

## **Section 9(j) of the Small Business Act (15 U.S.C. 638(j))**

Proposed Changes from HR4684 – 2/6/2006

[Unofficial markup by SBIR Gateway]

*Red underline = Proposed Additions*

*Red strikeout = Proposed Deletions*

### **(j) Small Business Administration policy directives for the general conduct of small business innovation research programs**

#### **(1) Policy directives**

The Small Business Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall, within one hundred and twenty days of July 22, 1982, issue policy directives for the general conduct of the SBIR programs within the Federal Government, including providing for—

- (A)** simplified, standardized, and timely SBIR solicitations;
- (B)** a simplified, standardized funding process which provides for
  - (i)** the timely receipt and review of proposals;
  - (ii)** outside peer review for at least phase two proposals, if appropriate;
  - (iii)** protection of proprietary information provided in proposals;
  - (iv)** selection of awardees;
  - (v)** retention of rights in data generated in the performance of the contract by the small business concern;
  - (vi)** transfer of title to property provided by the agency to the small business concern if such a transfer would be more cost effective than recovery of the property by the agency;
  - (vii)** cost sharing; and
  - (viii)** cost principles and payment schedules;
- (C)** exemptions from the regulations under paragraph (2) <sup>[4]</sup> if national security or intelligence functions clearly would be jeopardized;
- (D)** minimizing regulatory burden associated with participation in the SBIR program for the small business concern which will stimulate the cost-effective conduct of Federal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR program;
- (E)** simplified, standardized, and timely annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;
- (F)** standardized and orderly withdrawal from program participation by an agency having a SBIR program; at the discretion of the Administration, such directives may require a phased withdrawal over a period of time sufficient in duration to minimize any adverse impact on small business concerns; and
- (G)** the voluntary participation in a SBIR program by a Federal agency not required to establish such a program pursuant to subsection (f) of this section.

## (2) Modifications

Not later than 90 days after October 28, 1992, the Administrator shall modify the policy directives issued pursuant to this subsection to provide for—

(A) retention by a small business concern of the rights to data generated by the concern in the performance of an SBIR award for a period of not less than 4 years;

(B) continued use by a small business concern participating in the third phase of the SBIR program, as a directed bailment, of any property transferred by a Federal agency to the small business concern in the second phase of an SBIR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of such program;

(C) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an SBIR program enters into follow-on, non-SBIR funding agreements with the small business concern for such research, development, or production;

~~(D) an increase to \$100,000 in the amount of funds which an agency may award in the first phase of an SBIR program, and to \$750,000 in the second phase of an SBIR program, and an adjustment of such amounts once every 5 years to reflect economic adjustments and programmatic considerations;~~

~~(E)~~ a process for notifying the participating SBIR agencies and potential SBIR participants of the 1991, 1992, and the current critical technologies, as identified—

(i) by the National Critical Technologies Panel (or its successor), in accordance with section 6683 <sup>[5]</sup> of title 42; or

(ii) by the Secretary of Defense, in accordance with section 2522 <sup>[5]</sup> of title 10;

~~(F)~~(E) enhanced outreach efforts to increase the participation of socially and economically disadvantaged small business concerns, as defined in section 637 (a)(4) of this title, and the participation of small businesses that are 51 percent owned and controlled by women in technological innovation and in SBIR programs, including the third phase of such programs, and the collection of data to document such participation;

~~(G)~~(E) technical and programmatic guidance to encourage agencies to develop gap-funding programs to address the delay between an award for the first phase of an SBIR program and the application for and extension of an award for the second phase of such program;

~~(H)~~(G) procedures to ensure that a small business concern that submits a proposal for a funding agreement for the first phase of an SBIR program and that has received more than 15 second phase SBIR awards during the preceding 5 fiscal years is able to demonstrate the extent to which it was able to secure third phase funding to develop concepts resulting from previous second phase SBIR awards; and

~~(I)~~(H) procedures to ensure that agencies participating in the SBIR program retain the information submitted under subparagraph ~~(H)~~(G) at least until the General Accounting Office submits the report required under section 105 of the Small Business Research and Development Enhancement Act of 1992.

## (3) Additional modifications

Not later than 120 days after December 21, 2000, the Administrator shall modify the policy directives issued pursuant to this subsection—

**(A)** to clarify that the rights provided for under paragraph (2)(A) apply to all Federal funding awards under this section, including the first phase (as described in subsection (e)(4)(A) of this section), the second phase (as described in subsection (e)(4)(B) of this section), and the third phase (as described in subsection (e)(4)(C) of this section);

**(B)** to provide for the requirement of a succinct commercialization plan with each application for a second phase award that is moving toward commercialization;

**(C)** to require agencies to report to the Administration, not less frequently than annually, all instances in which an agency pursued research, development, or production of a technology developed by a small business concern using an award made under the SBIR program of that agency, and determined that it was not practicable to enter into a follow-on non-SBIR program funding agreement with the small business concern, which report shall include, at a minimum—

**(i)** the reasons why the follow-on funding agreement with the small business concern was not practicable;

**(ii)** the identity of the entity with which the agency contracted to perform the research, development, or production; and

**(iii)** a description of the type of funding agreement under which the research, development, or production was obtained; and

**(D)** to implement subsection (v) of this section, including establishing standardized procedures for the provision of information pursuant to subsection (k)(3) of this section.

#### **(4) Amount of Awards**

The program directives issued pursuant to this subsection shall provide that an agency may award an amount of not more than \$145,000 in the first phase of an SBIR program and an amount of not more than \$1,010,000 in the second phase of an SBIR program. Such amounts shall be adjusted once every 5 years to reflect economic adjustments and programmatic considerations.