
15 U.S. Code § 638

Research and development

(a) Declaration of policy

Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

(b) Assistance to small-business concerns

It shall be the duty of the Administration, and it is empowered—

- (1) to assist small-business concerns to obtain Government contracts for research and development;
- (2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense;
- (3) to provide technical assistance to small-business concerns to accomplish the purposes of this section;
- (4) to develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency small business innovation research programs and small business technology transfer programs;
- (5) to coordinate with participating agencies a schedule for release of SBIR and STTR solicitations, and to prepare a master release schedule so as to maximize small businesses' opportunities to respond to solicitations;
- (6) to independently survey and monitor the operation of SBIR and STTR programs within participating Federal agencies;
- (7) to report not less than annually to the Committee on Small Business of the Senate, and to the Committee on Science and the Committee on Small Business of the House of Representatives, on the SBIR and STTR programs of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR and STTR programs, including—
 - (A) the data on output and outcomes collected pursuant to subsections (g)(8) and (o)(9);
 - (B) the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns and firms with venture capital, hedge fund, or private equity firm investment (including those majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms) under each of the SBIR and STTR programs;
 - (C) a description of the extent to which each Federal agency is increasing outreach and awards to firms owned and controlled by women or by socially or economically disadvantaged individuals under each of the

SBIR and STTR programs;

(D) general information about the implementation of, and compliance with the allocation of funds required under, subsection (dd) for firms owned in majority part by venture capital operating companies, hedge funds, or private equity firms and participating in the SBIR program;

(E) a detailed description of appeals of Phase III awards and notices of noncompliance with the SBIR Policy Directive and the STTR Policy Directive filed by the Administrator with Federal agencies;

(F) an accounting of funds, initiatives, and outcomes under the Commercialization Readiness Program;

(G) a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k);

(H) with respect to a Federal agency to which subsection (f)(1) or (n)(1) applies, whether the Federal agency has complied with the applicable subsection for the year covered by the report;

(I) the number of applications submitted to each Federal agency participating in the SBIR or STTR program in innovation open topics as compared to conventional topics, and how many small business concerns receive funding from open topics compared to conventional topics;

(J) the total number and dollar amount, and average size, of awards made by each Federal agency participating in the SBIR or STTR program, by phase, from—

(i) open topics; and

(ii) conventional topics;

(K) the minimum performance standards established under subsection (qq), including any applicable modifications under paragraph (3) of such subsection, and the number of small business concerns that did not meet those minimum performance standards, provided that the Administrator does not publish any personally identifiable information, the identity of each such small business concern, or any otherwise sensitive information; and

(L) the aggregate number and dollar amount of SBIR and STTR awards made pursuant to waivers under subsection (qq)(3)(E), provided that the Administrator does not publish any personally identifiable information, the identity of each such small business concern, or any otherwise sensitive information;

(8) to provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing);

(9) to coordinate the implementation of electronic databases at each of the Federal agencies participating in the SBIR program or the STTR program, including the technical ability of the participating agencies to electronically share data; and

(10) to consult, where appropriate, with personnel from the relevant Federal agency to assist small business concerns participating in a SBIR or STTR program with commercializing research developed under such a program before such small business concern is awarded a contract from such Federal agency.

(c) Consultation and cooperation with Government agencies; studies and recommendations

The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section.

(d) Joint programs; approval of agreements; withdrawal of approval; publication in Federal Register

(1) The Administrator is authorized to consult with representatives of small-business concerns with a view to

assisting and encouraging such firms to undertake joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose. Such joint programs may, among other things, include the following purposes:

- (A) to construct, acquire, or establish laboratories and other facilities for the conduct of research;
- (B) to undertake and utilize applied research;
- (C) to collect research information related to a particular industry and disseminate it to participating members;
- (D) to conduct applied research on a protected, proprietary, and contractual basis with member or nonmember firms, Government agencies, and others;
- (E) to prosecute applications for patents and render patent services for participating members; and
- (F) to negotiate and grant licenses under patents held under the joint program, and to establish corporations designed to exploit particular patents obtained by it.

(2) The Administrator may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between small-business firms providing for a joint program of research and development, if the Administrator finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Administrator or the Attorney General may at any time withdraw his approval of the agreement and the joint program of research and development covered thereby, if he finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this subsection, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this subsection on the Administrator shall not be delegated by him.

(3) No act or omission to act pursuant to and within the scope of any joint program for research and development, under an agreement approved by the Administrator under this subsection, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.]. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this subsection, either by the Administrator or by the Attorney General, the provisions of this subsection shall not apply to any subsequent act or omission to act by reason of such agreement or approval.

(e) Definitions

For the purpose of this section—

- (1) the term “extramural budget” means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government-operated facilities, except that for the Department of Energy it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs, and except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries;
- (2) the term “Federal agency” means an executive agency as defined in section 105 of title 5 or a military department as defined in section 102 of such title, except that it does not include any agency within the Intelligence Community (as the term is defined in section 3.4(f) of Executive Order 12333 or its successor orders);
- (3) the term “funding agreement” means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government;

(4) the term “Small Business Innovation Research Program” or “SBIR” means a program under which a portion of a Federal agency’s research or research and development effort is reserved for award to small business concerns through a uniform process having—

(A) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential, as described in subparagraph (B), submitted pursuant to SBIR program solicitations;

(B) a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals which meet particular program needs, in which awards shall be made based on the scientific and technical merit and feasibility of the proposals, as evidenced by the first phase, considering, among other things, the proposal’s commercial potential, as evidenced by—

(i) the small business concern’s record of successfully commercializing SBIR or other research;

(ii) the existence of second phase funding commitments from private sector or non-SBIR funding sources;

(iii) the existence of third phase, follow-on commitments for the subject of the research; and

(iv) the presence of other indicators of the commercial potential of the idea; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program—

(i) in which commercial applications of SBIR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-SBIR Federal funding awards; or

(ii) for which awards from non-SBIR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or merit-based selection procedures;

(5) the term “research” or “research and development” means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements;

(6) the term “Small Business Technology Transfer Program” or “STTR” means a program under which a portion of a Federal agency’s extramural research or research and development effort is reserved for award to small business concerns for cooperative research and development through a uniform process having—

(A) a first phase, to determine, to the extent possible, the scientific, technical, and commercial merit and feasibility of ideas submitted pursuant to STTR program solicitations;

(B) a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals that meet particular program needs, in which awards shall be made based on the scientific, technical, and commercial merit and feasibility of the idea, as evidenced by the first phase and by other relevant information; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the STTR program—

(i) in which commercial applications of STTR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal

Government, by follow-on non-STTR Federal funding awards; and

(ii) for which awards from non-STTR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria;

(7) the term “cooperative research and development” means research or research and development conducted jointly by a small business concern and a research institution in which not less than 40 percent of the work is performed by the small business concern, and not less than 30 percent of the work is performed by the research institution;

(8) the term “research institution” means a nonprofit institution, as defined in section 3703(5)^[1] of this title, and includes federally funded research and development centers, as identified by the National Scientific Foundation in accordance with the governmentwide Federal Acquisition Regulation issued in accordance with section 1303(a)(1) of title 41 (or any successor regulation thereto);

(9) the term “commercial applications” shall not be construed to exclude testing and evaluation of products, services, or technologies for use in technical or weapons systems, and further, awards for testing and evaluation of products, services, or technologies for use in technical or weapons systems may be made in either Phase II or Phase III of the Small Business Innovation Research Program and of the Small Business Technology Transfer Program, as defined in this subsection;

(10) the term “commercialization” means—

(A) the process of developing products, processes, technologies, or services; and

(B) the production and delivery (whether by the originating party or by others) of products, processes, technologies, or services for sale to or use by the Federal Government or commercial markets;

(11) the term “Phase I” means—

(A) with respect to the SBIR program, the first phase described in paragraph (4)(A); and

(B) with respect to the STTR program, the first phase described in paragraph (6)(A);

(12) the term “Phase II” means—

(A) with respect to the SBIR program, the second phase described in paragraph (4)(B); and

(B) with respect to the STTR program, the second phase described in paragraph (6)(B);

(13) the term “Phase III” means—

(A) with respect to the SBIR program, the third phase described in paragraph (4)(C); and

(B) with respect to the STTR program, the third phase described in paragraph (6)(C);

(14) the term “senior procurement executive” means an official designated under section 1702(c) of title 41 as the senior procurement executive of a Federal agency participating in a SBIR or STTR program;

(15) the term “covered individual” means an individual who—

(A) contributes in a substantive, meaningful way to the scientific development or execution of a research and development project proposed to be carried out with a research and development award from a Federal research agency; and

(B) is designated as a covered individual by the Federal research agency concerned;

(16) the term “foreign affiliation” means a funded or unfunded academic, professional, or institutional appointment or position with a foreign government or government-owned entity, whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary);

(17) the term “foreign country of concern” means the People’s Republic of China, the Democratic People’s

Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State;

(18) the term “malign foreign talent recruitment program” has the meaning given such term in section 19237 of title 42; and

(19) the term “federally funded award” means a Phase I, Phase II (including a Phase II award under subsection (cc)), or Phase III SBIR or STTR award made using a funding agreement.

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