reprinted in appendix XXIX.

- Education disagreed with our determination that the agency did not demonstrate compliance with section 15(k)(3), which requires the OSDBU director to report to the head of the agency or deputy head. Education stated that, as we reported, the former deputy secretary

delegated the responsibility for the OSDBU director's performance appraisal to the senior policy adviser. The agency also stated that its performance appraisals are done at two levels: the initial appraisal and the approval by a higher-level official. Education said that, in the case of the OSDBU director, the deputy secretary was the second level of approval. Education stated that, since January 2017, the position of deputy secretary has been vacant, and, as noted in the report, the director's performance appraisal was signed by the senior policy adviser. However, for the two performance appraisals we reviewed, neither the agency head nor the deputy head signed these appraisals as required by section 15(k)(3). We maintain our recommendation.

Education did not explicitly agree or disagree with our recommendation on section 15(k)(11), advise on in-sourcing. Education said that, due to limited OSDBU resources, the agency delegated the responsibility to review in-sourcing to another office. Education stated that, given anticipated budget reductions, the agency would evaluate how best to implement section 15(k)(11). As noted in the draft report, section 15(k)(11) requires that the person heading the OSDBU office must review and advise the agency on any decision to convert an activity performed by a small business to an activity performed by a federal employee. Therefore, we maintain our recommendation. The department's comments are reprinted in appendix XXX.

- Energy agreed with our recommendation relating to sections 15(k)(3), reporting requirement (head of the agency or deputy head); 15(k)(8), assign small business technical advisers; and 15(k)(17), respond to a notification of an undue restriction on the ability of a small business to compete. The agency stated that the OSDBU director's performance appraisals will be completed by the secretary or deputy secretary; the OSDBU will appoint at least one small business technical adviser for each business line (three in total); and the OSDBU will complete a data call to its small business program managers to determine if there have been any undue restrictions on small business. We note that completing a data call to retrospectively look at prior instances of undue restrictions will not address the section 15(k)(17) requirement, which requires the OSDBU director to respond to concerns of undue restriction on an ongoing basis. The agency estimated that the actions will be completed by September 30, 2017. The department's comments are reprinted in appendix XXXI.
- HUD did not state whether it agreed or disagreed with our recommendation. In an e-mail, the senior small business utilization

specialist in HUD's OSDBU stated that the department did not have additional comments on the draft report. The official noted the two deficiencies we cited (the director's experience and the OSDBU's involvement with in-sourcing decisions) and reiterated the OSDBU director's statement that her previous experience prepared her well for the OSDBU director position. The official further stated that the OSDBU director had discussed developing policy for OSDBU involvement with in-sourcing decisions. As we reported, section 15(k) lists specific prior experiences which the OSDBU director did not have. We maintain our recommendations.

- Interior agreed with our two-part recommendation related to sections 15(k)(11), advise on in-sourcing, and 15(k)(17), respond to a notification of an undue restriction on the ability of a small business to compete. The agency stated that, for section 15(k)(11), its OSDBU will implement procedures to involve the OSDBU director in in-sourcing decisions that affect small business concerns, and for section 15(k)(17), the OSDBU will implement procedures for responding to notifications of undue restrictions on the ability of small businesses to compete. The department's comments are reprinted in appendix XXXII.
- Labor stated that it neither agreed nor disagreed with our two-part recommendation relating to sections 15(k)(2), compensation/seniority of the OSDBU director, and 15(k)(15), collateral duties of the OSDBU director. The agency noted that it is committed to reviewing its compliance with the relevant statutes. We maintain our recommendation to Labor, based on the agency not demonstrating compliance with sections 15(k)(2) and 15(k)(15). The department's comments are reprinted in appendix XXXIII.
- State agreed with the part of the recommendation on section 15(k)(17), respond to a notification of an undue restriction on the ability of a small business to compete, and disagreed with the part of the recommendation on section 15(k)(8), assign small business technical advisers. For section 15(k)(17), State said that its OSDBU will affirm internal policy to refer all claims of unduly restricting the ability of a small business to compete, regardless of their resolution at a lower level, to the agency's competition advocate. This is consistent with what we recommended.

For section 15(k)(8), the agency asserted that it is currently in compliance, noting that it assigns small business technical advisers at the department level and that staffing each of its 46 bureaus with a full-time qualified small business technical adviser would be impractical, inefficient, and unnecessary. As noted in our report,

State's OSDBU director assigns a small business technical adviser as a full-time employee of the OSDBU, rather than of the procuring activity, which is not consistent with the section 15(k)(8) requirement. We maintain our recommendation to State regarding section 15(k)(8). The department's comments are reprinted in appendix XXXIV.

- Treasury did not agree or disagree with our two-part recommendation related to sections 15(k)(8), assign small business technical advisers, and 15(k)(11), advise on in-sourcing. In an attachment to an e-mail, Treasury stated that the authority to appoint a small business technical adviser (termed small business specialist at Treasury) was delegated to the chief procurement officer for a bureau. As noted in the report, an agency official stated that the OSDBU does not assign a small business specialist to each of its bureaus. Section 15(k)(8) requires the OSDBU director to assign a small business technical adviser to each office to which SBA has assigned a procurement center representative. We maintain our recommendation. Treasury also stated that, if conversions from private to federal performance occurred, the department's human resources office would coordinate this action with the OSDBU and the acquisition office. The department plans to formally incorporate the small business provision in its workforce planning guidance and develop and document procedures for in-sourcing review as part of the OSDBU's effort to develop a Human Capital Workforce Planning process.
- VA agreed with the part of our recommendation related to section 15(k)(11), advise on in-sourcing, and concurred in principle with the other two parts of the recommendation related to sections 15(k)(3), reporting requirement (head of the agency or deputy head), and 15(k)(8), assign small business technical advisers. For section 15(k)(11), VA stated that the agency's OSDBU has drafted language for its review policy for procurements to address this requirement. VA plans to implement the revised policy in fiscal year 2018.

For section 15(k)(3), VA asserted that it is in compliance with this requirement but acknowledged that its chief of staff is the rating official for the OSDBU director. VA further noted that the deputy secretary is the reviewing official and the secretary the appointing official. VA said that federal law, regulation, and the VA handbook on the performance appraisal system require this separation of duties and roles. VA also said that, while the chief of staff prepares and signs the initial summary rating and performance appraisal, the appraisal is subject to review by the secretary and deputy secretary. VA stated that removing the chief of staff from the performance appraisal process would require merging some of the aforementioned

duties into the same person, eliminating the independent reviews required by law and regulation. However, as we note in appendix II, section 15(k)(3) requires that the OSDBU director report exclusively to the agency's secretary or deputy secretary, including with respect to performance appraisals. Therefore, we maintain our recommendation. VA also said that it will report to Congress on the reasons for its current reporting structure for the OSDBU director, with a target completion date of September 30, 2017.

For the part of the recommendation related to section 15(k)(8), VA acknowledged the value of contract activities having a knowledgeable on-site small business technical adviser who is able to collaborate with the procurement center representative and noted that, to the extent that the adviser addresses matters within the OSDBU's responsibility, it is essential for the OSDBU to provide guidance and direction. However, the agency stated that the requirement for the OSDBU to select an employee of the contracting activity and direct that person's principal work efforts to assist the procurement center representative requires an unusual degree of matrixed reporting relationships and will entail a high level of collaboration with the contracting activity's leadership. VA said that its OSDBU will seek to collaborate with the cognizant contracting activities through VA's Senior Procurement Council and develop a memorandum of understanding outlining roles and responsibilities. VA stated that its target completion date for the memorandum is September 30, 2017 (so as to go into effect at the start of fiscal year 2018). We maintain our recommendation, as VA's comments do not make it clear if the OSDBU director will assign a small business technical adviser to the procuring activity or if the assigned staff would be a full-time employee of this activity. The department's comments are reprinted in appendix XXXVI.

- EPA did not say whether it agreed or disagreed with our recommendation relating to requirements for section 15(k)(15), collateral duties. As we noted in the report, EPA's OSDBU director oversees two EPA-wide programs, the Disadvantaged Business Enterprise Program and the Asbestos and Small Business Ombudsman Program. EPA stated that we mischaracterized provisions of the Clean Air Act of 1990 (as requiring EPA's OSDBU director to serve as the ombudsman for the Asbestos and Small Business Ombudsman Program) as part of our determination of whether EPA demonstrated compliance. EPA stated that, instead, the act requires that the relevant programs be monitored through the ombudsman (not the OSDBU director). The agency stated that EPA appointed an official other than the OSDBU director to serve as the

ombudsman and that our report should be revised to correctly indicate that the OSDBU director does not hold the ombudsman position. Based on EPA's comments, we removed references in the report to the Clean Air Act requirements being inconsistent with section 15(k)(15) requirements. We also made it clear that the OSDBU, through the program ombudsman, monitors the activities of the Asbestos and Small Business Ombudsman Program. As noted in the report, we did not consider the provisions of the Clean Air Act and the corresponding responsibilities of the OSDBU as a factor for our assessment of demonstrated compliance with section 15(k)(15).

EPA also stated that the Disadvantaged Business Enterprise Program is structured so that the OSDBU director does not serve as the program manager or carry out the day-to-day programmatic responsibilities in contravention of section 15(k)(15). However, as we noted in the report, the OSDBU director oversees the Disadvantaged Business Enterprise Program. This is inconsistent with section 15(k)(15), which requires that the OSDBU director not hold responsibilities except as necessary to carry out responsibilities under section 15(k). Thus, we maintain our recommendation to EPA. The agency's comments are reprinted in appendix XXXVII.

- NASA partially agreed with our recommendation related to section 15(k)(17), respond to a notification of an undue restriction on the ability of a small business to compete. The agency agreed that, as our report supports, it is currently in compliance with two required steps under section 15(k)(17), subparagraphs (A) and (C), but not with the third required step, subparagraph (B), which requires the OSDBU director to inform the agency's advocate for competition when notified by a small business of a solicitation that unduly restricts its ability to complete. But NASA added that it believes that the most practical and effective way to address such notifications is for the OSDBU, in consultation with the contracting officer, to resolve issues at the lowest level possible. However, to comply with the statute, the agency said that the OSDBU will begin notifying the advocate for competition. The agency also said that the OSDBU will notify the cognizant Center-level competition advocate. NASA said that the OSDBU, in coordination with the agency's Office of Procurement, intends to issue formal correspondence to the acquisition community on the new procedures within 6 months and that it plans to begin carrying out the new procedures the next time it receives a notification of an unduly restrictive solicitation. The agency's comments are reprinted in appendix XXXVIII.

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- OPM agreed with one part of our recommendation and partially agreed with two parts of the recommendation. OPM concurred with the part of the recommendation regarding section 15(k)(17), respond to a notification of an undue restriction on the ability of a small business to compete. In response, OPM said it prepared draft guidance (standard operating procedures) on the topic that would address the issue of communicating such notices to the agency's advocate for competition. OPM said that it is currently reviewing the guidance.

OPM partially agreed with the part of the recommendation regarding section 15(k)(2), compensation/seniority of the OSDBU director. The agency stated that, at the time it became a requirement for the OSDBU director to be a member of the SES, the OSDBU director held a General Schedule position (GS-15). OPM said that the current nominee for OPM director, if confirmed, will evaluate and take appropriate action to comply or report to Congress on why the agency has not complied, including, if appropriate, seeking statutory flexibility or an exception.

OPM also partially concurred with the part of our recommendation related to section 15(k)(8), assign small business technical advisers. OPM stated that we did not take into account that the OSDBU has two staff members qualified to work with the procurement center representative who each spend 50 percent of their time working with the procurement center representative, which equates to full-time coverage. We maintain our recommendation as section 15(k)(8) requires that the technical adviser must be a full-time employee of the procuring activity. The agency's comments are reprinted in appendix XXXIX.

- SSA agreed with our recommendation relating to sections 15(k)(2), compensation/seniority; 15(k)(3), reporting requirement (head of the agency or deputy head); 15(k)(6), provide assistance on payments; 15(k)(8), assign small business technical advisers; 15(k)(11), advise on in-sourcing; and 15(k)(15), collateral duties. SSA summarized the actions it has taken or plans to take in response. For sections 15(k)(2) and (k)(3), SSA stated that, given the OSDBU director's duties and responsibilities and the agency's small size and structure, it intended to explore obtaining an exception to keep the director position at the GS-15 level and an exception to the reporting requirement. For section 15(k)(6), SSA said it will refer small businesses seeking assistance with payments to the OSDBU director. For section 15(k)(8), SSA said its OSDBU will officially assign a small business technical adviser to the relevant office. For section 15(k)(11), SSA

noted an existing analysis it performs of contractor functions, which helps ensure that SSA takes appropriate steps to guard against improper reliance on contractors and that contractor personnel do not perform inherently governmental functions. SSA said any proposed in-sourcing based on the analysis would be discussed with the component, the Office of Acquisition and Grants, and the OSDDBU if warranted. Finally, for section 15(k)(15), SSA said that it would delegate coordinating responsibilities for the Electronic Subcontracting Reporting System from the OSDDBU director to its small business technical adviser. The agency's comments are reprinted in appendix XXXX.

- USAID agreed with our recommendation relating to section 15(k)(15), collateral duties, and 15(k)(17), respond to a notification of an undue restriction on the ability of a small business to compete. For the part of the recommendation relating to section 15(k)(15), collateral duties, USAID said it would not gain efficiencies by moving responsibility for the Minority Serving Institution (MSI) program from the OSDDBU. Instead, it would explore requesting statutory flexibility or an exception to allow the OSDDBU director to continue to advocate for the MSI. In response to the other part of the recommendation relating to section 15(k)(17), USAID said the OSDDBU director simultaneously will notify the advocate for competition, contracting officer, and ombudsman in instances in which a notice falls within the parameters of section 15(k)(17). The agency's comments are reprinted in appendix XXXXI.
- In its comment letter, SBA agreed with our recommendation to include more detailed guidelines for the SBPAC peer review to facilitate a more in-depth review of agencies' compliance with section 15(k) provisions. The agency said that it has begun to implement the recommendation for fiscal year 2017 and that it has been developing more detailed guidelines that provide more objective criteria than the current guidelines, such as indicating whether agencies comply with the 21 section 15(k) requirements. The agency also stated that the new peer review process will count for a higher percentage of each agency's overall scorecard grade (an increase from 10 percent to 20 percent). SBA said that the changes will be implemented for the fiscal year 2017 peer review. The agency's comments are reprinted in appendix XXXV.

SBA provided additional comments, which the agency identified as technical comments, in an e-mail from the program manager, GAO liaison, Office of Congressional and Legislative Affairs. While these comments did not address our recommendation to SBA, in some instances they appeared to question our approach and the findings

that provided a basis for our conclusions and recommendation. In particular, the comments stated that there is little value in a comparison of SBA's success factor peer review (we refer to this in the report as the SBPAC peer review) with the requirement for SBA to conduct a full peer review of all of the requirements in section 15(k), given that the success factors were developed before the 2013 statutory requirement was put in place. In addition, the comments questioned the relevance of our findings for agency compliance with its peer review process.

However, as we state in the report, the SBPAC peer review assesses compliance with certain section 15(k) requirements, particularly the "organization" success factor focusing on five section 15(k) provisions. Our analysis focuses primarily on the methods SBA used and the guidance it provided for assessing OSDBUs' compliance with these section 15(k) requirements. We also note that the documentation SBA provided on its plans for the revised process suggests that similar methods to assess compliance will be used in the new process as under the current process. As in the current process, the documentation indicates that compliance determinations will be made based on a review of documents agencies voluntarily submit, rather than on a more in-depth assessment. For these reasons, we maintain that our discussion of the success factor peer review is relevant when considering how SBA may implement the new review process. In addition, our analysis does not equate our findings for agency compliance with those of the success factor peer review. Rather, it examines the alignment of the results. This allows for a valid assessment of whether the scores generally correspond with our findings. Our recommendation is intended to help ensure that SBA implements a more robust approach to assessing section 15(k) compliance through the SBPAC peer review, as compared to the success factor peer review. SBA stated that our report will help inform the structure of the new peer review checklist being developed.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Chairman and Ranking Member of the House Committee on Small Business, and other interested congressional committees. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions regarding this report, please contact me at (202) 512-8678 or by e-mail at shearw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix XXXXII.



William B. Shear
Director, Financial Markets and
Community Investment

Appendix I: Objectives, Scope, and Methodology

We reviewed practices of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at 24 agencies for carrying out the requirements of the Small Business Act.¹ More specifically, we examined (1) the extent to which selected federal agencies with procurement powers demonstrated compliance with five requirements of section 15(k) relating to the OSDBU director (including reporting relationships, qualifications, and supervisory duties); (2) the extent to which selected federal agencies demonstrated compliance with eight section 15(k) requirements for carrying out selected OSDBU functions or activities; and (3) the Small Business Procurement Advisory Council review of OSDBU compliance with section 15(k) requirements.

Identification of Federal Agencies in Our Review

To determine which federal agencies to include in our review, we reviewed fiscal year 2015 data from the Federal Procurement Data System-Next Generation. Government agencies are responsible for collecting and reporting data on federal procurements through this data system. (These were the most recent data available at the time of our review.) Using these data, we selected 23 agencies that each procured more than \$900 million in goods and services in fiscal year 2015, accounting for 87 percent of all federal contracting obligations.² Among the 23 agencies, 4 agencies were within the Department of Defense (DOD)—the Departments of the Air Force, Army, and Navy and the Defense Logistics Agency (DLA). Together, these 4 DOD components were responsible for 88 percent of DOD’s contracting obligations. We also selected 1 additional agency, the DOD Office of the Secretary, due to its role as a policy office within DOD. Thus, we selected 24 agencies in total.

¹For the purposes for this review, we included amendments to the OSDBU section 15(k) requirements through mid-2016, but we did not include amendments added in the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

²We did not include the Department of Health and Human Services in our review because we noted there was ongoing litigation involving the matters of fact and law we analyzed for this report. GAO’s policy is to avoid addressing disputed factual or legal matters pending in litigation.

The 24 agencies in our review are listed below. The 10 agencies shown in italics were assessed for the section 15(k)(3) requirement about the OSDBU director reporting to the head or deputy head of the agency.

1. Defense Logistics Agency
2. Department of Agriculture
3. *Department of the Air Force*
4. *Department of the Army*
5. Department of Commerce
6. Department of Defense – Office of the Secretary
7. *Department of Education*
8. Department of Energy
9. Department of Homeland Security
10. Department of Housing and Urban Development
11. Department of the Interior
12. Department of Justice
13. *Department of Labor*
14. *Department of the Navy*
15. *Department of State*
16. Department of Transportation
17. Department of the Treasury
18. *Department of Veterans Affairs*
19. Environmental Protection Agency
20. General Services Administration
21. *National Aeronautics and Space Administration*
22. Office of Personnel Management
23. *Social Security Administration*
24. U.S. Agency for International Development

See appendixes III–XXVII for our determinations of overall demonstrated compliance with section 15(k) requirements and for our determinations of demonstrated compliance at each agency.

Selection of Section 15(k) Requirements for Review and Information on Demonstrated Compliance

We selected the following 14 requirements of section 15(k) for our review, but focused only on 13 in our discussion of individual agencies' demonstrated compliance. As discussed in this report, we evaluated demonstrated compliance with the section 15(k)(16) requirement for agencies to submit an annual training and travel report to Congress. During the course of our review, the Small Business Administration (SBA) established new procedures to submit a consolidated report to Congress, rather than having each agency submit an individual report. Due to the new procedures, we do not include this requirement in the summary tables or agency appendixes. See appendix II for more information on the requirements.

- 15(k): Director experience
- 15(k)(2): Compensation/seniority
- 15(k)(3): Reporting requirement (head of agency or deputy head)
- 15(k)(5): Identify and address bundling of contract requirements
- 15(k)(6): Provide assistance on payments
- 15(k)(7): Supervisory duties
- 15(k)(8): Assign small business technical advisers
- 15(k)(11): Advise on in-sourcing
- 15(k)(12): Provide advice to chief acquisition officer and senior procurement executive
- 15(k)(13): Provide training³
- 15(k)(14): Receive unsolicited proposals and forward them when appropriate
- 15(k)(15): Collateral duties
- 15(k)(16): Submit training reports to Congress
- 15(k)(17): Respond to notification of an undue restriction on ability of small business to compete

³For the purposes of this report, we include the permissive training language in 15 U.S.C. § 644(k)(13) in our discussion of "requirements." Section 15(k)(13) does not mandate that the OSDBU provide training to small businesses, but we reviewed the agencies' training offered under this provision.

We focused our review on whether agencies had demonstrated compliance with each of these requirements. While we could not determine the compliance status with certainty, our approach allowed for a sufficiently reliable measure of demonstrated compliance, since it relied on self-reported accounts of compliance through interviews and survey responses, documentary evidence of compliance through agency materials and documents, or both. Specifically, categorizing an agency as demonstrating compliance with a section 15(k) requirement required evidence of compliance in our review of documents, interview materials, and/or questionnaire responses. In cases in which supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials.

Assessment of Demonstrated Compliance with Section 15(k)(3) of the Small Business Act

To assess whether the OSDBU director reports directly to the agency head or the deputy head, as generally required by section 15(k)(3) of the Small Business Act, we focused on 6 agencies with major contracting activity (greater than \$10 billion in obligations) and 4 agencies with contracting activity under \$10 billion.⁴ These 10 agencies were the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration. We considered agencies to demonstrate compliance if the designated OSDBU directors exercised the OSDBU responsibilities, if they reported directly to and were responsible only to the agency head or the agency head's deputy, and if these officials signed the director's performance appraisals. To determine compliance, we reviewed

- organization charts to identify where the OSDBU was situated in relation to the agency head or deputy head;

⁴The 6 agencies with major contracting activity consisted of the 3 DOD components with the highest contracting obligations in fiscal year 2015 (the Air Force, Army, and Navy), as well as the 3 non-DOD agencies with the highest obligations (the Department of Energy, the National Aeronautics and Space Administration, and the Department of Veterans Affairs). We selected these agencies to provide variety in the type of agency. Of the 4 agencies with contracting activity under \$10 billion, 2 were selected purposively based on preliminary information (the Social Security Administration and the Department of Education), and 2 were selected randomly (the Departments of State and Labor).

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- OSDBU directors' performance appraisals for the previous 2 years to identify the agency official(s) who evaluated the OSDBU director's performance;⁵
 - the position description of the OSDBU director to identify the OSDBU director's supervisor; and
 - other agency documents, such as reports and memoranda, discussing the agency's small business programs.

We also interviewed the designated OSDBU directors at each agency to identify the official(s) to whom they had reported during the past year and asked them to provide information characterizing the reporting relationship, such as the extent to which small business issues were discussed. In addition, we reviewed and analyzed section 15(k)(3).

Assessment of Compliance with Other Selected Section 15(k) Requirements

We surveyed OSDBU directors at the 24 agencies about the other section 15(k) requirements relating to OSDBU directors (such as rank and responsibilities) and about OSDBU functions. We reviewed available documents, such as policy statements issued by agency leadership on OSDBU practices or small business efforts, small business manuals or operating plans, and guidance and reports, when available. We also interviewed the designated OSDBU directors and other officials at each agency to discuss the extent to which they carry out each of the requirements.

Survey of OSDBU Directors

To obtain information on the functions performed by OSDBUs and actions the offices took to further small business contracting opportunities, we surveyed the OSDBU directors at 24 federal agencies using a web-based survey. The survey asked the OSDBU directors about their roles and functions. In this survey, we focused on seven areas: acquisition planning, solicitation development, proposal evaluation, obtaining payments, training, interaction with SBA, and other functions. The survey questions covered certain OSDBU functions listed in section 15(k) of the Small Business Act.

⁵We generally reviewed the two most recently available OSDBU director performance appraisals at the time of our review.

Survey Design and Administration

To obtain comparable data with the 2011 survey of OSDBU directors, our survey instrument listed similar questions and response choices as the 2011 survey.⁶ Updates to the 2011 survey included adding some new questions, reordering a few questions, and deleting several questions that were no longer relevant. We obtained input from GAO experts on survey design. We also pretested the survey instrument with two OSDBU directors to help ensure that the questions would be correctly interpreted by respondents. Agency officials, including the OSDBU directors, were notified about the survey before it was launched on November 1, 2016. The survey closed on February 24, 2017. We had a 100 percent response rate.

We conducted follow-up with OSDBU directors to clarify their responses and to obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement. The purpose of the follow-up was to determine which office, if not the OSDBU, carried out these functions at their agency, to collect answers from OSDBU directors who did not provide them initially, or to determine why the OSDBU did not carry out a specific function. To do this, we conducted interviews with OSDBU directors. A few agencies also provided written responses to our follow-up questions.

Small Business Procurement Scorecard and Peer Review Process of Small Business Procurement Advisory Council

We reviewed documentation and data related to SBA's scorecard for small business procurement and the peer review process of the Small Business Procurement Advisory Council (SBPAC) and spoke with SBA officials about this program. We compared SBA's "OSDBU organization" success factor scores to the compliance information we obtained from our review to determine whether they correlated with our compliance determinations.

SBPAC is an interagency council chaired by SBA, and its members are mainly OSDBU directors. SBPAC annually reviews each OSDBU to determine compliance with certain OSDBU functions pertaining to section

⁶GAO, *Small Business Contracting: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required*, [GAO-11-418](#) (Washington, D.C: June 3, 2011).

15(k). These reviews are used to help determine SBA's annual scorecard grade for each agency.⁷

We conducted our work from May 2016 to August 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁷SBA uses the scorecard for purposes including measuring how well federal agencies reach their small business prime contracting and subcontracting goals and reporting agency-specific progress. Scorecard grades are based on the extent to which (or how well) agencies met goals for prime contracts and subcontracts and on their progress plans for meeting goals.

Appendix II: Select Statutory Requirements for Office of Small and Disadvantaged Business Utilization

Section 15(k) of the Small Business Act, as amended, requires each Office of Small and Disadvantaged Business Utilization (OSDBU) and each OSDBU director to meet certain requirements. Our review selected 14 requirements from section 15(k) for closer review. This appendix details each of those requirements and, where appropriate, elaborates on how we determined demonstrated compliance with each section.

Table 4: Requirements of Section 15(k) of the Small Business Act Selected for Our Review

Requirement	Statutory section ^a	Description
Director experience ^b	15(k)	<p>The management of each OSDBU office must be vested in an officer or employee of the agency with experience serving in any combination of the following roles:</p> <ul style="list-style-type: none"> • program manager, deputy program manager, or assistant program management for federal acquisition program; • chief engineer, systems engineer, assistant engineer, or product support manager for federal acquisition program; • federal contracting officer; • small business technical adviser; • contracts administrator for federal government contracts; • attorney specializing in federal procurement law; • small business liaison officer; • officer or employee who managed federal contracts for a small business; or • individual whose primary responsibilities were for the functions and duties of section 8, 15, or 44 of the Small Business Act (15 U.S.C. § 637, 644, 657q).
Compensation/seniority ^c	15(k)(2)	<p>The officer or employee in the position of heading the OSDBU office must either:</p> <ol style="list-style-type: none"> 1. be appointed by the agency's head to a Senior Executive Service position, or 2. only for an agency where the chief acquisition officer and the senior procurement executive are not Senior Executive Service positions, may be appointed to a position compensated not less than the minimum rate for a salary at level 15 of the General Schedule.
Reporting requirement (head of agency or deputy head)	15(k)(3)	<p>The officer or employee in the position of heading the OSDBU office must be responsible only to, and report directly and exclusively to, the head of the agency or to the deputy of the agency, except that the OSDBU for the Office of the Secretary of Defense must be responsible only to and report directly and exclusively to the secretary or the secretary's designee.</p> <p>These requirements include that the OSDBU director's performance appraisals be signed by either the agency head, deputy head, or in the case of the Department of Defense, the secretary or the secretary's designee.</p>
Identify and address bundling of contract requirements	15(k)(5)	<p>The officer or employee in the position of heading the OSDBU office must (1) identify proposed solicitations that involve significant bundling of contract requirements, and (2) work with the agency acquisition officials and the Small Business Administration to revise the procurement strategies for those proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or, if the bundled solicitation is issued, to facilitate small business participation as subcontractors and suppliers.</p>

**Appendix II: Select Statutory Requirements for
Office of Small and Disadvantaged Business
Utilization**

Requirement	Statutory section^a	Description
Provide assistance on payments ^d	15(k)(6)	The officer or employee in the position of heading the OSDBU office must assist small businesses in obtaining: (1) payments, (2) required late payment interest penalties, or (3) information regarding payments due to the businesses from an executive agency or a contractor, in conformity with certain statutory provisions, or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulations or any individual agency's supplement to the Federal Acquisition Regulations.
Supervisory duties ^e	15(k)(7)	The officer or employee in the position of heading the OSDBU office must have supervisory authority over agency personnel to the extent that the functions and duties of the personnel relate to sections 8 and 15 of the Small Business Act (15 U.S.C. § 637 and 644).
Assign small business technical advisers	15(k)(8)	The officer or employee in the position of heading the OSDBU office must assign a small business technical adviser to each office where the Small Business Administration has assigned a procurement center representative. The technical adviser: <ol style="list-style-type: none"> 1. must be a full-time employee of the procuring activity and must be well qualified, technically trained, and familiar with the supplies or services purchased at the activity; and 2. must have the principal duty to assist the Small Business Administration procurement center representative in the representative's duties and functions related to sections 8 and 15 of the Small Business Act (15 U.S.C. § 637 and 644).
Advise on in-sourcing	15(k)(11)	The officer or employee in the position of heading the OSDBU office must review and advise the agency on any decision to convert an activity performed by a small business to an activity performed by a federal employee.
Provide advice to chief acquisition officer and senior procurement executive ^f	15(k)(12)	The officer or employee in the position of heading the OSDBU office must provide the chief acquisition officer and senior procurement executive of the agency with advice and comments on acquisition strategies, market research, and justifications related to consolidation of contract requirements (15 U.S.C. § 657q).
Provide training	15(k)(13)	The officer or employee in the position of heading the OSDBU office may provide training to small businesses and contract specialists, except that the training may only be provided to the extent it does not interfere with the OSDBU director carrying out other responsibilities under section 15(k) (15 U.S.C. § 644(k)).
Receive unsolicited proposals and forward them when appropriate	15(k)(14)	The officer or employee in the position of heading the OSDBU office must receive unsolicited proposals and, when appropriate, forward them to personnel of the activity responsible for reviewing the proposals.
Collateral duties ^g	15(k)(15)	The officer or employee in the position of heading the OSDBU office must carry out exclusively the duties in section 15(k) (15 U.S.C. § 644(k)) and, while director, must not hold any other title, position, or responsibility, except as necessary to carry out the responsibilities of section 15(k).
Submit training report to Congress ^h	15(k)(16)	The officer or employee in the position of heading the OSDBU office each fiscal year must submit a report to the House of Representatives Committee on Small Business and the Senate Committee on Small Business and Entrepreneurship. The report must describe: <ol style="list-style-type: none"> 1. the training by the director to small businesses and contract specialist completed in the recently completed fiscal year; 2. the percentage of the director's budget used for the training in that fiscal year; and 3. the percentage of the director's budget used for travel in that fiscal year.

Appendix II: Select Statutory Requirements for Office of Small and Disadvantaged Business Utilization

Requirement	Statutory section ^a	Description
Respond to notification of an undue restriction on ability of small business to compete	15(k)(17)	<p>When notified by a small business prior to the award of a contract that the small business believes that a solicitation, request for proposal, or request for quotation unduly restricts the ability of the small business to complete, the officer or employee in the position of heading the OSDBU office must:</p> <ol style="list-style-type: none"> 1. submit the notice to the contracting officer, and if necessary, recommend ways the solicitation, request for proposal, or request for quotation may be altered to increase the opportunity for competition; 2. inform the agency's advocate for competition of the notice; and 3. ensure that the small business is aware of other resources and processes available to address undue restriction provisions in a solicitation, request for proposal, or request for quotation, even if the resources and processes are provided by the agency, the Small Business Administration, the Government Accountability Office, or a procurement technical assistance program.

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization

Source: GAO. | GAO-17-675

Note: The table includes a breakdown of statutory language through 2016, but it does not include language added in the National Defense Authorization Act for Fiscal Year 2017. Pub. L. No. 114-328, 130 Stat. 2000 (2016).

^aAll statutory sections are within 15 U.S.C. § 644(k). These sections all fall within section 15(k) of the Small Business Act and therefore are commonly called section 15(k).

^bAn individual who has held one or more of the enumerated list of positions would meet requirements for our review.

^cIn instances in which an agency had an acting OSDBU director, we looked at the seniority of the director who served immediately prior to the acting.

^dAn OSDBU that provides any assistance would meet requirements for our review.

^eAn OSDBU that supervises personnel within its office to the extent that the functions and duties of the personnel relate to sections 8 and 15 of the Small Business Act (15 U.S.C. § 637 and 644) would meet requirements for our review.

^fWe would not determine that an OSDBU did not demonstrate compliance for failure to provide information to a chief acquisition officer or senior procurement executive if the agency did not have a chief acquisition officer or senior procurement executive.

^gActing OSDBU directors may hold other titles or positions while serving as the temporary OSDBU director as long as while so serving they exclusively carry out the duties in section 15(k).

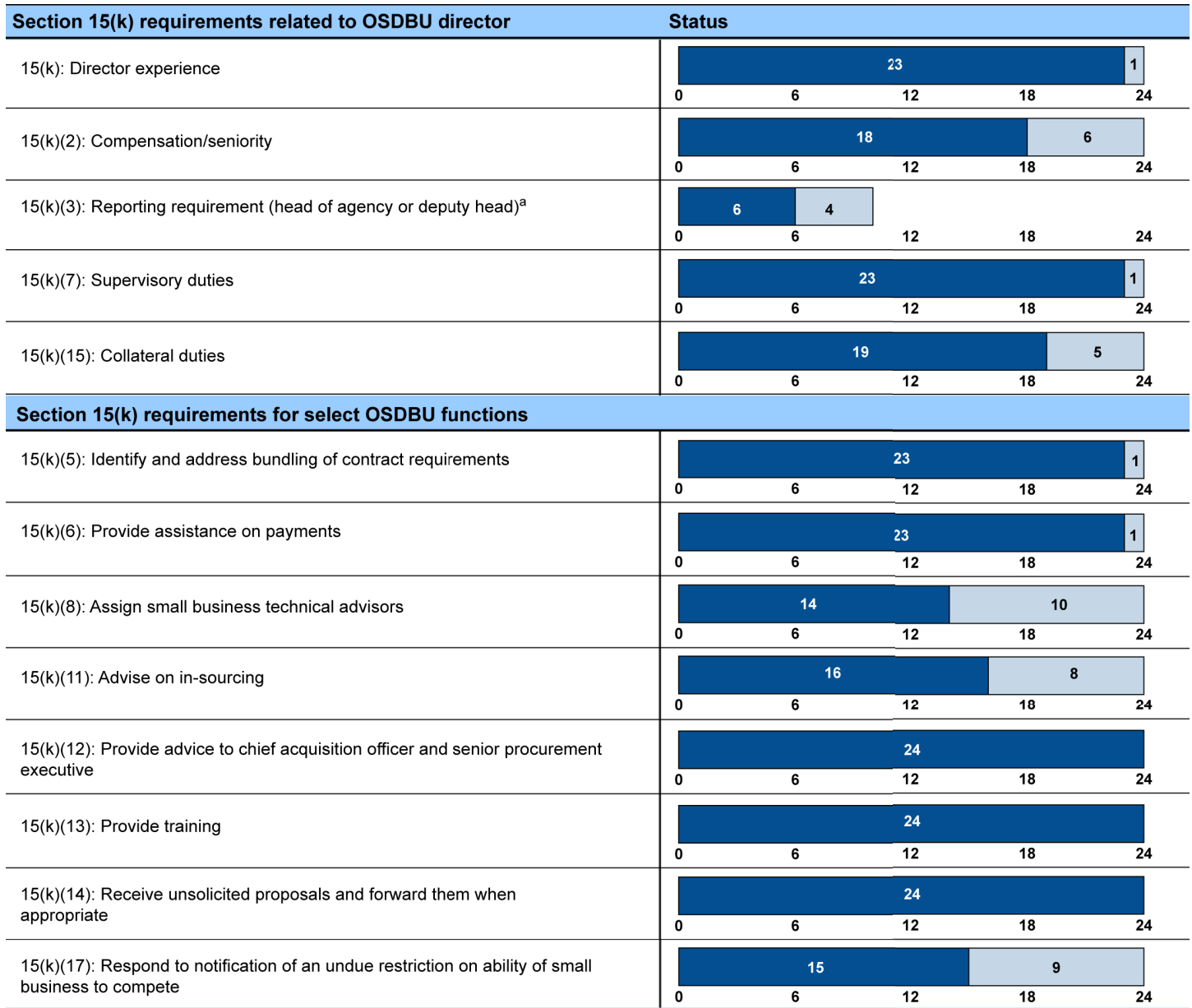
^hTo fulfill this requirement, Small Business Administration has collected the training and travel reports on behalf of the OSDBUs and submitted them to Congress in June 2017.



Appendix III: Overall Agencies' Demonstrated Compliance with Select Section 15(k) Requirements

Listed below are the section 15(k) requirements we assessed to determine the extent to which the 24 agencies in this review demonstrated compliance.

Appendix III: Overall Agencies' Demonstrated Compliance with Select Section 15(k) Requirements

Figure 1: Overall Agencies' Demonstrated Compliance with Select Section 15(k) Requirements as of May 19, 2017



Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
 Demonstrated compliance  Did not demonstrate compliance

Source: GAO analysis. | GAO-17-675

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Appendix IV: Demonstrated Compliance with Section 15(k), Defense Logistics Agency

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Defense Logistics Agency (DLA) demonstrated compliance with 8 of the 12 section 15(k) requirements within our review (see table 5). The agency did not demonstrate compliance with 4 requirements regarding compensation/seniority of the OSDBU director, supervisory duties of the director, providing advice on the conversion of activities from performance by a small business to performance by a federal employee (in-sourcing), and responding to a notification from a small business of an undue restriction on its ability to compete. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 5: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Defense Logistics Agency

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority		●
15(k)(3): Reporting requirement (head of agency or deputy head)	Defense Logistics Agency not assessed for this requirement ^a	
15(k)(7): Supervisory duties		●
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing		●
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete		●

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Agency Response Relating to Areas in Which DLA Did Not Demonstrate Section 15(k) Compliance

15(k)(2), compensation/seniority: The survey response and the position description indicated that the director held a General Schedule position (GS-15). According to the survey, the chief acquisition officer and senior procurement executive are Senior Executive Service positions. In a follow-up meeting, agency officials stated that the agency has requested that the Department of Defense seek Congressional approval to authorize a new Senior Executive Service position for the OSDBU director. The officials stated that the agency has been waiting for authorization to make this change.

15(k)(7), supervisory duties: An agency official stated that the office provides policy and program oversight. The official explained that the director appoints small business associates to work in the field, but does not directly supervise field staff. Field staff report to deputy commanders at their sites.

15(k)(11), advise on in-sourcing: An agency official stated that the director does not review decisions on the conversion of activities from performance by a small business to performance by a federal employee. Instead, the agency's human resource office performs that function in consultation with the acquisition office. The official also stated that the director does not view in-sourcing as negatively affecting small businesses but focuses on how to align the resources to best fulfill the assigned mission.

15(k)(17), respond to notification of an undue restriction on ability of small business to compete: An agency official explained that the director works to ensure such notifications are resolved as quickly as possible, which requires working with key staff at the operational level in the field. The official further stated that the director did not think that there is a need to notify the agency advocate for competition unless there is a need to change an agency practice.

Appendix V: Demonstrated Compliance with Section 15(k), Department of Agriculture

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the U.S. Department of Agriculture (USDA) demonstrated compliance with 9 of the 12 section 15(k) requirements within our review (see table 6). The department did not demonstrate compliance with 3 requirements regarding compensation/seniority of the OSDBU director, collateral duties of the director, and responding to a notification from a small business of an undue restriction on its ability to compete. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 6: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Agriculture

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority		●
15(k)(3): Reporting requirement (head of agency or deputy head)	Department of Agriculture not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties		●
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete		●

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Agency Response Relating to Areas in Which USDA Did Not Demonstrate Section 15(k) Compliance

15(k)(2), compensation/seniority: At the time of our review, the current OSDBU director was an acting director. In cases in which an agency's OSDBU director was an acting director, we assessed compliance for section 15(k)(2) based on the seniority and compensation of the immediately prior permanent director. OSDBU officials explained that historically, the permanent OSDBU director was a political appointee holding a Senior Executive Service (SES) position. However, the prior director was a political appointee holding a General Schedule position (GS-15 level). The officials explained that the position was temporary (6

months) and it would have been difficult to fill the position with a member of the SES on a short-term basis.

15(k)(15), collateral duties: The current OSDBU director holds the position in an acting capacity because there has not been a new political appointee, and he also holds the title of acting assistant secretary for administration. USDA officials stated that they did not know when a new OSDBU director would be appointed, but they expected that person to exclusively hold the OSDBU director position.

15(k)(17), respond to notification of an undue restriction on ability of small business to compete: OSDBU officials told us that the OSDBU would work to resolve such an issue at the lowest level. The OSDBU director and the small business technical adviser would work on the issue with the contracting office to give recommendations. The agency advocate for competition would only be notified if the issue could not be resolved at a lower level.

Appendix VI: Demonstrated Compliance with Section 15(k), Department of the Air Force

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of the Air Force demonstrated compliance with all 13 of the 13 section 15(k) requirements within our review (see table 7). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 7: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of the Air Force

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	●	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
 Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

Appendix VII: Demonstrated Compliance with Section 15(k), Department of the Army

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of the Army (Army) demonstrated compliance with 12 of the 13 section 15(k) requirements within our review (see table 8). The department did not demonstrate compliance with 1 requirement regarding assigning small business technical advisers. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 8: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of the Army

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	●	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers		●
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization

Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

Agency Response
Relating to Area in Which
Army Did Not
Demonstrate Section 15(k)
Compliance

15(k)(8), assign small business technical advisers: An agency official stated that Army personnel providing small business technical advice are assigned to their position by the procuring activity offices and not by the OSDBU. These personnel possess technical knowledge of the procuring activity and provide technical advice to the procurement center representatives on contracting matters. The official also stated that for issues involving particularly complex technical areas, the OSDBU will form a team with the appropriate staff to provide advice to the procurement center representative.

Appendix VIII: Demonstrated Compliance with Section 15(k), Department of Commerce

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Commerce (Commerce) demonstrated compliance with 8 of the 12 section 15(k) requirements within our review (see table 9). The department did not demonstrate compliance with 4 requirements regarding compensation/seniority of the OSDBU director, assigning small business technical advisers, providing advice on the conversion of activities from performance by a small business to performance by a federal employee (in-sourcing), and responding to a notification from a small business of an undue restriction on its ability to compete. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 9: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Commerce

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority		●
15(k)(3): Reporting requirement (head of agency or deputy head)	Department of Commerce not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers		●
15(k)(11): Advise on in-sourcing		●
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	● ^b	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete		●

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

^bThe survey response indicated that the OSDBU had not provided any training programs for small businesses or contract specialists in the past 3 calendar years. However, section 15(k)(13) states that OSDBU directors may provide such training but does not require that they do so.

Agency Response Relating to Areas in Which Commerce Did Not Demonstrate Section 15(k) Compliance

15(k)(2), compensation/seniority: The survey response indicated that the OSDBU director held a General Schedule position (GS-15 level) and the chief acquisition officer and senior procurement executive were Senior Executive Service (SES) positions. In a written response, the agency stated that it has begun discussions to elevate the OSDBU director position to an SES level.

15(k)(8), assign small business technical advisers: A policy document provided by the agency provides evidence of an OSDBU process to assign small business technical advisers, however, agency officials told us that the head of each bureau procurement office rather than the OSDBU director is the official who appoints technical advisers.

15(k)(11), advise on in-sourcing: The survey response indicated that providing advice on in-sourcing was not an OSDBU role. In a written response, the agency stated that it has been developing a review and advisory process on in-sourcing decisions.

15(k)(17), respond to notification of an undue restriction on ability of small business to compete: The survey response indicated that the OSDBU had not received any such notifications in the past three years. According to its written response, the agency stated that it has been developing an agency policy that would include procedures for addressing notifications by small businesses concerning solicitations that have been issued.

Appendix IX: Demonstrated Compliance with Section 15(k), Department of Defense – Office of the Secretary

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Defense (DOD) – Office of the Secretary demonstrated compliance with 10 of the 12 section 15(k) requirements within our review (see table 10). DOD – Office of the Secretary did not demonstrate compliance with 2 requirements regarding identifying and addressing significant bundling of contract requirements and assigning small business technical advisers. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 10: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Defense – Office of the Secretary

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	•	
15(k)(2): Compensation/seniority	•	
15(k)(3): Reporting requirement (head of agency or deputy head)	DOD – Office of the Secretary not assessed for this requirement ^a	
15(k)(7): Supervisory duties	•	
15(k)(15): Collateral duties	•	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements		•
15(k)(6): Provide assistance on payments	•	
15(k)(8): Assign small business technical advisers		•
15(k)(11): Advise on in-sourcing	•	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	•	
15(k)(13): Provide training	•	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	•	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	•	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization, DOD = Department of Defense
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

**Agency Response
Relating to Areas in Which
DOD – Office of the
Secretary Did Not
Demonstrate Section 15(k)
Compliance**

15(k)(5), identify and address bundling of contract requirements:
According to the survey response and policy documentation, the OSDBU provides more of an oversight role than a direct implementation role. In an interview, OSDBU officials said that identification and mitigation of bundling typically occurs at the local level of the contracting office. In instances in which a small business notified the OSDBU that bundling had occurred, the OSDBU would report it to the contracting office. The

OSDBU also oversees bundling activity; for example, checking that bundled contracts are coded correctly.

15(k)(8), assign small business technical advisers: The survey response indicated that the OSDBU director has not assigned small business technical advisers to each office in which the Small Business Administration has a procurement center representative. In a follow-up meeting, an agency official explained that the OSDBU does not have the resources to assign small business technical advisers. The contracting officer helps determine the need for a small business technical adviser on a case-by-case basis. According to OSDBU officials, the Department of Defense has about 700 small business professionals (generally known at other agencies as small business technical advisers). The small business professionals coordinate their work with the contracting office, but these staff reside in the small business office.

Appendix X: Demonstrated Compliance with Section 15(k), Department of Education

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Education (Education) demonstrated compliance with 11 of the 13 section 15(k) requirements within our review (see table 11). The department did not demonstrate compliance with 2 requirements regarding reporting to the head or deputy head of the agency and providing advice on the conversion of activities from performance by a small business to performance by a federal employee (in-sourcing). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 11: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Education

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)		●
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing		●
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

Agency Response
Relating to Areas in Which
Education Did Not
Demonstrate Section 15(k)
Compliance

15(k)(3), reporting requirement (head of agency or deputy head):

Information provided by Education officials indicated that the OSDBU director reports to the senior policy adviser (who is also the rating official). An agency official explained that the previous deputy secretary delegated the duties and functions to the senior policy adviser. The director's performance appraisal was signed by the senior policy adviser. According to the official, in the past, the director has typically met with the deputy secretary on a monthly basis and provided updates on small business activities. At the time GAO completed its review, Education had no deputy secretary.

15(k)(11), advise on in-sourcing: According to the survey and follow-up response, advising on in-sourcing is not a function of the OSDBU and an OSDBU official could not identify any instances in which the OSDBU would be involved in this activity. An OSDBU official explained that this responsibility was delegated to the Office of Contract Operations because of limited OSDBU resources. The official stated that the agency understands that this requirement must be fulfilled by the OSDBU director and it has been developing a policy and procedures to address this responsibility. An OSDBU official said that the agency's Office of General Counsel would have to review and concur with the new policy and procedures. The agency's goal is to have a new policy approved for fiscal year 2018.

Appendix XI: Demonstrated Compliance with Section 15(k), Department of Energy

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Energy (Energy) demonstrated compliance with 10 of the 13 section 15(k) requirements within our review (see table 12). The department did not demonstrate compliance with 3 requirements regarding reporting to the head or deputy head of the agency, assigning small business technical advisers, and responding to a notification from a small business of an undue restriction on its ability to compete. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 12: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Energy

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	● ^a	
15(k)(3): Reporting requirement (head of agency or deputy head)		●
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers		●
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete		●

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
 Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aAt the time of our review, the OSDBU director was an acting director and held a General Schedule position (GS-15). However, the last permanent OSDBU director was a political appointee and a member of the Senior Executive Service (SES). A position description for the director indicates it is an SES-level position.

Agency Response Relating to Areas in Which Energy Did Not Demonstrate Section 15(k) Compliance

15(k)(3), reporting requirement (head of agency or deputy head): Energy's position description for the OSDBU director states that the director reports directly to the agency's secretary. However, the performance appraisals for the director that we reviewed were signed by the deputy chief of staff and the chief of staff. An Energy official stated that the secretary provides input into the OSDBU director's rating.

15(k)(8), assign small business technical advisers: According to an agency official, in March 2017, 4 small business technical advisers were

appointed within the OSDDBU. The official stated that the small business technical advisers do not report directly to the contracting office but are subject matter experts within the OSDDBU who work with specific business lines such as science and energy.

15(k)(17), respond to notification of an undue restriction on ability of small business to compete: An agency official stated that on receiving a complaint of this nature, the director would investigate the situation and, if needed, elevate the complaint along the contracting chain of command. For instance, the progression would be to reach out to the small business, then to the agency's contracting office to obtain additional perspective, and if needed, to notify the agency advocate for competition. The official also said that the director would share information with the small business about available resources. The official stated that the director might not carry out all of these steps if the situation was resolved earlier in the process. The official said that the current OSDDBU director had held the position of OSDDBU director since January 2017 and had not yet encountered this situation.

Appendix XII: Demonstrated Compliance with Section 15(k), Department of Homeland Security

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Homeland Security demonstrated compliance with all 12 of the 12 section 15(k) requirements within our review (see table 13). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 13: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Homeland Security

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	Department of Homeland Security not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
 Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Appendix XIII: Demonstrated Compliance with Section 15(k), Department of Housing and Urban Development

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Housing and Urban Development (HUD) demonstrated compliance with 10 of the 12 section 15(k) requirements within our review (see table 14). The department did not demonstrate compliance with 2 requirements regarding the prior experience of the OSDBU director and providing advice on the conversion of activities from performance by a small business to performance by a federal employee (in-sourcing). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

**Appendix XIII: Demonstrated Compliance with
Section 15(k), Department of Housing and
Urban Development**

Table 14: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Housing and Urban Development

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience		●
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	HUD not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing		●
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization, HUD = Department of Housing and Urban Development
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

**Agency Response
Relating to Areas in Which
HUD Did Not Demonstrate
Section 15(k) Compliance**

15(k), director experience: HUD officials stated the OSDBU director has previously served as the deputy assistant secretary for operations and management and the deputy chief human capital officer. As the deputy assistant secretary for operations and management, the director had oversight over all contracting functions in the Office of Fair Housing and Equal Opportunity. The director is an attorney and has served in several positions where contracting has been a responsibility. At the time we completed our review, the current director had served as head of the OSDBU for about 1-1/2 years. An OSDBU official stated that the director

has had a long work history in a variety of jobs and felt that the director was prepared for the role of the OSDBU director.

15(k)(11), advise on in-sourcing: An OSDBU official told us that the OSDBU does not receive notices of in-sourcing proposals. According to the agency's survey response, the Office of the Chief Procurement Officer would review and advise the agency on decisions to convert an activity (to performance by a federal employee). An agency official stated that the OSDBU director plans to pursue discussions within the agency about a policy to address the OSDBU's involvement with in-sourcing decisions. A written response provided by HUD officials also indicated that the agency plans to examine its policy and ensure compliance with this requirement.

Appendix XIV: Demonstrated Compliance with Section 15(k), Department of the Interior

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of the Interior (Interior) demonstrated compliance with 10 of the 12 section 15(k) requirements within our review (see table 15). The department did not demonstrate compliance with 2 requirements regarding providing advice on the conversion of activities from performance by a small business to performance by a federal employee (in-sourcing) and responding to a notification from a small business of an undue restriction on its ability to compete. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 15: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of the Interior

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	Department of the Interior not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing		●
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete		●

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
 Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Agency Response Relating to Areas in Which Interior Did Not Demonstrate Section 15(k) Compliance

15(k)(11), advise on in-sourcing: The survey response indicated that this was not an OSDBU role. In a follow-up meeting, an agency official stated that the OSDBU does not have a formal process for giving advice on in-sourcing and that the official could not recall the OSDBU being involved with any in-sourcing decisions. The official does not think that in-sourcing is happening very often but said that there may be instances of this that the official is not aware of. The official further stated that if a small business is affected, the OSDBU would be consulted when relevant issues arise.

15(k)(17), respond to notification of an undue restriction on ability of small business to compete: An agency official stated that the OSDBU director resolves these issues at lower levels and that this approach works at Interior. The official explained that each bureau at Interior has advocates for competition and a bureau chief, who is a senior expert on contracting for that bureau. The OSDBU director will reach out to the bureau advocates and chiefs to obtain information on a specific issue. The official considers this to be the best place to identify the details of the undue restriction. However, the official stated that there may be other benefits to informing the primary agency advocate for competition, such as attempting to see broad trends within the agency rather than remedying an individual situation.

Appendix XV: Demonstrated Compliance with Section 15(k), Department of Justice

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Justice demonstrated compliance with all 12 of the 12 section 15(k) requirements within our review (see table 16). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 16: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Justice

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	Department of Justice not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
 Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Appendix XVI: Demonstrated Compliance with Section 15(k), Department of Labor

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Labor (Labor) demonstrated compliance with 11 of the 13 section 15(k) requirements within our review (see table 17). The department did not demonstrate compliance with 2 requirements regarding compensation/seniority and collateral duties of the OSDBU director. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

**Appendix XVI: Demonstrated Compliance with
Section 15(k), Department of Labor**

Table 17: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Labor

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority		● ^a
15(k)(3): Reporting requirement (head of agency or deputy head)	●	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties		●
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aA Senior Executive Service (SES) position is any position in an agency classified above GS-15 or in Level IV or V of the executive schedule, or an equivalent position, not required to be filled by an appointment by the President (with the consent of the Senate). An employee in such a position (1) directs the work of an organizational unit; (2) is held accountable for the success of one or more specific programs or projects; (3) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to the goals; (4) supervises the work of employees other than personal assistants; or (5) otherwise exercises important policy-making, policy-determining, or other executive functions, with certain enumerated exceptions. 5 U.S.C. § 3132(a)(2). Therefore, a presidentially appointed, Senate-confirmed position compensated under the executive schedule does not meet the definition of SES.

Agency Response
Relating to Areas in Which
Labor Did Not
Demonstrate Section 15(k)
Compliance

15(k)(2), compensation/seniority: At the time of our review, the current OSDBU director was an acting director. In cases in which an agency's OSDBU director was an acting director, we assessed compliance for section 15(k)(2) based on the seniority and compensation of the immediately prior permanent director. In follow-up correspondence, a Labor staff member indicated that the prior permanent OSDBU director was a presidentially appointed, Senate-confirmed position compensated under an executive schedule. The position is not a Senior Executive Service (SES) position. This type of appointment does not meet the statutorily defined SES position requirements.

15(k)(15), collateral duties: According to agency officials, the acting OSDBU director holds other positions and titles, including assistant secretary for administration and management and chief acquisition officer. When the position is permanently filled, the OSDBU director will hold the position of the assistant secretary for administration and management. The officials referenced a March 2010 department order, which explains that the agency realigned the small business-related functions under the assistant secretary for administration and management to better integrate small business outreach and small business procurement within the overall procurement function of the department. According to the officials, the assistant secretary for administration and management was appointed to simultaneously serve as the OSDBU director.

Appendix XVII: Demonstrated Compliance with Section 15(k), Department of the Navy

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of the Navy (Navy) demonstrated compliance with 12 of the 13 section 15(k) requirements within our review (see table 18). The department did not demonstrate compliance with 1 requirement regarding assigning small business technical advisers. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 18: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of the Navy

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	●	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers		●
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization

Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

Agency Response
Relating to Area in Which
Navy Did Not Demonstrate
Section 15(k) Compliance

15(k)(8), assign small business technical advisers: The survey response indicated that the OSDDBU director does not assign small business technical advisers. In a follow-up discussion, an agency official stated that section 15(k) of the Small Business Act and the Defense Federal Acquisition Regulation (DFAR) differ in relation to how this function is to be carried out. The official explained that the DFAR delegates the responsibility of hiring technical advisers to the head of contracting. The official added that delegating this activity to the contracting office is effective and that the OSDDBU is responsive to this office. The official also explained that the OSDDBU is a policy-level office and does not have the staffing to oversee this activity.

Appendix XVIII: Demonstrated Compliance with Section 15(k), Department of State

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of State (State) demonstrated compliance with 11 of the 13 section 15(k) requirements within our review (see table 19). The department did not demonstrate compliance with 2 requirements regarding assigning small business technical advisers and responding to a notification from a small business of an undue restriction on its ability to compete. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 19: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of State

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	●	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers		●
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete		●

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization

Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

Agency Response
Relating to Areas in Which
State Did Not
Demonstrate Section 15(k)
Compliance

15(k)(8), assign small business technical advisers: The OSDBU director does not assign a small business technical adviser as a full-time employee of the procuring activity, but rather oversees small business technical advisers as employees of the OSDBU. There is 1 procurement center representative assigned to State, who covers all 46 bureaus of the department. When a question arises for the procurement center representative, the OSDBU director assigns a technical adviser to work (as needed) with the representative at the bureau procurement office. An agency official stated the director would like to assign small business specialists to each of the major bureaus at State, but resource constraints represent a significant barrier.

15(k)(17), respond to notification of an undue restriction on ability of small business to compete: Officials at State told us that the OSDBU interacts with a wide range of small businesses and that, in certain cases, the OSDBU would respond to a notification of an undue restriction on the ability of a small business to compete by completing the steps detailed in all three subsections of this requirement. But in other instances, the OSDBU would partially follow the subsections. For example, the OSDBU would not inform the agency's advocate for competition when they believed it was not warranted to do so. The officials stated that in these cases there was no need for the OSDBU to inform the agency's advocate for competition because the situation the small business raised was resolved at lower levels in the acquisition process.

Appendix XIX: Demonstrated Compliance with Section 15(k), Department of Transportation

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Transportation demonstrated compliance with all 12 of the 12 section 15(k) requirements within our review (see table 20). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 20: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Transportation

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	Department of Transportation not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
 Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Appendix XX: Demonstrated Compliance with Section 15(k), Department of the Treasury

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of the Treasury (Treasury) demonstrated compliance with 10 of the 12 section 15(k) requirements within our review (see table 21). The department did not demonstrate compliance with 2 requirements regarding assigning small business technical advisers and providing advice on the conversion of activities from performance by a small business to performance by a federal employee (in-sourcing). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 21: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of the Treasury

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	● ^a	
15(k)(3): Reporting requirement (head of agency or deputy head)	Department of the Treasury not assessed for this requirement ^b	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers		●
15(k)(11): Advise on in-sourcing		●
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aAt the time of our review, the OSDBU director was an acting director and held a General Schedule position (GS-14). However, the last permanent OSDBU director was a member of the Senior Executive Service (SES). A position description for the director indicates it is an SES-level position.

^bWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Agency Response Relating to Areas in Which Treasury Did Not Demonstrate Section 15(k) Compliance

15(k)(8), assign small business technical advisers: An agency official stated that the OSDBU does not assign a small business technical adviser (termed small business specialists at Treasury) to each of its bureaus. The official explained that it is important for bureau managers to assign technical advisers. The OSDBU provides input on the small business expertise the appointee holds.

15(k)(11), advise on in-sourcing: Based on the survey response and follow-up discussion, an agency official indicated that this was not an OSDBU role. The official added that this activity falls under the human resources area. However, the official was not certain if human resources personnel would consult with the OSDBU, as in-sourcing does not happen that often. The official also referenced an Office of Management and Budget letter saying that in these cases, the OSDBU should be notified, but this guidance had not been incorporated into Treasury's policy.

Appendix XXI: Demonstrated Compliance with Section 15(k), Department of Veterans Affairs

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Department of Veterans Affairs (VA) demonstrated compliance with 10 of the 13 section 15(k) requirements within our review (see table 22). The department did not demonstrate compliance with 3 requirements regarding reporting to the head or deputy head of the agency, assigning small business technical advisers, and providing advice on the conversion of activities from performance by a small business to performance by a federal employee (in-sourcing). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 22: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Department of Veterans Affairs

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)		●
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers		●
15(k)(11): Advise on in-sourcing		●
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
 Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

Agency Response
Relating to Areas in Which
VA Did Not Demonstrate
Section 15(k) Compliance

15(k)(3), reporting requirement (head of agency or deputy head): An agency official stated that the director reports to both the deputy secretary and the chief of staff, and the chief of staff signs the director's performance appraisals. The official added that, if there is a matter requiring the attention of the secretary, the OSDDBU director will first advise the chief of staff. The official did not know why the secretary and deputy secretary do not sign the director's performance appraisals, but the official believes the director has adequate access to both the secretary and deputy secretary through the chief of staff.

15(k)(8), assign small business technical advisers: According to an agency official, the director does not assign OSDDBU personnel to the procuring activity, and the official believes the procuring office should perform this role. VA has 46 small business liaison officers (the term VA uses for personnel performing the role of small business technical advisers). The official stated that the small business liaison officers are full-time employees and well-qualified, but that their principal duty is not to assist the procurement center representatives.

15(k)(11), advise on in-sourcing: An agency official stated that it is not common for agency personnel to send the OSDDBU information when they are considering in-sourcing of activities. The official added that if a decision were made to convert sourcing, the agency would not submit the contract for re-competition. The official said that a draft policy (under development) will state that the OSDDBU must be notified of potential in-sourcing.

Appendix XXII: Demonstrated Compliance with Section 15(k), Environmental Protection Agency

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Environmental Protection Agency (EPA) demonstrated compliance with 11 of the 12 section 15(k) requirements within our review (see table 23). The agency did not demonstrate compliance with 1 requirement regarding collateral duties of the OSDBU director. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

**Appendix XXII: Demonstrated Compliance with
Section 15(k), Environmental Protection
Agency**

Table 23: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Environmental Protection Agency

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	Environmental Protection Agency not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties		● ^b
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

^bFor the purposes of this report, we only included the Disadvantaged Business Enterprise Program responsibility for making our demonstrated compliance determination.

**Agency Response
Relating to Area in Which
EPA Did Not Demonstrate
Section 15(k) Compliance**

15(k)(15), collateral duties: According to an EPA official, the OSDBU director also oversees 2 EPA-wide programs: (1) the Disadvantaged Business Enterprise Program, which is designed to increase the use of such businesses in procurements funded under EPA's financial assistance agreements; and (2) the Asbestos and Small Business Ombudsman Program, which advocates for small businesses on regulatory and environmental compliance issues. The official stated that

the intent of delegating these duties to the OSDBU was to increase cost efficiencies and effectiveness because of the functional overlap (all small business-related) and that sharing resources to accomplish these complementary agendas made sense for the agency. The OSDBU director provides administrative support to the procurement manager for the Disadvantaged Business Enterprise Program. The Clean Air Act of 1990 requires the OSDBU, through the program ombudsman, to monitor activities for the Asbestos and Small Business Ombudsman Program.¹

¹According to the Clean Air Act of 1990, the administrator shall direct the agency's Office of Small and Disadvantaged Business Utilization through the small business ombudsman to monitor the Small Business Stationary Source Technical and Environmental Compliance Assistance Program under this Clean Air Act section. The monitoring activities include (1) rendering advisory opinions on the overall effectiveness of the assistance program, difficulties encountered, and degree and severity of enforcement; (2) periodic reporting to Congress on program compliance with requirements of the Paperwork Reduction Act, Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and Equal Access to Justice Act; (3) reviewing information to be issued by the program to ensure the layperson can understand the information; and (4) having the program serve as the secretariat for the development and dissemination of such reports and advisory opinions. 42 U.S.C. § 7661f(d).

Appendix XXIII: Demonstrated Compliance with Section 15(k), General Services Administration

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the General Services Administration demonstrated compliance with all 12 of the 12 section 15(k) requirements within our review (see table 24). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

**Appendix XXIII: Demonstrated Compliance
with Section 15(k), General Services
Administration**

Table 24: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, General Services Administration

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	● ^a	
15(k)(3): Reporting requirement (head of agency or deputy head)	General Services Administration not assessed for this requirement ^b	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aAt the time of our review, the OSDBU director was an acting director and held a General Schedule position (GS-15). However, the last permanent OSDBU director was a political appointee, and in a written response, General Services Administration officials stated that the OSDBU director position is a politically appointed, Senior Executive Service (SES) position. A position description for the director also indicates it is an SES-level position.

^bWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Appendix XXIV: Demonstrated Compliance with Section 15(k), National Aeronautics and Space Administration

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the National Aeronautics and Space Administration (NASA) demonstrated compliance with 12 of the 13 section 15(k) requirements within our review (see table 25). NASA did not demonstrate compliance with 1 requirement regarding responding to a notification from a small business of an undue restriction on its ability to compete. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 25: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, National Aeronautics and Space Administration

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	●	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	●	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete		●

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization

Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

Agency Response
Relating to Area in Which
NASA Did Not
Demonstrate Section 15(k)
Compliance

15(k)(17), respond to notification of an undue restriction on ability of small business to compete: Officials at NASA stated that, on receiving a notification of an unduly restrictive solicitation, the OSDBU would respond by working directly with the appropriate contracting personnel at the relevant NASA buying center. The OSDBU would notify the contracting officer and ensure that the small business was aware of resources, but it would not inform the agency advocate for competition because the goal is to resolve issues at the lowest level. According to the officials, NASA has a decentralized structure consisting of 10 buying centers, and it is rare for an undue restriction issue to require the attention of the agency advocate for competition. Issues are generally resolved at the buying center offices.

Appendix XXV: Demonstrated Compliance with Section 15(k), Office of Personnel Management

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Office of Personnel Management (OPM) demonstrated compliance with 9 of the 12 section 15(k) requirements within our review (see table 26). OPM did not demonstrate compliance with 3 requirements regarding compensation/seniority of the OSDBU director, assigning small business technical advisers, and responding to a notification from a small business of an undue restriction on its ability to compete. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

Table 26: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Office of Personnel Management

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority		●
15(k)(3): Reporting requirement (head of agency or deputy head)	Office of Personnel Management not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties	●	
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers		●
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete		●

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
 Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

Agency Response Relating to Areas in Which OPM Did Not Demonstrate Section 15(k) Compliance

15(k)(2), compensation/seniority: According to the survey response, the OSDBU director is a General Schedule position (GS-15 level), and the senior procurement executive is a Senior Executive Service position. The survey also stated that OPM does not have a chief acquisition officer.

15(k)(8), assign small business technical advisers: An agency official stated that the OSDBU has hired one staff member who is technically qualified to work with the procurement center representative. The employee also does market research and helps with outreach events of

the OSDBU, and in general mirrors the director's work. The official told us the staff member spends about 50 percent of her time working with the procurement center representative. The official also said the OPM OSDBU is small, and the director handles many tasks himself or may refer them to other relevant individuals.

15(k)(17), respond to notification of an undue restriction on ability of small business to compete: The survey response indicated that the OSDBU had not received a notification of an undue restriction in the past 3 years. In a follow-up response, an agency official indicated that the director would take most of the steps specified in the notification requirement, but would only inform the agency's advocate for competition if the situation could not be resolved between contracting, the procurement center representative, and the OSDBU director. According to the official, the agency has created a draft standard operating procedure that will address the issue of communicating to the agency advocate for competition. However, the official also added that the draft review process is lengthy. The review process had not been completed as of May 19, 2017.

Appendix XXVI: Demonstrated Compliance with Section 15(k), Social Security Administration

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the Social Security Administration (SSA) demonstrated compliance with 7 of the 13 section 15(k) requirements within our review (see table 27). SSA did not demonstrate compliance with 6 requirements regarding compensation/seniority of the OSDBU director, reporting to the head or deputy head of the agency, collateral duties of the director, providing assistance on payments, assigning small business technical advisers, and providing advice on the conversion of activities from performance by a small business to performance by a federal employee (in-sourcing). For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

**Appendix XXVI: Demonstrated Compliance
with Section 15(k), Social Security
Administration**

Table 27: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, Social Security Administration

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority		●
15(k)(3): Reporting requirement (head of agency or deputy head)		●
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties		●
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments		●
15(k)(8): Assign small business technical advisers		●
15(k)(11): Advise on in-sourcing		●
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete	●	

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

**Agency Response
Relating to Areas in Which
SSA Did Not Demonstrate
Section 15(k) Compliance**

15(k)(2), compensation/seniority: SSA officials explained that SSA's acquisition office is relatively small and they could not justify the OSDBU director holding a Senior Executive Service (SES) position. They said that they believe the OSDBU director is compensated appropriately at level 15 of the General Schedule given the responsibilities associated with a small procurement agency.

15(k)(3), reporting requirement (head of agency or deputy head): According to SSA officials, the OSDBU director reports to the Office of the Commissioner on small business matters, but the chief of staff signs the performance appraisals of the director. In the past, the director's performance appraisals had been completed by the agency's deputy

commissioner. However, as of May 10, 2017, the SSA commissioner position remained vacant and the deputy director filled the role of acting commissioner; thus, the responsibilities for appraising the OSDBU director remain delegated to the chief of staff.

15(k)(15), collateral duties: The OSDBU director is also the agency coordinator for the Electronic Subcontracting Reporting System, which collects information on subcontracts for use by the OSDBU and acquisition personnel. The agency officials added that the director does not spend a significant amount of time in this role.

15(k)(6), provide assistance on payments: Agency officials said that the director would provide some limited assistance to small businesses seeking help with payment issues, usually by referring the business to the contracting office. The officials said that the OSDBU does not have formal procedures for providing payment assistance, and in cases in which a small business sought payment assistance from a prime contractor, the OSDBU generally would not get involved.

15(k)(8), assign small business technical advisers: SSA officials noted that the agency has only one acquisition office; therefore, the OSDBU director did not assign technical advisers and the requirement did not make sense in the agency context. However, SSA has a specialist for small and disadvantaged business utilization, who is managed by another executive. Officials said that the specialist is a well-qualified, technically trained, full-time employee and has a principal duty to assist the procurement center representative, but is not assigned by the OSDBU.

15(k)(11), advise on in-sourcing: According to SSA officials, the OSDBU is not generally involved in providing advice on a decision to convert an activity performed by a small business to an activity performed by a federal employee, although the budget office could contact the OSDBU for input on an informal basis. The budget office is responsible for preparing an analysis of proposed in-sourcing.

Appendix XXVII: Demonstrated Compliance with Section 15(k), U.S. Agency for International Development

We reviewed policy documents and survey and interview responses and determined that the Office of Small and Disadvantaged Business Utilization (OSDBU) at the U.S. Agency for International Development (USAID) demonstrated compliance with 10 of the 12 section 15(k) requirements within our review (see table 28). USAID did not demonstrate compliance with 2 requirements regarding collateral duties of the OSDBU director and responding to a notification from a small business of an undue restriction on its ability to compete. For more information about our methodology, see appendix I. For more information about each statutory provision, see appendix II.

**Appendix XXVII: Demonstrated Compliance
with Section 15(k), U.S. Agency for
International Development**

Table 28: Demonstrated Compliance with Section 15(k) Requirements as of May 19, 2017, U.S. Agency for International Development

Section 15(k) requirements related to OSDBU director	Demonstrated compliance with section 15(k)	
	Yes	No
15(k): Director experience	●	
15(k)(2): Compensation/seniority	●	
15(k)(3): Reporting requirement (head of agency or deputy head)	USAID not assessed for this requirement ^a	
15(k)(7): Supervisory duties	●	
15(k)(15): Collateral duties		●
Section 15(k) requirements for select OSDBU functions		
15(k)(5): Identify and address bundling of contract requirements	●	
15(k)(6): Provide assistance on payments	●	
15(k)(8): Assign small business technical advisers	● ^b	
15(k)(11): Advise on in-sourcing	●	
15(k)(12): Provide advice to chief acquisition officer and senior procurement executive	●	
15(k)(13): Provide training	●	
15(k)(14): Receive unsolicited proposals and forward them when appropriate	●	
15(k)(17): Respond to notification of an undue restriction on ability of small business to compete		●

Legend: OSDBU = Office of Small and Disadvantaged Business Utilization, USAID = U.S. Agency for International Development
Source: GAO. | GAO-17-675

Note: The information we collected to make the determination for the director-related requirements included survey responses; follow-up responses; and documentation such as policies, position descriptions, organizational charts, and reports. If supporting documentation was not available, we made the determination based solely on the agency's survey response and/or follow-up with agency officials. To obtain information for determinations on OSDBU functions, we surveyed OSDBU directors at 24 agencies about certain OSDBU functions listed in section 15(k) of the Small Business Act. We also reviewed relevant policy documents. We followed up with all 24 OSDBU offices to clarify responses and obtain additional information in instances in which they indicated they did not perform a section 15(k) requirement.

^aWe reviewed compliance with this requirement for 10 agencies (the Departments of Education, Energy, Labor, State, Air Force, Army, Navy, and Veterans Affairs; the National Aeronautics and Space Administration; and the Social Security Administration).

^bThe Small Business Administration has not assigned a procurement center representative to USAID, but would provide one on an ad-hoc basis when requested.

**Agency Response
Relating to Areas in Which
USAID Did Not
Demonstrate Section 15(k)
Compliance**

15(k)(15), collateral duties: The OSDBU director oversees the Minority Servicing Institutions Program for USAID. The director typically spends less than 2–3 hours per week in this role, and another OSDBU staff member serves as the full-time coordinator for the program. USAID officials stated that this role was moved from the agency's Office of General Counsel to the OSDBU about 10 years ago. They said that

bringing the responsibility under the OSDDBU made sense from an agency perspective because the OSDDBU assists disadvantaged businesses.

15(k)(17), respond to notification of an undue restriction on ability of small business to compete: Agency officials stated that on receiving such a notification, the director would contact the procurement officer involved with the solicitation and ensure that the small business was aware of available options to address the situation. The officials stated that the director would not inform the agency's advocate for competition. They explained that discussing the issues with personnel directly involved with the solicitation was more effective than informing the advocate for competition. In the future, the officials indicated that the OSDDBU may take steps to involve the agency advocate for competition in the process as required in section 15(k)(17).

Appendix XXVIII: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

July 25, 2017

Mr. William B. Shear
Director, Financial Markets and Community Investment Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Shear:

Thank you for the opportunity to review and comment on the Government Accountability Office's draft report titled *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates* (GAO-17-675).

On behalf of the Department of Commerce, I have enclosed our comments on the draft report. The report discusses five recommendations to address non-compliance with section 15 of the Small Business Act. We agree with the report's recommendations for sections 15(k)(2) – SES designation for the Director position, (k)(8) – Appointment of Small Business Technical Advisers, (k)(11) – In-sourcing, and (k)(17) – Unduly restrictive solicitations. The Department has initiated appropriate corrective actions. However, the Department believes that we are in compliance with sections 15(k)(5) – bundling – and provided additional information accordingly.

If you have any questions, please contact LaJuene Desmukes at (202) 482-1472.

Sincerely,

A handwritten signature in cursive script that reads "Wilbur Ross".

Wilbur Ross

Enclosure

**Department of Commerce's Comments on
GAO Draft Report titled *Small Business Contracting: Actions Needed to Demonstrate and
Better Review Compliance with Select Requirements for Small Business Advocates*
(GAO-17-675)**

The Department of Commerce has reviewed the draft report and we offer the following comments for GAO's consideration. Page numbers refer to page numbers in the report unless otherwise stated.

General Comments

The report on agencies' small business contracting programs, and in particular the review and compliance responsibilities of the Office of Small and Disadvantaged Business Utilization (OSDBU), was very informative. We agree with the report's discussion that noncompliance with section 15(k) requirements may limit the extent to which an OSDBU can advocate for small businesses. Overall, we found the report generally well-informed and balanced.

Comments on Recommendations

The Government Accountability Office (GAO) made one recommendation to the Department of Commerce in the report.

- **Recommendation:** The Secretary of Commerce should comply with sections 15(k)(2), (k)(5), (k)(8), (k)(11), and (k)(17) or report to Congress on why the agency has not complied, including any statutory flexibilities or exceptions believed appropriate.

Commerce Response: The Department of Commerce agrees with GAO's recommendation that we are not in compliance with sections 15(k)(2), (k)(8), (k)(11), and (k)(12). We are taking appropriate corrective actions. We intend to move forward with plans to change the position of the director for OSDBU from GS-15 to an SES position in FY 2018. The OSDBU Director is in the process of appointing Small Business Technical Advisers (SBTA) to bureaus in which SBA assigned PCRs. In addition, the Department is in the process of updating the Commerce Acquisition Manual (CAM) to address procedures for in-sourcing and unduly restrictive solicitations.

The Department of Commerce does not agree with GAO's recommendation that we are not in compliance with sections 15(k)(5).

- (k)(5), Bundling – The Department has well-established policy and procedures in place to identify, review, and approve acquisitions valued over \$150,000 that involve bundling of contract requirements prior to the issuance of any solicitation. The contracting officer is required to submit form CD-570, Small Business Set-Aside Review, indicate on the form if the planned acquisition involves bundling, and attach supporting documentation and bundling analysis. The CD-570 package is subjected to a review and approval process, which includes the bureau small business specialist, PCR, OSDBU Director, and in cases of substantial bundling, the Senior Procurement

Executive. When the CD-570 form does not indicate a bundling action, the SBS and OSDBU may investigate the possibility of bundling based on supporting documentation submitted with the CD-570 (i.e., acquisition history) or based on information other than that provided with the CD-570 package, and require the contracting officer to provide a bundling analysis to support the acquisition to bundle requirements. The Department has reported zero bundled actions in FPDS since FY 2003.

Appendix XXIX: Comments from the Department of Defense



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

Mr. William Shear
Director, Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington DC 20548

JUL 31 2017

Dear Mr. Shear,

This is the Department of Defense (DoD) response to the GAO Draft Report GAO-17-675, "SMALL BUSINESS CONTRACTING: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates," dated June 26, 2017 (GAO Code 100820).

The Department appreciates the opportunity to comment on the draft report. Attached is DoD's proposed response to the subject report. My point of contact is Ms. Janice Buffler who can be reached at Janice.l.buffler.civ@mail.mil and (571) 372- 6333.

Sincerely,

A handwritten signature in black ink that reads "James J. Galvin".

James J. Galvin
Acting Director, Office of
Small Business Programs

Enclosure:
As stated

GAO Draft Report Dated June 26, 2017
GAO-17-675 (GAO CODE 100820)

**“SMALL BUSINESS CONTRACTING: ACTIONS NEEDED TO DEMONSTRATE
AND BETTER REVIEW COMPLIANCE WITH SELECT REQUIREMENTS FOR
SMALL BUSINESS ADVOCATES”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

RECOMMENDATION 1: The GAO recommends that the Director of the Defense Logistics Agency should comply with sections 15(k)(2), (k)(7), (k)(11), and (k)(17) or report to Congress on why the agency has not complied including seeking any statutory flexibilities or exceptions believed appropriate.

DoD RESPONSE: Partially concur.

Concur with section 15(k)(2). Defense Logistics Agency (DLA) formally requested a Senior Executive Service (SES) billet for the position of Director, DLA Office of Small Business Programs via the fiscal year 2018/2019 executive resource allocation process administered by the Office of Personnel Management. Although this initial request was not approved by the Office of the Secretary of Defense, Office of the Deputy Chief Management Officer, DLA will continue to submit requests to elevate the position to the SES level.

Nonconcur with section 15(k)(7) because the headquarters DLA OSBP Director supervises all employees within the headquarters DLA OSBP. To clarify the other supervisory relationships, DLA is a relatively large agency which is comprised of many subordinate field activities, each of which has a small business office. In each small business office, there is a Director who supervises all of the small business professionals within that activity. Therefore, DLA is in compliance with section 15(k)(7).

Concur with section 15(k)(11). DLA OSBP has reviewed this statutory requirement with the DLA acquisition office responsible for in-sourcing decisions for the agency. Future in-sourcing actions will be coordinated with DLA OSBP as required.

Concur with section 15(k)(17). When notified by a small business of undue restrictions on competition, DLA OSBP will forward a copy of the notification to the DLA Competition Advocate as required.

RECOMMENDATION 2: The GAO recommends that the Secretary of the Army should comply with section 15(k)(8) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

DoD RESPONSE: Nonconcur.

The Defense Federal Acquisition Regulation Supplement (specifically, DFARS 219.201(c)(8)) delegates the authority to appoint small business technical advisors to the head of the contracting activity. Numerous heads of contracting activity across DoD appointed more than 700 small business specialists, also referred to as “small business professionals”, to perform the technical advisor function. Therefore, the Army is in compliance with section 15(k)(8).

RECOMMENDATION 3: The GAO recommends that the Secretary of Defense should comply with sections 15(k)(5) and (k)(8) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

DoD RESPONSE: Nonconcur.

At the level of the Office of the Secretary of Defense, DoD Office of Small Business Programs, there is no contracting or bundling to review or mitigate. The contracting and bundling occurs in acquisitions conducted at the lower level DoD Components. Nevertheless, each year, the DoD Office of Small Business Programs identifies all contracts marked as bundled across the entire DoD, creates a summary bundling report, and submits the report to Congress through the Small Business Administration. The annual report summarizes the many individual efforts across the DoD to identify, mitigate, and monitor bundled contracts. Therefore, the DoD is in compliance with section 15(k)(5).

The Defense Federal Acquisition Regulation Supplement (specifically, DFARS 219.201(c)(8)) delegates the authority to appoint small business technical advisors to the head of the contracting activity. Numerous heads of contracting activity across DoD appointed more than 700 small business specialists, also referred to as “small business professionals”, to perform the technical advisor function. Therefore, the DoD is in compliance with section 15(k)(8).

RECOMMENDATION 4: The GAO recommends that the Secretary of the Navy should comply with section 15(k)(8) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

DoD RESPONSE: Nonconcur.

The Defense Federal Acquisition Regulation Supplement (specifically, DFARS 219.201(c)(8)) delegates the authority to appoint small business technical advisors to the head of the contracting activity. Numerous heads of contracting activity across DoD appointed more than 700 small business specialists, also referred to as “small business professionals”, to perform the technical advisor function. Therefore, the Navy is in compliance with section 15(k)(8).

Appendix XXX: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY SECRETARY

July 25, 2017

Mr. William B. Shear
Director, Financial Markets
And Community Investment Issues
Government Accountability Office
Washington, DC 20530

Dear Mr. Shear:

I am writing in response to the recommendations made in the Government Accountability Office (GAO) draft report, "Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates," GAO-17-675. This report has two recommendations for the Secretary of the U.S. Department of Education (Department), one regarding Section 15(k)(3) of the Small Business Act (15 U.S.C.A. § 644) and a second regarding Section 15(k)(11) of that same Act. We appreciate the opportunity to comment on the draft report and its recommendations.

Recommendations:

The Secretary of Education should comply with sections 15(k)(3) and (k)(11) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exception believed appropriate.

Section 15(k)(3): Section 15(k)(3) of the Small Business Act (15 U.S.C.A. § 644) provides in relevant part that the Director of the Office for Small and Disadvantaged Business Utilization (OSDBU) "shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head of such agency or to the deputy of such head."

As GAO reported, the Department's former Deputy Secretary delegated the responsibility of the performance appraisal of the OSDBU Director to the Senior Policy Advisor in the Office of the Deputy Secretary (ODS). Please note that in the Department, performance appraisals are done at two levels: (1) the initial appraisal, and (2) the approval by a higher level official. In the case of the OSDBU Director, the Deputy Secretary was the second level of approval, and he carefully reviewed and could modify the first level appraisal. In addition, the Department's OSDBU Director typically meets with the Deputy Secretary on a monthly basis and provides updates on small business activities. Since the change in administration in January of 2017, the position of Deputy Secretary at the Department has been vacant; the Senior Policy Advisor in ODS has been performing the duties and functions of the Deputy Secretary, including the functions delegated to him under section 15(k)(3) of the Small Business Act. As such, we do not believe the Department is out of compliance with Section 15(k)(3) of the Small Business Act.

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www.ed.gov

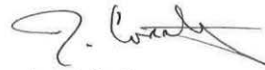
**Appendix XXX: Comments from the
Department of Education**

Section 15(k)(11): Section 15(k)(11) of the Small Business Act (15 U.S.C.A. § 644) (SBA) provides in full that the Director of OSDBU “shall review and advise such agency on any decision to convert an activity performed by a small business concern to an activity performed by a Federal employee.”

Due to limited OSDBU resources, the responsibility to review for “insourcing” was delegated to the Office of Contract Operations in the Department’s Office of the Chief Financial Officer. Given anticipated budget reductions, the Department will evaluate the appropriate office and how best to implement Section 15(k)(11) of the SBA in light of the activities that are part of the Department’s overall mission.

Thank you for the opportunity to provide these comments.

Sincerely,



Joseph C. Conaty
Delegated the Duties and Functions
of the Deputy Secretary

Appendix XXXI: Comments from the Department of Energy



Department of Energy

Washington, DC 20585

July 28, 2017

Mr. William B. Shear
Director
Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Shear:

Thank you for providing a draft copy of the Government Accountability Office (GAO) report *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates (GAO-17-675)*. We reviewed the draft report and provided our response to GAO's recommendations in the enclosure titled "Response to Report Recommendations."

Overall efforts since January 2017 to move the Office of Small and Disadvantaged Business Utilization (OSDBU) into compliance with Section 15(k) of the Small Business Act have been successful. Compliance as outlined in the enclosed "Response to Recommendations" should be achievable before the end of FY 2017.

If you have any questions, please contact me, Christy Jackiewicz, at (202) 586-4620.

Sincerely,

A handwritten signature in black ink, appearing to read "Christy Jackiewicz".

Christy Jackiewicz
Acting Director
Department of Energy Office of Small and
Disadvantaged Business Utilization

Enclosure



Printed with soy ink on recycled paper

Response to Report Recommendations

GAO Recommendation: *The Secretary of Energy should comply with sections 15(k)(3), (k)(8), and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.*

Management Response: Concur.

The Office of Small and Disadvantaged Business Utilization (OSDBU) will take the following action to ensure compliance with section 15(k)(3):

- The OSDBU Director's performance appraisals will be completed by the Secretary of Energy or Deputy Secretary of Energy.

The OSDBU will take the following action to ensure compliance with section 15(k)(8):

- The OSDBU will appoint at least one Small Business Technical Advisors for each Business Line (3 total)
 - a. Management and Operations
 - b. Science and Energy
 - c. National Nuclear Security Administration

The OSDBU will take the following action to ensure compliance with section 15(k)(17):

- The OSDBU will complete a data call to DOE's Small Business Program Managers to determine if there have been any undue restrictions on small business. If the findings indicate that small businesses have endured any undue restrictions, the OSDBU will take action to remedy the situation.

The estimated closure date of the actions listed above is September 30, 2017.

Appendix XXXII: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 26 2017

Mr. William B. Shear
Director, Financial Markets and
Community Investment Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Shear:

Thank you for providing the Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates* (GAO-17-675). We appreciate GAO's review of compliance with selected requirements of the Small Business Act.

The Department concurs with the recommendation to comply with sections 15(k)(11) and 15(k)(17) of the Small Business Act or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

For section 15(k)(11) of the Small Business Act, the Department's Office of Small and Disadvantaged Business Units (OSDBU) will implement procedures to involve the OSDBU Director in insourcing decisions that affect small business concerns. For section 15(k)(17) of the Act, OSDBU will implement procedures for responding to notifications of undue restrictions on the ability of small businesses to compete.

If you have any questions or require additional information, please contact Chris Bell at (202) 208-3458 or Christopher_Bell@ios.doi.gov.

Sincerely,

Amy Holley
Acting Assistant Secretary
Policy, Management and Budget

Appendix XXXIII: Comments from the Department of Labor

U.S. Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210



JUL 13 2017

Mr. William B. Shear
Director, Financial Markets and Community Investment
Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Shear:

Thank you for the opportunity to review and comment on draft report GAO-17-675 *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*. We appreciate the Government Accountability Office's (GAO) efforts and insights.

Recommendation: *The Secretary of Labor should comply with sections 15(k)(2) and (k)(15) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.*

DOL Response: The Department neither agrees nor disagrees with the recommendation. As currently structured, our small business program has had eight consecutive years of 'A' ratings on its small business scorecard – a clear demonstration of sustained success. This is due in part to the ongoing support from Departmental leadership and program agencies for the small business program. However, the Department is committed to reviewing its compliance with the relevant statutes.

Should you have any questions regarding the Department's response, please have your staff contact Carl Campbell, Chief Procurement Officer, at Campbell.Carl.V@dol.gov.

Sincerely,

Edward C. Hugler
Acting Assistant Secretary for
Administration and Management

Appendix XXXIV: Comments from the Department of State



Charles M. Johnson, Jr.
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

United States Department of State

Comptroller

Washington, DC 20520

JUL 21 2017

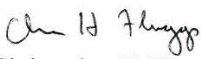
Dear Mr. Johnson:

We appreciate the opportunity to review your draft report, "SMALL BUSINESS CONTRACTING: Actions Needed to Demonstrate and Better Review Compliance with Select Requirement for Small Business Advocates" GAO Job Code 100820.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Rich Vinncombe, Deputy Director, Office of Small and Disadvantaged Business Utilization, Bureau of Administration at (703) 875-7491.

Sincerely,


Christopher H. Flagg

Enclosure:
As stated

cc: GAO – William B. Shear
OSDBU– George L. Price
State/OIG - Norman Brown

Department of State Comments on GAO Draft Report

**SMALL BUSINESS CONTRACTING: Actions Needed to
Demonstrate and Better Review Compliance with Select
Requirements for Small Business Advocates
(GAO-17-675, GAO Code 100820)**

Thank you for the opportunity to comment on your draft report entitled “*Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*”. The report includes two recommendations for the Department of State. The Department respectfully non-concurs with one of these recommendations and concurs with the other that assists us in maintaining a strong small business program.

First, U.S. Government Accountability (GAO) recommends that the Department take additional steps to comply with Section 15(k) (8), which requires that the officer or employee in the position of the Office of Small and Disadvantaged Business Utilization (OSDBU) Director must assign a small business technical adviser to each office where the Small Business Administration (SBA) has assigned a Procurement Center Representative (PCR). The technical adviser:

1. Must be a full-time employee of the procuring activity and must be well qualified, technically trained and familiar with the supplies or services purchased at the activity; and
2. Their principal duty must be to assist the SBA PCR in the PCR’s duties and functions rated to section 8 and 15 of the Small Business Act (15 U.S.C. § 637, 644).

The Department non-concurs with this recommendation and asserts that it is currently in compliance. As noted during the Agency interview, the U.S. Small Business Administration has assigned the Department of State a single PCR at the Department level. Likewise, the Department assigns small business technical advisors at the Department level. Staffing each of the Department’s 46 Bureaus with a full time qualified small business technical advisor is impractical, inefficient and unnecessary at this time.

- 2 -

Secondly, GAO recommends that the Department take additional steps to comply with Section 15(k)(17), which requires that when notified by a small business prior to the award of a contract that the small business believes that a solicitation, request for proposal, or request for quotation unduly restricts the ability of the small business to compete, the officer or employee in the position of the OSDBU Director must:

1. Submit the notice of the small business to the contracting officer, and if necessary, recommend ways in which the solicitation, request for proposal, or request for quotation may be altered to increase the opportunity for competition,
2. Inform the agency's Advocate for Competition; and,
3. Ensure that the small business is aware of other resources and processes available to address unduly restrictive provisions in a solicitation, request for proposal, or request for quotation, even if the resources and processes are provided by the agency, SBA, the GAO, or a procurement technical assistance program.

The Department agrees with this recommendation. As noted during the Agency interview, claims of undue restriction are rare and the Department's OSDBU has successfully resolved the claims at the Contracting Officer's level. However, OSDBU will affirm internal policy to refer all claims, regardless of their resolution at a lower level, to the Competition Advocate.

In conclusion, the Department thanks the GAO for this constructive audit and will promptly implement the agreed recommendations.

Appendix XXXV: Comments from the Small Business Administration



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

July 25, 2017

Mr. William B. Shear
Director
Financial Markets and Community Investment
U. S. Government Accountability Office
Washington, D. C. 20548

Dear Mr. Shear:

Thank you for providing the U. S. Small Business Administration (SBA) with a copy of the Government Accountability Office (GAO) draft report titled *"Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates"*. The draft report analyzes the compliance of the participating agencies with section 15(k) of the Small Business Act and examines the SBPAC review process results. SBA agrees with the recommendation to SBA and has already begun to implement the recommendation for FY2017.

On page 32, GAO states "As SBA continues to enhance the SBPAC peer review process, the SBA Administrator in her capacity as head of SBPAC should include more detailed guidelines than those used for the current process to facilitate a more in-depth review of agencies' compliance with section 15(k) requirements." SBA has initiated action to enhance the SBPAC peer review process. Working with feedback from other Agencies, SBA is currently developing more detailed guidelines. The guidelines in development provide more objective ("comply/non-comply" for example) criteria for the 21 current section 15(k) requirements and facilitate a more in-depth review of agency compliance. In addition to providing more detail the 21 section 15(k) criteria will increase from 10% to 20% of each agency's final goaling score. The more detailed guidelines and the increased importance to the Agency's goaling score will be implemented for the FY 2017 peer review.

Thank you for the opportunity to comment on this report and for taking our views into consideration.

Sincerely,

Robb N. Wong
Associate Administrator,
Office of Government Contracting and Business Development

Appendix XXXVI: Comments from the Department of Veterans Affairs



DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON DC 20420

July 24, 2017

Mr. William B. Shear
Director, Financial Markets
and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Shear:

The Department of Veterans Affairs (VA) has reviewed the Government Accountability Office's (GAO) draft report, "***SMALL BUSINESS CONTRACTING: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates***" (GAO-17-675).

The enclosure sets forth the actions to be taken to address the GAO draft report recommendation.

VA appreciates the opportunity to comment on your draft report.

Sincerely,

A handwritten signature in black ink that reads "Gina S. Farrissee".

Gina S. Farrissee
Deputy Chief of Staff

Enclosure

Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report
***“SMALL BUSINESS CONTRACTING: Actions Needed to Demonstrate and Better
Review Compliance with Select Requirements for Small Business Advocates”***
(GAO-17-675)

GAO Recommendation: To address noncompliance with section 15(k) the Small Business Act, as amended, GAO recommends:

Recommendation 1(a): The Secretary of Veterans Affairs should comply with section 15(k)(3) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

VA Comment: Concur in principle. The Department of Veterans Affairs (VA) is compliant and no further action is needed, but VA will notify Congress as the Government Accountability Office (GAO) recommends. GAO finds VA did not demonstrate compliance with the required reporting relationship for the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). Noting that the statute specifies the Director shall report exclusively to the Secretary or Deputy Secretary, “including with respect to performance appraisals,” GAO construed this requirement as requiring the Secretary or Deputy Secretary sign the Director’s performance appraisal. Because VA’s Chief of Staff signs the Director’s performance appraisal, GAO found VA deficient on this element.

VA’s performance appraisal process for the Director, OSDBU, properly provides for separation of duties among the Rating Official (the Chief of Staff), the Reviewing Official (the Deputy Secretary), and the Appointing Authority (the Secretary). These roles are required by title 5, United States Code, sections 4311-15; title 5, Code of Federal Regulations, subpart 430.3; and part V of VA Handbook 5027/2, Performance Appraisal System. The Chief of Staff prepares and signs an initial summary rating and performance appraisal based on specific performance elements, subject to review by the Deputy Secretary and the Secretary. Removing the Chief of Staff from this process would require merging some of these duties into the same person and eliminating the independent reviews mandated by law and regulation.

The Director, OSDBU, is fully and directly accountable to the Secretary and Deputy Secretary “with respect to performance appraisals,” as section 15(k)(3) directs. The Chief of Staff’s role in initiating this process does not alter that accountability, particularly in light of the Chief of Staff’s own direct reporting relationships to the Secretary and Deputy Secretary. Moreover, the annual summary rating assigned by the Secretary is the official rating. In response to the recommendation for section 15(k)(3), VA will not implement changes as GAO envisions them but will instead report to the Congress the reasons for this arrangement. VA will not characterize its policy as non-compliant. The target completion date for this action is September 30, 2017.

1

Enclosure

Department of Veterans Affairs (VA) Comments to
Government Accountability Office (GAO) Draft Report
***"SMALL BUSINESS CONTRACTING: Actions Needed to Demonstrate and Better
Review Compliance with Select Requirements for Small Business Advocates"***
(GAO-17-675)

Recommendation 1(b): The Secretary of Veterans Affairs should comply with section 15(k)(8) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

VA Comment: Concur in principle. VA acknowledges the value of a knowledgeable on-site technical advisor at a contracting activity able to collaborate with the Small Business Administration's Procurement Center Representative (PCR), where one has been assigned. To the extent that employee addresses matters within OSDDBU subject matter responsibility, it is essential for OSDDBU to provide guidance and direction to ensure consistency.

In interviews with GAO, OSDDBU noted the anomalous requirement to select an employee of the contracting activity and direct that the employee expend his or her principal efforts to assist the PCR. For OSDDBU to select an employee and direct that person's principal work efforts, while that person nominally remains accountable to and on the payroll of the contracting activity, requires an unusual degree of "matrixed" reporting relationships not often found in any workplace. Successful implementation will require a high degree of collaboration with the contracting activity's leadership to ensure the employee retains access to the information he or she will need to assist the PCR.

OSDBU will seek to collaborate with the cognizant contracting activities through VA's Senior Procurement Council, and develop a clear written understanding of roles and responsibilities in a memorandum of understanding. The target completion date for this memorandum is September 30, 2017, to enable execution of these responsibilities in fiscal year 2018.

Recommendation 1(c): The Secretary of Veterans Affairs should comply with section 15(k)(11) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

VA Comment: Concur. GAO notes OSDDBU has drafted language for its Procurement Review Policy to this end.

The target completion date for this action is September 30, 2017, to enable execution of the revised Procurement Review Policy in fiscal year 2018.

2

Appendix XXXVII: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 24 2017

OFFICE OF
SMALL AND DISADVANTAGED
BUSINESS UTILIZATION

William B. Shear
Director
Financial Markets and Community Investment Issues
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Shear:

The U.S. Environmental Protection Agency (EPA) appreciates the opportunity to review and comment on the General Accountability Office (GAO) draft report entitled, *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates* (GAO-17-675). In the draft report, GAO concludes that the EPA complies with 11 of the 12 GAO-reviewed statutory requirements governing the EPA's Office of Small and Disadvantaged Business Utilization (OSDBU).

The EPA agrees with GAO's finding of compliance with the 11 requirements of Sections 15(k) of the Small Business Act. As explained below, however, GAO's finding that EPA did not demonstrate compliance with Section 15(k)(15) mischaracterizes the role of the EPA's OSDBU Director with respect to the EPA-wide Asbestos and Small Business Ombudsman (ASBO) Program. This letter clarifies that role. It also reiterates the specific organizational alignment of the EPA's Disadvantaged Business Enterprise (DBE) Program, which GAO should consider in its analysis of the Section 15(k)(15) requirement.

GAO's Finding

Section 15(k)(15) expressly provides that the Director of OSDBU "shall carry out exclusively the duties enumerated in this Act, and shall, while *the Director*, not hold any other title, position, or responsibility, except as necessary to carry out responsibilities under this subsection." [Emphasis added.]

GAO takes issue with the EPA's compliance with this provision because the OSDBU Director oversees the ASBO and DBE Programs. With respect to the ASBO program, GAO points out that the Clean Air Act of 1990 requires the OSDBU Director to be the ombudsman for the ASBO program. According to GAO, the Clean Air Act requirement that the Director of OSDBU hold a position outside of the responsibilities under Section 15(k) is inconsistent with Section 15(k)(15).

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With respect to the DBE Program, GAO acknowledges that the program is designed to increase the utilization of small disadvantaged and women-owned businesses in procurements funded under the EPA's financial assistance agreements. It also highlights some of the efficiencies and benefits the EPA has identified in connection with the organization of these complementary programs within a single overarching office. GAO did not, however, address the relevant operational framework for carrying out the DBE responsibilities through the EPA's OSDBU. That consideration is relevant to assessing whether the OSDBU Director holds other titles or positions, or performs other work in a manner that is inconsistent with Section 15(k)(15).

EPA's Clarifications

GAO's representation that the Clean Air Act of 1990 requires the EPA's OSDBU Director to serve as the Small Business Ombudsman incorrectly characterizes the relevant statutory provisions and their implementation in the alignment of the ASBO function within OSDBU. Significantly, Section 15(k)(15), does not explicitly preclude an OSDBU from housing other programs or functions. Rather, by its expressed terms, it only specifically prohibits the OSDBU Director from holding other titles or positions, or performing other work.

The 1990 Clean Air Act Amendments, Section 507(d), require that the state small business stationary source technical and environmental compliance assistance program be monitored "through" the EPA Small Business Ombudsman *not* the OSDBU Director. Specifically, Section 507(d) provides:

- (d) Monitoring – The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman to monitor the small business stationary source technical and environmental compliance assistance program under this section. The Ombudsman shall –
- (1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;
 - (2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act [5 U.S.C. § 601 et seq.], and the Equal Access to Justice Act;
 - (3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and
 - (4) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

In implementing that provision, the EPA appointed an official other than the OSDBU Director to serve as the EPA's Small Business Ombudsman. That official is charged with responsibility for administering the state small business stationary source technical and environmental compliance assistance program. Also in accordance with the statutory provisions, that official operates through the EPA's OSDBU. As a result, although GAO indicates that for purposes of the report it did not consider the ASBO function as a determining factor in its assessment, the report should be revised to correctly indicate that while the ASBO function is housed in the EPA's Office of Small and Disadvantaged Business, the OSDBU Director does not hold the EPA's Small Business Ombudsman position.

It is also noteworthy that, like the organizational framework for the ASBO function, the OSDBU Director does not directly manage the DBE program. Instead, the DBE program falls within the purview of a separate dedicated DBE program manager, who reports to and is supervised by another manager within OSDBU. As GAO points out in the draft report, the EPA has determined that locating the DBE function within OSDBU maximizes programmatic, administrative and cost efficiency and effectiveness for the EPA and the small businesses that the programs serve. Similar to the small business programs authorized under the Small Business Act, the DBE program seeks to expand the utilization of small disadvantaged and women-owned businesses in procurements ultimately funded with EPA dollars. In fact, the DBE enabling statutes expressly incorporate by reference the small business eligibility requirements of the Small Business Act.

Accordingly, the DBE program is strategically housed within the EPA's OSDBU to better achieve the common goals of the programs to expand contracting opportunities for small businesses, whether the opportunities are on the prime or subcontracting levels, or whether they are for procurements under financial assistance agreements funded with EPA extramural dollars. The program also is appropriately structured so that the OSDBU Director does not serve as the DBE program manager or directly carryout the day-to-day DBE programmatic responsibilities in contravention of Section 15(k)(15).

The EPA remains committed to championing the interests of small businesses and appreciates the thoughtfulness and professionalism of the GAO team in conducting this important review. Again, the EPA thanks GAO for the opportunity to provide the above clarifications for consideration as GAO finalizes the draft report. If you have any questions or desire additional information, please feel free to contact me at 202-564-6771.

Sincerely,



Denise Benjamin Sirmons, Director
Office of Small and Disadvantaged
Business Utilization

cc: Mike Flynn, Acting Deputy Administrator
Ryan Jackson, Chief of Staff
John Reeder, Deputy Chief of Staff
EPA GAO Liaison Team

Appendix XXXVIII: Comments from the National Aeronautics and Space Administration

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



July 24, 2017

Reply to Attn of: Office Small Business Programs

Mr. William B. Shear
Director
Financial Markets and Community Investment Issues
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Shear:

The National Aeronautics and Space Administration (NASA) appreciates the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled, "Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates" (GAO-17-675), dated June 26, 2017.

In the draft report, GAO makes one recommendation to the Acting Administrator of NASA intended to better ensure compliance with section 15(k) of the Small Business Act.

Specifically, GAO recommends the following:

Recommendation 1: The [Acting] Administrator of NASA should comply with section 15(k) (17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

Management's Response: NASA partially concurs with the recommendation. NASA believes, and the draft report supports, that NASA already complies with subparagraphs (A) and (C) of paragraph (17). NASA concurs that it is not in compliance with subparagraph (B), which requires the Director of Small and Disadvantaged Business Utilization (OSDBU) inform the advocate for competition of such Agency. NASA still believes the most practical and effective solution is for the OSDBU, in consultation with the Contracting Officer, to resolve issues at the lowest level possible. However, the OSDBU will begin notifying the Agency competition advocate in order to comply with the statute. In addition, the OSDBU will also notify the cognizant Center-level competition advocate. The OSDBU in coordination with the Office of Procurement will issue formal correspondence to the acquisition community on these new procedures.

Estimated Completion Date: Regarding the estimated completion date, we intend to comply beginning whenever the next such occurrence takes place. NASA intends to issue formal correspondence to the acquisition community to fully implement this new procedure within six months of the date of this letter.

Once again, thank you for the opportunity to comment on the subject draft report. If you have any questions or require additional information, please contact Richard Mann on (202) 358-2438.

Sincerely,



Glenn A. Delgado
Associate Administrator for Small Business Programs

Appendix XXXIX Comments from the Office of Personnel Management



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Chief Management Officer

July 26, 2017

Mr. William B. Shear
Director, Financial Markets and
Community Investment Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Shear:

Thank you for providing us the opportunity to respond to the Government Accountability Office (GAO) draft report, *Small Business Contracting – Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*, GAO-17-675, GAO job code number 100820.

We recognize that even the most well-run programs benefit from external evaluations and we appreciate your input as we continue to enhance our programs. The response to your recommendation is provided below.

Recommendation: The Director of OPM should comply with sections 15(k)(2), (k)(8), and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

OPM Response

Section 15(k)(2), Compensation/Seniority: Generally requires that OSDBU Director be appointed by the agency head to an SES position. According to the survey response, the OSDBU Director is a General Schedule position (GS-15 level) and the Senior Procurement Executive is a Senior Executive Service position.

Management Response: We concur in part. OPM recognizes that the National Defense Authorization Act for 2013, Section 691(a) Pub. L. No. 112-239 included the requirement that the OSDBU Director be a member of the Senior Executive Service (SES) if the chief acquisition officer (CAO) or the senior procurement executive (SPE) is an SES. By statute, OPM has no chief acquisition officer, but it does have a senior procurement executive, who is a member of the senior executive service.

At the time of enactment of section 691(a), OPM's OSDBU Director position was encumbered by an employee at the GS-15 pay grade. OPM is presently awaiting the confirmation of its nominee for Director. Should the nominee be confirmed, this requirement will be one of the many items the new Director will evaluate and take appropriate action to comply, or to report to

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or exception from this provision.

Section 15(k)(8), Assign Small Business Technical Advisor: An agency official stated that the OSDBU has hired 1 staff member who is technically qualified to work with the procurement center representative. The employee also does market research and helps with outreach events of the OSDBU, and in general mirrors the director's work. The official told us the staff member spends about 50 percent of her time working with the procurement center representative. The official also said the OPM OSDBU is small and the director handles many tasks himself or may refer them to other relevant individuals.

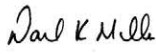
Management Response: We partially concur. OPM agrees with GAO's summary for Section 15(k)(8); however, the summary does not take into account that OSDBU office has two full-time "FTEs" who each share 50 percent of their time with the procurement center representative which equates to 100 percent full-time coverage.

Section 15(k)(17), Respond to Notification of Undue Restriction on Ability of Small Business to Compete: The survey response indicated that the OSDBU had not received a notification of an undue restriction in the past 3 years. In a follow-up discussion, an agency official indicated that the director would take most of the steps specified in the notification requirement, but would only inform the advocate for competition if the situation could not be resolved among contracting, the procurement center representative, and the OSDBU director. According to the official, the agency has created a draft standard operating procedure that will address the issue of communicating to the agency advocate for competition. However, the official also added that draft review process is lengthy and had not yet been completed as of May 19, 2017.

Management Response: We concur. The Director of the OSDBU prepared a draft SOP entitled "*Undue Restriction on Small Business Ability to Compete*" which is undergoing Agency review.

I appreciate the opportunity to respond to this draft report. If you have any questions regarding our response, please contact Mr. Desmond Brown, Director OSDBU at 202- 606-2862 or desmond.brown@opm.gov.

Sincerely,

For  Devo

Dennis Coleman
Acting Chief Management Officer

Appendix XXXX: Comments from the Social Security Administration



SOCIAL SECURITY
Office of the Commissioner

July 26, 2017

Mr. William B. Shear
Director, Financial Markets and Community Investment Issues
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Shear:

Thank you for the opportunity to review the draft report, "SMALL BUSINESS CONTRACTING: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates" (GAO-17-675). Please see our enclosed comments.

If you have any questions, please contact me at (410) 965-9704. Your staff may contact Gary S. Hatcher, Senior Advisor for the Audit Liaison Staff, at (410) 965-0680.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie Hall".

Stephanie Hall
Acting Deputy Chief of Staff

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MD 21235-0001

COMMENTS ON THE GOVERNMENT ACCOUNTABILITY OFFICE DRAFT REPORT, "SMALL BUSINESS CONTRACTING: ACTIONS NEEDED TO DEMONSTRATE AND BETTER REVIEW COMPLIANCE WITH SELECT REQUIREMENTS FOR SMALL BUSINESS ADVOCATES" (GAO-17-675)

GENERAL COMMENTS

Thank you for the opportunity to comment on the draft report. We remain committed to advancing our small business procurement program, and our Office of Small and Disadvantaged Business Utilization (OSDBU) will continue its advocacy for small businesses. Our detailed response to your recommendation is below.

Recommendation

SSA should comply with sections 15(k)(2), (k)(3), (k)(6), (k)(8), (k)(11), and (k)(15) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

Response

We are a relatively "small agency" in terms of acquisitions and while we strive to comply with section 15(k) of the Small Business Act, certain provisions pose challenges. We agree with the recommendation. Specifically, for section:

- 15(k)(2) - Compensation/Seniority - We intend to explore obtaining an exception. Given the OSDBU director's duties and responsibilities, we believe that the position is appropriate at the GS-15 level. Unlike agencies with larger procurement responsibilities, Congress did not mandate that we establish a Chief Acquisition Officer (CAO) position. For the same reason, we also do not have a full-time Senior Procurement Executive (SPE). The Deputy Commissioner, Budget, Finance and Quality Management serves as the SPE, and in many other roles, such as the Chief Financial Officer.
- 15(k)(3) - Reporting Requirement - We intend to explore obtaining an exception given our agency's structure and agency-head responsibilities.
- 15(k)(6) - Provide Assistance on Payments - We will refer small businesses seeking assistance with payments and late payment interest penalties to the OSDBU director.
- 15(k)(8) - Assign Small Business Technical Advisers - Our OSDBU will officially assign our existing Small and Disadvantaged Business Utilization Specialist (SADBUS) to the acquisition office.
- 15(k)(11) - Advise on In-sourcing - The OSDBU director is not generally involved in providing advice on a decision to convert an activity performed by a small business to an activity performed by a federal employee. Section 743 of Division C of the Fiscal Year (FY) 2010 Consolidated Appropriations Act, P.L. 111-117, requires civilian agencies to prepare and analyze service contract inventories of the functions performed by their service contractors. This analysis ensures the agency takes appropriate steps to guard

against improper reliance or overreliance on contractors and that contractor personnel do not perform inherently governmental functions. Any proposed in-sourcing based on the analysis would be discussed with the component, the Office of Acquisition and Grants and OSDBU if warranted.

- 15(k)(15) - Collateral Duties - The OSDBU director was acting as the Agency Coordinator for the Electronic Subcontracting Reporting System (eSRS). We will be delegating these duties to the SADBUS.

Appendix XXXXI: Comments from the U.S. Agency for International Development



JUL 24 2017

Mr. William B. Shear
Director, Financial Markets and Community Investment Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: SMALL BUSINESS CONTRACTING: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates (GAO-17-675)

Dear Mr. Shear:

I am pleased to provide the United States Agency for International Development's (USAID) formal response to the U. S. Government Accountability Office (GAO) draft report entitled "*SMALL BUSINESS CONTRACTING: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*" (GAO-17-675).

This letter and the enclosed USAID comments are provided for incorporation as an appendix to the final report. Thank you for the opportunity to respond to the GAO draft report and for the courtesies extended by your staff while conducting this GAO engagement.

Sincerely,

Angelique M. Crumbly
Acting Assistant Administrator
Bureau for Management

Enclosure: a/s

USAID COMMENTS ON GAO DRAFT REPORT
SMALL BUSINESS CONTRACTING: Actions Needed to Demonstrate and Better Review
Compliance with Select Requirements for Small Business Advocates (GAO-17-675)

This report has one recommendation for USAID as shown on page 32 of the draft report:

Recommendation: To address noncompliance with section 15(k) the Small Business Act, as amended, we are making recommendations to the heads of 19 agencies. Specifically, the Administrator of USAID should comply with sections 15(k)(15) and (k)(17) or report to Congress on why the agency has not complied, including seeking any statutory flexibilities or exceptions believed appropriate.

USAID's Response: USAID Concurs with the recommendation.

Section 15(k)(3): The Office of Small and Disadvantaged Business Utilization (OSDBU) status as an independent office, reporting directly to the Administrator or Deputy Administrator, is required by Section 15(k) of the Small Business Act (the "Act"). This report identifies the factor as "Not Assessed" for USAID. As discussed during the interview phase of this audit, USAID is in compliance with this requirement.

Section 15(k)(15): The Act precludes the OSDBU Director from taking on additional tasks outside of the small business program. OSDBU has oversight of and advocacy for the Minority Serving Institution (MSI) Program. The MSI program fulfills the Agency's requirements under the Executive Orders for Historically Black Colleges and Universities, Hispanic Serving Institutions and other minority serving institutions. Unlike the small business program, the MSI program does not have regulations to mandate the use of the program. The success of the program depends on the advocacy and outreach efforts of the staff supporting it. The OSDBU strong skills in advocacy and outreach have been advantageous to the MSI program and instrumental in its advancement at USAID. The program is managed primarily by the MSI Program Coordinator with oversight by the OSDBU Deputy Director. The OSDBU Director only spends a few hours each week on the program. While removing the MSI program and placing it in another USAID Bureau or Independent Office would bring the Agency into compliance with the Act, it is unlikely to result in any net efficiency for either program. The Agency will address the feasibility of requesting statutory flexibility or an exception to housing the MSI program within the OSDBU.

Section 15(k)(17): The Act requires the OSDBU Director to take three steps to assist a small business who notifies him/her that it believes a solicitation, Request for Proposals (RFP) or request for quotations unduly restricts a small business' ability to compete for the award. The OSDBU Director currently accomplishes two of these steps directly, and the third indirectly/through other means. First, the OSDBU Director submits a solicitation or request for proposals/quotations to the contracting officer, and if necessary, recommends ways to increase the opportunity for competition. Second, the OSDBU Director also ensures that small businesses are aware of other resources and processes available to address unduly restrictive provisions. Finally, OSDBU Director recognizes that his office is required to notify the Agency's Competition Advocate (ACA) of RFPs, solicitations or quotations which unduly restrict the ability of small businesses to compete for contracts. Historically, in lieu of working with the ACA, the OSDBU Director has met or communicated with the Agency's Ombudsman in the Management Bureau's Office of Acquisition and Assistance (M/OAA) or directly with the Senior Procurement Executive (SPE). In response to this recommendation, OSDBU met with the ACA to establish a process of engaging the small business community. Either the OSDBU Director or the ACA may convene a larger group, if necessary, to discuss any possible unduly restrictive features of the requirement. The larger group would include the OSDBU Director, the ACA, the Ombudsman, the Contracting Officer, the SPE and a representative from the Agency's Contract Review Board. For all future notices, the OSDBU Director will notify the ACA, the Contracting Officer, and the Ombudsman simultaneously in instances where a small business submits a notice that falls within the parameters of Section 15(k)(17).

Appendix XXXXII: GAO Contact and Staff Acknowledgments

GAO Contact

William B. Shear, (202) 512-8678, shearw@gao.gov

Staff Acknowledgments

In addition to the contact named above, Andy Pauline (Assistant Director), Janet Fong and Meredith Graves (Analysts in Charge), Benjamin Adrian, Pamela Davidson, Hannah Dodd, Ricki Gaber, Farrah Graham, Barbara Roesmann, Jessica Sandler, Jena Sinkfield, and Tyler Spunaugle made key contributions to this report.

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