

April 1995

SMALL BUSINESS

Information on Eight Small and Disadvantaged Business Utilization Offices





United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-258025

April 14, 1995

The Honorable Kweisi Mfume
House of Representatives

Dear Mr. Mfume:

To increase the opportunities for small and disadvantaged businesses to obtain federal contracts, in 1978 the Congress enacted Public Law 95-507, amending the Small Business Act, to establish an Office of Small and Disadvantaged Business Utilization (OSDBU) in each federal agency with procurement powers. Under the act, the OSDBU is responsible for overseeing the agency's functions and duties related to the awarding of contracts and subcontracts to small and disadvantaged businesses. The act requires the OSDBU director to report directly to the agency head or the agency's deputy (the second-ranking official in the agency); an exception enacted in 1988 allows the Department of Defense OSDBU director to report to an official designated by the Secretary of Defense.¹

You requested that we review the OSDBUS at eight federal agencies—the Departments of Defense (DOD) and Energy (DOE); the General Services Administration (GSA); the National Aeronautics and Space Administration (NASA); and, within DOD, the Defense Logistics Agency (DLA) and the Departments of the Air Force, Army, and Navy. Specifically, we agreed to (1) determine whether OSDBU directors report to the appropriate agency official as required by the Small Business Act, as amended, and, if not, provide you with information on the rationale for the deviation and (2) describe the activities that OSDBUS perform to assist small and disadvantaged businesses in obtaining federal contracts.

Results in Brief

In all of the agencies except the Defense Logistics Agency and the Department of Energy, the Office of Small and Disadvantaged Business Utilization directors report to the appropriate agency official as required by Public Law 95-507. We found that two directors report to the agency head, and three report to the agency's deputy. At Defense, the director reports to the Secretary's designee, as permitted by the exception enacted in 1988.

At the Defense Logistics Agency, its Small Business Office director reports to the Deputy Director for Acquisition. However, the Deputy Director for

¹Public Law 100-656.

Acquisition is not the second-ranking official for the agency. In March 1995, agency officials said that they will take steps to reorganize so that the Small Business Office director reports to either the agency head or the agency's second-ranking official. At Energy, the Small Business Office director reports to the Director of the Office of Economic Impact and Diversity. In the past, Energy has maintained that the Department of Energy Organization Act provides the Secretary of Energy with discretion to determine the Small Business Office director's reporting level and that Public Law 95-507 was not intended to supersede or amend the Organization Act. Nevertheless, according to Energy's Deputy General Counsel for General Law, the agency now plans to comply with a recent executive order mandating that, unless prohibited by law, the Small Business Office director should report to the agency head or the agency's deputy. However, the agency has not developed a detailed plan or timetable.

All eight Small Business Offices we examined conduct activities consistent with the requirements of Public Law 95-507 for assisting small and disadvantaged businesses in obtaining federal contracts. These activities include developing contracting goals, sponsoring and/or participating in outreach efforts, and providing guidance and training to agency staff who work with small businesses.

Background

In 1979, the Office of Management and Budget's (OMB) Office of Federal Procurement Policy (OFPP) issued Policy Letter No. 79-1 to guide federal agencies in implementing Public Law 95-507. The letter provides uniform policy guidance to federal agencies regarding the organization and functions of OSDBUS.

In September 1994, the President signed Executive Order No. 12928, entitled "Promoting Procurement With Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals, Historically Black Colleges and Universities, and Minority Institutions." The order mandates that, unless prohibited by law, the OSDBU director should be responsible to and report directly to the agency head or the agency's deputy as required by the Small Business Act. The order also mandates that federal agencies comply with the requirements of OFPP's policy letter, unless prohibited by law.

Most OSDBU Directors Report to Appropriate Agency Officials

Of the eight federal agencies we reviewed, only DLA's and DOE's OSDBU heads do not report to the appropriate agency official.

Most Directors Report to the Agency Head or Deputy

The conference report accompanying Public Law 95-507 states that each federal agency having procurement powers must establish an Office of Small Business Utilization² to be directed by an employee of that agency, who would report directly to the head of the agency or the agency's second-ranking official. Also, OFPP's policy letter defines the agency's deputy as the second-ranking official within the agency. Furthermore, in a June 1994 memorandum to federal agencies, the OMB Director defines the agency's deputy as the second-in-command.

The OSDBU directors in the Departments of the Army, the Navy, and the Air Force; NASA; and GSA report to either the agency head or the agency's deputy. The Army OSDBU director reports to the Secretary of the Army (the agency head), while the Navy and Air Force OSDBU directors report to the Under Secretary of the Air Force and the Under Secretary of the Navy, respectively (the agencies' second-ranking officials). The NASA OSDBU director reports to the NASA Administrator (the agency head). At GSA, the OSDBU director reports directly to the GSA Deputy Administrator (the agency's second-in-command).

In 1988, Public Law 100-656 amended the Small Business Act, allowing the Secretary of Defense to designate the official to whom the OSDBU director should report. Currently, DOD's OSDBU director reports to the Under Secretary of Defense for Acquisition and Technology, who is the Secretary's designee.

Two OSDBU Directors Do Not Report to the Agency Head or Deputy

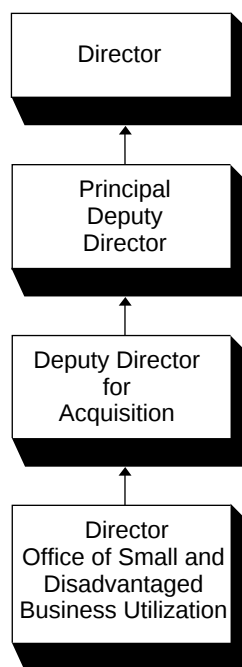
The OSDBU directors at DLA and DOE report to officials other than the agency head or agency's deputy. While each agency explained its rationale, we do not believe that in either agency the OSDBU director reports to the appropriate official, as defined by Public Law 95-507.

Defense Logistics Agency

DLA's OSDBU director reports to the agency's Deputy Director for Acquisition. As shown in figure 1, the Deputy Director for Acquisition is neither the agency head nor the agency's deputy.

²The conferees changed the office's name to the current Office of Small and Disadvantaged Business Utilization.

Figure 1: DLA's Organizational Chart



Note: DLA's organizational chart abbreviated by GAO.

According to DLA's Deputy General Counsel (Acquisition), the agency's rationale for the above reporting arrangement is that the Deputy Director for Acquisition is considered to be the agency's deputy for all matters relating to acquisition. We do not agree with DLA's rationale. In our view and as shown by the agency's organizational chart, the Principal Deputy Director is the agency's second-in-command.

In addition, the existing reporting arrangement at DLA could potentially impair the achievement of the act's objectives. As the House Committee on Small Business observed in a 1987 report, having the OSDBU director report to an individual who has responsibility for the functions that the director is intended to monitor (procurement) could lessen the director's effectiveness.³

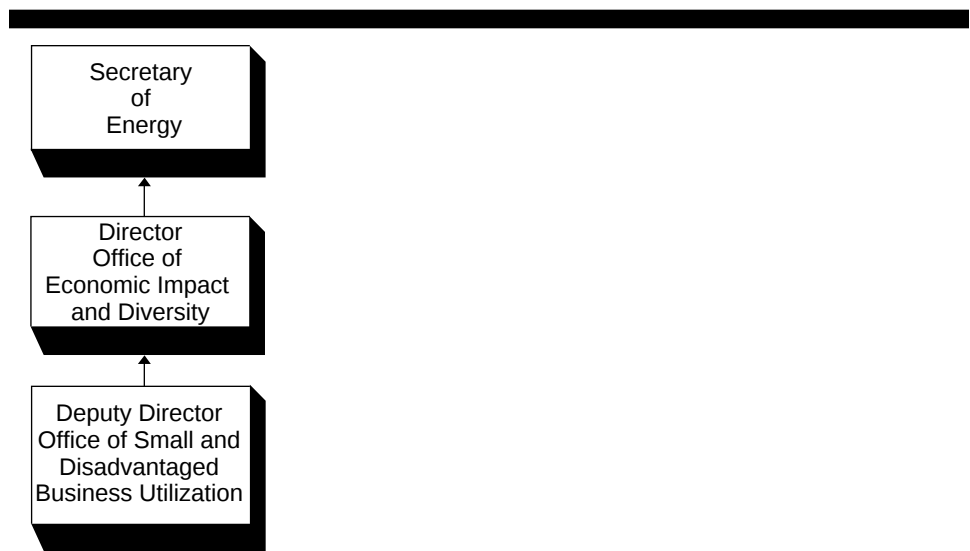
³H.R. Rep. No. 460, 100th Congress, 1st Sess. 40-41 (1987).

DLA officials neither agreed nor disagreed with our position that the OSDBU's reporting level was not in compliance with Public Law 95-507. However, in March 1995, on the basis of questions raised during our review, DLA's Deputy General Counsel (Acquisition) said that DLA will take steps to reorganize so that the OSDBU director reports to either the agency head or the agency's deputy.

Department of Energy

As shown in figure 2, the head of Energy's OSDBU, whose title is Deputy Director, reports to the Director of the Office of Economic Impact and Diversity. The Director reports directly to the Secretary of Energy but is neither the agency head nor the agency's second-in-command.

Figure 2: DOE's Organizational Chart



Note: DOE's organizational chart abbreviated by GAO.

Figure 2 reflects DOE's January 1995 reorganization. Prior to the reorganization, the title of the head of the OSDBU was Director, and that official reported to the Director of Economic Impact and Diversity. In response to our inquiry concerning the rationale for that arrangement, DOE said that the Department of Energy Organization Act (42 U.S.C. 7253) gives the Secretary broad authority to organize the Department and that Public Law 95-507 was not intended to supersede or amend the Organization Act.

In response to a congressional request, in 1993 OMB surveyed federal agencies to determine the organizational reporting levels of their OSDBU directors. The OMB survey included four of the agencies we reviewed: DOD, DOE, GSA, and NASA. According to the OFPP Deputy Administrator for Procurement Law and Legislation, DOE was not in compliance with the statute because the OSDBU director did not report to the agency head or the agency's deputy. In a June 9, 1994, memorandum, OMB's Director emphasized that federal agencies must comply with the law and policy regarding the OSDBU's organizational reporting level.

Furthermore, in a 1987 report, we stated that DOE's rationale based on the Organization Act does not give the Secretary the authority to alter or abridge the requirements of the Small Business Act.⁴ We recommended that the Secretary of Energy require the head of the OSDBU to be responsible only to, and report directly to, the Secretary or Deputy Secretary of Energy.

DOE officials neither agreed nor disagreed with our position that the OSDBU's reporting level was not in compliance with Public Law 95-507. However, in March 1995, DOE officials—including the Director, Office of Economic Impact and Diversity, and the Assistant General Counsel for General Law—told us that the agency recognizes that it must comply with Executive Order 12928 (which mandates that, unless prohibited by law, the OSDBU director should be responsible to and report directly to the agency head or the agency's deputy). DOE officials told us that they are currently developing a reorganization plan. DOE's Assistant General Counsel for General Law said that it is uncertain when or how the reorganization will be accomplished because of a need to reconcile the responsibilities of the OSDBU with DOE's statutorily mandated Office of Minority Economic Impact.⁵

OSDBUs Perform a Variety of Activities to Assist Small Businesses

All eight OSDBUs we examined conduct activities consistent with the requirements of Public Law 95-507 and OFPP's Policy Letter 79-1 for assisting small and disadvantaged businesses in obtaining federal contracts. These activities include (1) developing the agency's small business contracting and subcontracting goals, (2) sponsoring and/or participating in small business outreach efforts, (3) serving as an

⁴Small Business Act: Energy's Disadvantaged Business Advocate Not Reporting to Proper Management Level (GAO/GGD-87-69, May 26, 1987).

⁵This office advises the Secretary on the effects of energy policies, regulations, and other actions by DOE on minority businesses.

interagency liaison for procurement activities relating to small businesses and small disadvantaged businesses, and (4) supervising and training employees involved with the agency's small business activities. Officials at several OSDBUS also cited examples of special initiatives undertaken to help meet their agency's contracting goals.

As noted above, the Energy OSDBU head reports to the Director of the Office of Economic Impact and Diversity. Because the Diversity Office has broad responsibility for formulating and monitoring the implementation of policies for the agency's small business, disadvantaged business, and women-owned business programs, many activities are conducted jointly with the OSDBU. For simplicity, in the following sections, we characterize these as the OSDBU's activities.

Establishing Goals for Small and Disadvantaged Businesses

The Small Business Act and OFPP's Policy Letter require OSDBU directors to consult with the Small Business Administration (SBA) on establishing contracting goals for small and small disadvantaged businesses. At GSA and NASA, the OSDBU directors and SBA establish goals setting out the percentage of prime contracts and subcontracts that will be awarded to small businesses, small disadvantaged businesses, and women-owned businesses. For DOD, the OSDBU director negotiates DOD-wide prime contracting and subcontracting goals, which incorporate the goals for the component agencies such as DLA and the Departments of the Army, Navy, and Air Force. For DOE, the Office of Economic Impact and Diversity has assumed the responsibility for negotiating the agency's contracting and subcontracting goals.

The process of setting goals begins with OSDBU representatives providing SBA officials with estimates of the total dollar amounts of (1) all prime contracts the agencies anticipate awarding during the forthcoming fiscal year and (2) subcontracts to be awarded by the agencies' prime contractors. The agencies express the goals in terms of the percentages of the total contract and subcontract dollars to be awarded to small and small disadvantaged businesses. In formulating goals and tracking the agencies' progress or achievement toward the goals, the OSDBUS also look at the number of contracts awarded and their dollar values.

Outreach and Liaison Efforts to Small and Disadvantaged Businesses

OFPP's policy letter requires OSDBUS to conduct outreach efforts to provide information to small and disadvantaged businesses. For example, OSDBU's outreach may consist of sponsoring or participating in seminars or

conferences on contracting opportunities and providing materials describing how to do business with the agencies. OSDBU officials at each of the eight agencies told us that they had sponsored or cosponsored conferences or seminars for small businesses during fiscal years 1993 and 1994. In addition, all eight agencies told us that their staffs had attended numerous conferences or seminars sponsored by other government agencies or private organizations.

OFPP's policy letter also requires the OSDBU directors to serve as interagency liaisons for all small business matters. Officials of each of the OSDBUS we reviewed serve in this capacity. For example, in response to the Federal Acquisition Streamlining Act of 1994, OSDBU officials at five of the eight agencies are participating in an interagency group that is drafting revisions to the Federal Acquisition Regulations pertaining to small businesses.

Generally, the OSDBUS also serve as their agency's point of contact for small businesses. All eight of the agencies provide information to individual small businesses in response to inquiries about doing business with them. For example, the information provided includes forecasts of agencies' acquisitions, contracting procedures, and required forms.

OSDBU's Training for Agency Staff on Small and Disadvantaged Businesses

Under Public Law 95-507 and/or OFPP's policy letter, OSDBUS are responsible for supervising and training agency employees in contracting and subcontracting with small businesses. The OSDBUS we reviewed had activities designed to accomplish this requirement. These activities include conducting annual or semiannual training sessions for small business specialists and issuing agency regulations concerning small business procurement matters.

Initiatives to Help Meet Agencies' Contracting Goals

Officials of each of the eight OSDBUS said that they have initiated efforts to help meet their agency's contracting goals. In particular, the GSA and Air Force OSDBUS cited examples that illustrate these efforts. Furthermore, officials of small and minority business associations cited the NASA OSDBU as a model for other federal OSDBUS because of its initiatives to help meet the agency's goals.

General Services Administration

GSA's OSDBU, in conjunction with the agency's Office of Training and Compliance, has established the Procurement Preference Goaling Program. The program is designed to assist small disadvantaged

businesses and women-owned businesses in four industries—travel, manufacturing, automobile sales, and construction—where these businesses have done less well in obtaining federal contracts. For example, the program includes the following:

- Developing a list of minority- and women-owned automobile dealerships in various geographic areas that can supply a portion of GSA's automobile fleet purchases. For about 80 percent of the agency's automobile purchases, the volume of cars required can only be obtained directly from one of the big three automakers. The remaining 20 percent—about \$217 million in fiscal year 1993—is small enough that the agency can procure the automobiles from individual dealerships, according to GSA's OSDBU director.
- Working with SBA on a pilot project to identify zones where contracts for travel services could be set aside for SBA's 8(a) program participants. The OSDBU and SBA are currently planning to sponsor a large conference in New Orleans, Louisiana, to solicit applications from 8(a) firms in the travel services field.
- Compiling lists of small businesses, small disadvantaged businesses, and women-owned businesses that manufacture various goods that the Federal Emergency Management Agency may need during disasters.
- Attempting to increase construction subcontracting opportunities for small disadvantaged businesses and small women-owned businesses by implementing the Courthouse/Federal Buildings Pilot Program. Under this program, GSA identifies new federal construction projects with an estimated cost of over \$50 million and makes special efforts to include small businesses, small disadvantaged businesses, and small women-owned businesses as subcontractors. (GSA has identified one such project in 10 of its 11 regions; no project qualified in one region.)

As part of this pilot program, one of the Deputy Directors will be directly involved in the projects and will meet with potential contractors and agency field staff before contracts are issued to ensure that specific language concerning subcontracting is included in solicitations and bid offerings. Also, the prime contractor will be required to report to GSA—on a monthly basis during the procurement phase and quarterly thereafter—on the utilization of the targeted small businesses. According to the Deputy Director, as of February 1995, although the pilot had not yet been formally approved by GSA, two projects—the Tampa Courthouse and the Kansas City Courthouse—were in the initial process stage.

Air Force

The Air Force OSDBU initiated the Small Business and Historically Black Colleges and Universities/Minority Institutions Strategic Planning Workshop in fiscal year 1992. The purpose of the workshop is to increase the participation in the Air Force's procurement by establishing contracting goals for small business, small disadvantaged business, and minority educational institutions.

The workshop is unique for three reasons: (1) The process of goal setting begins 6 months earlier than in other agencies, (2) the OSDBU and field officials meet for a week to develop the goals, and (3) the Air Force develops a set of goals explicitly based on an increased level of effort by agency contracting officials to provide opportunities to small and disadvantaged businesses.

The OSDBU also has a project called the East St. Louis Initiative, under which the Air Force OSDBU is working with the city of East St. Louis, Illinois, to help bring contracts to small disadvantaged businesses and jobs to the mostly minority residents. Under this initiative, the Air Force is in a partnership with a national organization called Access America and identifies Air Force contracts that it can obtain to bring manufacturing jobs to this economically depressed area. Access America has obtained a grant to train between 1,100 and 1,500 residents of East St. Louis in aircraft maintenance and aerospace technology.

With support from the Air Force Secretary and Chief of Staff, the OSDBU director has assembled a Business Education Team from field and headquarters contracting activities. The team conducts seminars that provide small businesses and small disadvantaged businesses with information on doing business with the Air Force.

National Aeronautics and Space Administration

NASA is required by law to award, to the fullest extent possible, at least 8 percent of the annual total value of its contracts and subcontracts to small businesses or other organizations owned or controlled by socially and economically disadvantaged individuals,⁶ including (1) women-owned businesses, (2) historically black colleges and universities, and (3) minority educational associations. NASA targeted fiscal year 1994 to meet the goal. The agency awarded 8.5 percent of its fiscal year 1993 contracting budget to small disadvantaged businesses, and in fiscal year 1994 it awarded 9.9 percent.

⁶Public Law 101-144, as amended by Public Law 101-507.

NASA OSDBU officials attributed the agency's success to the office's six-point plan—a strategy for achieving and maintaining compliance with the law's requirements. The six points include

- requiring NASA's top officials—Center Directors and Associate Administrators—to develop a plan for meeting their portion of the agency's 8-percent goal;
- requiring the concurrence of the NASA Chief of Staff when consolidating prime contracts that would reduce awards to small disadvantaged businesses;
- requiring Associate Administrators to take steps to increase subcontracting to small disadvantaged businesses by NASA's top 100 prime contractors and report these steps to the OSDBU;
- requiring each NASA center to identify two non-8(a) procurement requirements, of significant dollar value, that could be awarded to small disadvantaged businesses in fiscal year 1993;
- developing an awards program for technical small business and contracting personnel for their efforts in helping to achieve NASA's 8-percent goal; and
- challenging NASA's Jet Propulsion Laboratory to double its subcontracting in fiscal year 1993.

Also, at the urging of its OSDBU, NASA requires that the OSDBU director review all procurement proposals with an estimated value over \$25 million for large contracting activities and \$10 million for smaller contracting activities, in order to establish a goal for the portion to be subcontracted to small businesses.

NASA also established criteria for assessing top-level managers' assistance to small and disadvantaged businesses. Fiscal year 1993 was the first year the OSDBU provided input for top-level managers' performance assessment.

NASA also has several efforts aimed specifically at high-tech small or minority-owned businesses. In cooperation with SBA and the UNISPHERE Institute, the OSDBU assists firms that have participated in SBA's 8(a) program to find international venture partners.⁷ The UNISPHERE program helps these firms expand their technical and financial capabilities, thus increasing their ability to compete for NASA contracts. In addition, the OSDBU's New England Outreach Office identifies high-tech minority businesses that are capable of working on NASA contracts and

⁷The UNISPHERE Institute is a nonprofit organization that provides financial and technical support to small high-tech businesses seeking to expand their markets overseas.

subcontracts. Furthermore, the OSDBU has initiated the High-Tech Small Disadvantaged Business Forum, which permits small disadvantaged businesses to make presentations on their technical capabilities to NASA headquarters and field officials. In fiscal year 1994, 70 percent of the NASA contracts awarded to small disadvantaged businesses were awarded to high-tech firms.

Conclusions

The organizational reporting levels of the OSDBU directors at the Defense Logistics Agency and the Department of Energy do not comply with the requirements of Public Law 95-507. By reporting to officials other than the agency head or the agency's deputy, the OSDBU directors at these agencies may not have access to officials at a high enough level to maximize their effectiveness in assisting small and disadvantaged businesses. Following our review, DLA's Deputy General Counsel for Acquisition said that the agency will take steps to reorganize so that the OSDBU director reports to either the agency head or the agency's second-ranking official. DOE's Director, Office of Economic Impact and Diversity, and the Assistant General Counsel for General Law told us that their agency would comply with Executive Order 12928. However the Deputy General Counsel said that it is uncertain when or how the reorganization will be accomplished because of a need to reconcile the responsibilities of the OSDBU with another statutorily mandated office.

Agency Comments

We discussed a draft of this report with the OSDBU directors or their designees and staff at each of the eight agencies we reviewed. In addition, we discussed matters related to the OSDBUS' reporting levels with DLA's Deputy General Counsel for Acquisition and with DOE's Assistant General Counsel for General Law. All of the officials generally agreed with the facts presented. We have incorporated the officials' comments where appropriate.

Scope and Methodology

To attain our objectives, we reviewed the Small Business Act, Public Law 95-507, OFPP's Policy Letter 79-1, and Executive Order No. 12928. We interviewed the directors and other officials of the OSDBU at each of the eight agencies. To obtain the views of small businesses and small disadvantaged businesses concerning OSDBUS' activities, we also interviewed representatives from two small business associations: the National Minority Suppliers Development Council, Inc., and the National Association of Small Businesses. To determine the reporting levels of the

OSDBU directors, we reviewed organizational charts and identified the officials providing performance ratings. In those cases in which the OSDBU varied from the statutory requirement, we obtained the rationale from the agency's OSDBU and Office of General Counsel officials. To determine what activities the OSDBUS conducted to assist small businesses and small disadvantaged businesses, we reviewed the OSDBUS' function statements and obtained documentation related to specific activities. We conducted our review from April 1994 through March 1995 in accordance with generally accepted government auditing standards.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of this report to the appropriate congressional committees and to other interested parties. We will also make copies available to others on request. Should you or your staff have any questions, you may reach me at (202) 512-7631. Major contributors to this report are listed in appendix I.

Sincerely yours,

A handwritten signature in black ink that reads "Michael England-Joseph for". The signature is written in a cursive, flowing style.

Judy A. England-Joseph
Director, Housing and Community
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