May 8, 2017

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G St. NW
Washington, D.C., 20548

Dear Director Dodaro,

I am writing to you today to inform you of potential program management issues at the Department of Energy’s Advanced Research Project Agency-Energy (ARPA-E).

Last month, I received reports that ARPA-E initiated a “no contract action” order which prevents the program from taking any action to distribute and manage FY2016 or prior year funds as directed by law. Press accounts have corroborated these reports, stating that ARPA-E “has started withholding money on grants already approved.”

On April 26, 2017, I wrote to Secretary of Energy Rick Perry to ask for detailed information about the reported “no contract action.” I received a response from the Department on May 4. Unfortunately, that response did not address my concerns that prior year appropriated funds were being inappropriately unobligated to projects which had already been competitively selected for awards.

Taken together with the President’s recent budget request that proposed to eliminate ARPA-E, these reports appear to suggest that the Administration is attempting to shut down the agency without Congressional authorization. Such an action would be both ill-advised and potentially illegal.

FY2016 appropriations have already been made, by law, for ARPA-E to fulfill its mission. Moreover, well over $100 million has been sent to ARPA-E for FY2017 under the terms of the Continuing Resolution which funded the Federal Government for the first half of FY2017. In addition, Congress just voted on and sent to the President a

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FY2017 appropriations bill which would actually increase funding for ARPA-E over their FY2016 budget. Congress has provided these monies to the Department of Energy for the expressed purpose of fulfilling ARPA-E’s mission as prescribed by law. Diversion or impoundment of this money would be contrary to law. My understanding is that upwards of $40 million of FY2016 monies remain unobligated despite project awardees having already been selected and in many cases publicly announced for those dedicated funds.

The effects of these actions are not theoretical. They have real world consequences for American small businesses. For example, on April 28, 2017, *Science* reported that:

> “Calum Chisholm and his 10-person company, SAFCell Inc., of Pasadena, California, are also waiting for their ARPA-E funding to be awarded. Chisholm, who has worked on fuel cell and hydrogen storage technologies for 20 years, was chosen in December 2016 as one of 16 lead partners in a $32 million ARPA-E program called REFUEL (Renewable Energy to Fuels Through Utilization of Energy-Dense Liquids). . . .

Soon after the announcement, Chisholm used $200,000 in preaward spending approval to order one-off parts and equipment and began the process of hiring two new employees. One will have to be laid off if the money never materializes, he says, and he guesses the second will go elsewhere if the delay continues for much longer. He’s also raised $1 million in private funding that he says could be pulled if the project’s status remains up in the air.

And things could get worse, he adds. “The work on this grant represents about half of our total productivity,” Chisholm says. “If the project is delayed significantly, I could run out of cash. And that will put the entire company in jeopardy.”

Based on feedback I have received from other ARPA-E awardees, Mr. Chisholm’s story is not unique. High tech small businesses across the country face an uncertain future because of DOE’s questionable actions.

The Congressional Budget and Impoundment Control Act of 1974, as amended, requires Federal Agencies to devote lawfully directed appropriations to the programs to which they are dedicated.3 Congress specifically passed the Congressional Budget and Impoundment Control Act of 1974 because of frustration that President Richard Nixon had impounded congressionally appropriated funds for federal agencies.4 Moreover, the courts have declared that agencies may not attempt to thwart the intent of Congress by

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3 2 U.S.C. § 681 et seq.
withholding or impounding funds intended for a specific purpose. If the Department of Energy has subjected ARPA-E to a “no contract action” which has this effect, the Department could be in violation of the law.

Under the Impoundment Control Act, the Comptroller General has a unique role in ensuring Executive Branch compliance with the law. You are authorized by this law to bring civil actions to compel the Executive Branch to make available for obligation any budget authority made pursuant to law.

I have serious concerns that the actions which have been reported to me at ARPA-E may constitute violations of the Impoundment Control Act. I would ask that you look into these allegations with all due haste, and take any actions you feel are necessary to ensure Executive compliance with Congressional direction. If you have any questions about this request, please feel free to contact Adam Rosenberg, Staff Director, Subcommittee on Energy at (202) 225-6375.

Thank you for your attention to this matter.

Sincerely,

Eddie Bernice Johnson
EDDIE BERNICE JOHNSON
Ranking Member
Committee on Science, Space, and Technology

cc: The Honorable Rick Perry, Secretary of Energy

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