



Testimony

Before the Subcommittee on
Contracting and Workforce, Committee
on Small Business, House of
Representatives

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**SMALL BUSINESS
CONTRACTING**

**Actions Needed to
Demonstrate Compliance
with Requirements for
Small Business Advocates**

Statement of William B. Shear, Director, Financial
Markets and Community Investment

GAO Highlights

Highlights of [GAO-18-191T](#), a testimony before the Subcommittee on Contracting and Workforce, 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 OSDBUs and required SBPAC to review OSDBU compliance with section 15(k) requirements.

This testimony is based on a report GAO issued in August 2017 ([GAO-17-675](#)). For that report, GAO examined (1) the extent to which selected federal agencies demonstrated compliance with thirteen section 15(k) requirements for OSDBUs and (2) SBPAC review process results. GAO selected 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

In [GAO-17-675](#), GAO made recommendations to 20 agencies, including that agencies not demonstrating compliance with section 15(k) requirements comply or report to Congress on why they had not, and that SBA provide more detailed guidance for the new SBPAC review process. Agency responses to the recommendations varied. As discussed in the report, GAO maintains that implementation of each of its recommendations is warranted.

View [GAO-18-191T](#). For more information, contact William B. Shear at (202) 512-8678 or shearw@gao.gov.

October 25, 2017

SMALL BUSINESS CONTRACTING

Actions Needed to Demonstrate Compliance with 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. Examples of GAO findings (which relate to both OSDBU directors and OSDBU functions) include the following:

- Five agencies did not demonstrate compliance with a requirement to limit 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 procurement requirements into a solicitation for a single contract), and providing assistance on payments.
- Fifteen agencies demonstrated compliance with a requirement to respond to notification by a small business that a solicitation unduly restricts the ability of the small business to compete for the award.
- Four OSDBU directors did not report directly to the agency head or deputy head (the one requirement for which GAO reviewed only 10 agencies).

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 (of 100 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.

Chairman Knight, Ranking Member Murphy, and Members of the Subcommittee:

I am pleased to be here today to discuss our recent work on the Offices of Small and Disadvantaged Business Utilization (OSDBU). As you know, the federal government has a long-standing policy to maximize contracting opportunities for small businesses. To help increase small business visibility among federal agencies, in 1978 Congress amended the Small Business Act to require that all federal agencies with procurement powers establish an OSDBU, which would advocate for small businesses in procurement and contracting processes.¹ Section 15(k) of the act contains provisions related to OSDBUs.

The National Defense Authorization Act for Fiscal Year 2013 further amended the Small Business Act with provisions intended to strengthen the position of the OSDBU director (director-related requirements). Section 15(k) of the Small Business Act also includes required functions and duties of OSDBUs (functional requirements).

My testimony is based on our August 2017 report ([GAO-17-675](#)) that examined (1) the extent to which selected federal agencies demonstrated compliance with five section 15(k) requirements relating to the OSDBU director; (2) the extent to which selected federal agencies demonstrated compliance with eight section 15(k) requirements on OSDBU functions or activities; and (3) the review by the Small Business Procurement Advisory Council (SBPAC) of OSDBU compliance with section 15(k) requirements.²

For the August 2017 report, we reviewed 24 agencies (civilian and military). For one director-related requirement (that the OSDBU director report to the agency head or deputy head), we reviewed 10 of the 24

¹The provisions for OSDBUs were further amended, 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)). Our report, upon which this testimony is based, did not include amendments in the National Defense Authorization Act of Fiscal Year 2017 because the statute was amended during the time GAO was conducting the report review.

²See GAO, *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*, [GAO-17-675](#) (Washington, D.C.: Aug. 25, 2017).

agencies and analyzed reports, position descriptions, and performance appraisals and interviewed OSDBU directors and agency officials. For the rest of the requirements in our review, we surveyed the 24 OSDBU directors, reviewed agency documents, and interviewed OSDBU directors and agency officials. To make our determinations of demonstrated compliance, we used agency documentation, survey responses, follow-up with agency officials, or some combination of the three. See appendix I for more information.

The work on which this statement is based was performed 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Section 15(k)(3) of the Small Business Act, as amended, requires that OSDBU directors generally be responsible only to and report directly to agency heads or their deputies.³ The purpose of this provision is to help ensure OSDBU directors have direct access to agencies' top decision makers to advocate effectively for small businesses. Subsequent amendments specify minimum seniority or pay levels for directors, enumerate qualifying work experience, specify who must sign the director's performance appraisals, and outline position responsibilities.

Section 15(k), as amended, also establishes functions for which OSDBU directors are responsible, which include identifying proposed solicitations that bundle contract requirements; working with agency acquisitions officials to revise solicitations to increase the probability of small business participation; and assisting small businesses in obtaining payments from

³All references to section 15(k) are to section 15 of the Small Business Act, codified at 15 U.S.C. § 644(k).

agencies.⁴ OSDDBUs also are to provide senior agency officials with advice on acquisition strategies and market research. See appendix II for more information.

SBPAC annually reviews each OSDDBU to determine compliance with section 15(k) requirements.⁵ The reviews are used to help determine the annual scorecard grade that the Small Business Administration (SBA) gives each agency.⁶ SBPAC also must report the results of the review to the House and Senate Small Business committees.

Agencies Demonstrated Mixed Levels of Compliance with OSDDBU Director Requirements

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 reviewed demonstrated compliance for two requirements on director experience and supervisory duties.
- Nineteen of 24 agencies demonstrated compliance with a requirement limiting collateral duties of the director.

⁴The Small Business Reauthorization Act of 1997 defines the bundling of contract requirements as the consolidation of 2 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).

⁵SBPAC comprises the Administrator of the Small Business Administration (SBA), or the designee of the administrator, the director of the Minority Business Development Agency, and the heads of each OSDDBU. SBA chairs the council, which assists agencies in their acquisition planning efforts. The council also is to identify best practices for maximizing small business utilization in federal contracting.

⁶According to SBA, the annual scorecard measures how well federal agencies reach small business contracting goals and reports agency-specific progress. Scorecard grades are based on the extent to which (or how well) agencies met goals for prime contracts and subcontracts and their progress plans for meeting goals.

- Eighteen of 24 agencies demonstrated compliance with a requirement for the director's compensation and seniority.

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-18-191T

Note: The information we collected to make the determinations 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, follow-up with agency officials, or both. See appendix II for more information on 15(k) requirements.

^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). "N/A" indicates we did not assess agencies for this requirement.

Noncompliance with section 15(k) requirements may limit the extent to which an OSDBU can successfully 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.

In our August 2017 report, we made recommendations to 12 agencies to address demonstrated noncompliance with director-related requirements of section 15(k) or report to Congress on why they had not complied, including seeking any statutory flexibilities or exceptions believed appropriate. Agency responses to our recommendations varied. For example, the U.S. Agency for International Development agreed with our recommendation relating to section 15(k)(15), which requires that the OSDBU director not have collateral duties beyond those needed to carry out the responsibilities of section 15(k). We found that the agency had not demonstrated compliance with section 15(k)(15) because its OSDBU

director had responsibility for the Minority Serving Institution program which is outside of the statutorily defined OSDBU duties. The agency stated that moving responsibility for the program from the OSDBU would not gain efficiencies and the agency will explore requesting an exception to allow the OSDBU director to continue to advocate for that program. The Department of Defense disagreed with the part of the recommendation to the Defense Logistics Agency about section 15(k)(7), supervisory duties. The Department noted the agency had numerous field offices, and thus supervisory authority was divided (headquarters did not supervise each field office). But this resulted in an OSDBU director not supervising all staff carrying out OSDBU responsibilities, which is required by section 15(k)(7), and we maintained our recommendation.

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 requirements for 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.⁷
- Nine of the 24 agencies did not demonstrate compliance with the requirement to respond to notification by a small business that a solicitation unduly restricts the ability of the small business to compete for the award.⁸

⁷In-sourcing refers to converting an activity performed by a small business to an activity performed by a federal employee.

⁸This requirement is triggered when a small business notifies the agency (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.

Table 2: Agencies' Demonstrated Compliance with Section 15(k) Requirements for Select OSDBU 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-18-191T

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.

In our August 2017 report, we made recommendations to 17 agencies to address demonstrated noncompliance with section 15(k) functional requirements (as shown in table 2).⁹ Agency responses to our recommendations varied. For example, some agencies questioned the effectiveness or practicality of performing actions in a certain way. The National Aeronautics and Space Administration (NASA) partially agreed with the part of our recommendation related to section 15(k)(17), responding to notification by a small business that it believes a solicitation unduly restricts the small business's ability to compete. OSDBU directors are required to inform an agency's advocate for competition of such notifications. NASA said that it would do so going forward to comply with the statute. 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. In another example, the Department of Veterans Affairs (VA) concurred in principle with the recommendation related to section 15(k)(8), which requires the OSDBU director to assign a small business technical adviser to each office where SBA assigned a procurement center representative. The agency stated that for the OSDBU 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. VA said that its 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. 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 (as is also required by section 15(k)(8)).

⁹In [GAO-17-675](#), we made recommendations addressing noncompliance to 19 agencies. The recommendations to some agencies addressed demonstrated noncompliance for both director-related and functional section 15(k) requirements.

Some SBPAC Review Scores Were Not Consistent with Our Compliance Determinations

Some SBPAC review scores were inconsistent with our compliance determinations for the section 15(k) requirements we and SBPAC both considered. The SBPAC review panel—comprising OSDBU directors—annually reviews each OSDBU to determine compliance with section 15(k) requirements; it considers seven success factors for achievement of and commitment to small business contracting.¹⁰ The peer reviews are a form of internal control intended to provide some assurance that OSDBUs comply with section 15(k) requirements. Agencies in the most recent review received overall scores (across the seven success factors) of 94-98 percent.

For several agencies, our compliance determinations for the section 15(k) requirements related to organizational structure did not align with SBPAC's 2016 scores for the "OSDBU organization" success factor (see table 3).¹¹ Where our review considered the same section 15(k) requirements as the SBPAC review, we found that several agencies had not demonstrated compliance with multiple requirements.

¹⁰Some 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.

¹¹To compare SBPAC scores and our determinations, we focused on the organization success factor because it aligned most directly with five requirements—15(k)(2), (k)(3), (k)(7), (k)(8), and (k)(15). 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 for each success factor, and SBA then calculates an average of each score. SBA's peer review panel guidance provides the following grading scale: 1.0 (excellent), 0.9 (above average), 0.8 (satisfactory), 0.7 (below average), and 0.6 (unsatisfactory).

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-18-191T

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 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. Thus, some agencies' scores fall in between two categories on the grading scale (e.g., between 0.9, above average, and 1.0, excellent). If agencies had scores between two categories, we listed the category to which the score most closely approached.

^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. 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.

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 about agencies' compliance with section 15(k) requirements. In contrast, our review of demonstrated compliance included follow-up discussions with agency officials. According to federal standards for internal control, management should use quality information to make informed decisions. Although SBA has been developing a new review process, preliminary information we reviewed indicates the process will be similar to the current one. Under the new process, the review results will carry twice as much weight in another process that SBA uses to determine an agency's overall grade for small business contracting—underscoring the importance of the SBPAC review results.

We made one recommendation to SBA in our August 2017 report to include more detailed guidance to SBPAC members for the annual reviews. SBA agreed with our recommendation and stated it had begun developing more detailed guidelines that provide more objective criteria for determining compliance that will be used for the fiscal year 2017 review.

In summary, agencies generally demonstrated high levels of compliance with some section 15(k) requirements but less so for others. Some agencies explained they carried out the required activities outside of the OSDBU or by using different processes than those specified in the requirements. But continued noncompliance may undermine the extent to which OSDBUs can advocate for small businesses. If agencies still believe their procedures for certain activities are sufficient to advocate for small business contracts, they should explain their noncompliance to Congress and provide support for their views, including requesting any statutory flexibilities to permit exceptions. The reliability of the SBPAC review will take on greater importance because SBA proposes to make the scores count for more of an agency's scorecard grade. However, the divergence in results between our review and SBPAC scores suggests the review could be enhanced. For instance, improving SBA's guidance can help increase the reliability of the peer review determinations and increase consistency with federal internal control standards.

Chairman Knight, Ranking Member Murphy, and members of the Subcommittee, this concludes my statement. I would be pleased to answer any questions that you may have at this time related to our work on OSDBUs and section 15(k) compliance.

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 (Analyst in Charge), Pamela Davidson, Hannah Dodd, Barbara Roesmann, Jessica Sandler, Jena Sinkfield, and Tyler Spunaugle made key contributions to this report.

Appendix I: Objectives, Scope, and Methodology

This testimony is based on our August 2017 report ([GAO-17-675](#)) on Offices of Small and Disadvantaged Business Utilization (OSDBU) at selected federal agencies.¹ More specifically, the report examined (1) the extent to which selected federal agencies demonstrated compliance with five section 15(k) requirements relating to the OSDBU director; (2) the extent to which selected federal agencies demonstrated compliance with eight section 15(k) requirements on OSDBU functions or activities; and (3) the review by the Small Business Procurement Advisory Council (SBPAC) of OSDBU compliance with section 15(k) requirements.

To determine how agencies demonstrated compliance with the OSDBU-related requirements, we first selected 24 agencies (civilian and military) for review.

- Of 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. 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 in the department.

We then selected the following section 15(k) requirements for review (5 requirements relating to OSDBU directors and 8 relating to OSDBU functions):

- 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

¹See GAO, *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*, [GAO-17-675](#) (Washington, D.C.: Aug. 25, 2017).

- 15(k)(12): Provide advice to chief acquisition officer and senior procurement executive
- 15(k)(13): Provide training²
- 15(k)(14): Receive unsolicited proposals and forward them when appropriate
- 15(k)(15): Collateral duties
- 15(k)(16): Submit training reports to Congress³
- 15(k)(17): Respond to notification of an undue restriction on ability of small business to compete

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 (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 for variety. Of the 6 agencies with more than \$10 billion in obligations, we selected 3 Department of Defense components and 3 other agencies. 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) and eight that relate to OSDBU functions or activities—we surveyed OSDBU directors at 24 agencies. The survey questions focused on acquisition planning,

²Section 15(k)(13) does not mandate that the OSDBU provide training to small businesses, but we included 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.

³Our review of individual agencies’ demonstrated compliance encompasses 13 requirements. As discussed in [GAO-17-675](#), an additional requirement—section 15(k)(16)—directs agencies to submit an annual training and travel report to Congress. During our review, the Small Business Administration 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 tables about agencies’ demonstrated compliance in [GAO-17-675](#) or in this testimony.

solicitation development, proposal evaluation, obtaining payments, training, interaction with SBA, and other functions. 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.

We determined if an agency demonstrated compliance with a particular requirement by reviewing agency documentation, survey responses, and responses to follow-up we conducted with agencies (for instance, to clarify survey responses and to obtain additional information in instances in which respondents indicated they did not perform a section 15(k) requirement). In cases in which supporting documentation was not available, we made the determination based solely on the agency's survey response, follow-up with agency officials, or both. See appendix II for more information on the requirements.

To examine the SBPAC review, we reviewed documentation and data related to the Small Business Administration's (SBA) scorecard for small business procurement and SBPAC's peer review process. We also 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 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. We selected 14 requirements from section 15(k) for closer review. This appendix details each requirement and, where appropriate, elaborates on how we determined that agencies demonstrated compliance with each requirement.

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 unduly restrictive 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-18-191T

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 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 director.

^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, the Small Business Administration collected the training and travel reports on behalf of individual OSDBUs and submitted them to Congress in June 2017.

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