SMALL BUSINESS LEGISLATIVE COUNCIL

SBLC WEEKLY

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INNOVATION

Congress has the week off. When they return, the Senate will resume consideration of S. 493, a bill to reauthorize two federal small business programs. The two programs are not household words in the small business community and while the general media mentions that the Senate is considering small business legislation, nobody really ever explains what the programs are or do.

The Small Business Innovation Research (SBIR) program provides federal research and development funding to small businesses to develop products and services that fulfill the federal government's research priorities but that also can eventually be commercialization. The program was created in 1982. Each year, eleven federal departments and agencies are required by SBIR to reserve a portion (2.5 percent) of their R&D funds for awards to small business. They are:

*Department of Agriculture
*Department of Commerce
*Department of Defense
*Department of Education
*Department of Energy
*Department of Health and Human Services
*Department of Homeland Security
*Department of Transportation
*Environmental Protection Agency
*National Aeronautics and Space Administration
*National Science Foundation

Small businesses must meet certain eligibility criteria to participate in the SBIR program.

*American-owned and independently operated
*For-profit
*Principal researcher employed by business
*Company size limited to 500 employees

Small businesses receive awards through a three-phase program.

*Phase I is the startup phase. Awards of up to $100,000 for approximately 6 months support exploration of the technical merit or feasibility of an idea or technology.

*Phase II awards of up to $750,000, for as many as 2 years, expand Phase I results. During this time, the R&D work is performed and the developer evaluates commercialization potential. Only Phase I award winners are considered for Phase II.

*Phase III is the period during which Phase II innovation moves from the laboratory into the marketplace. No SBIR funds support this phase. The small business must find funding in the private sector or other non-SBIR federal agency funding.

The Small Business Technology Transfer Program (STTR) uses federal innovation research and development funding for joint venture opportunities for small business and nonprofit research institutions. The STTR came along a decade after the SBIR program in 1992.

Small businesses must meet certain eligibility criteria to participate in the STTR Program.

*American-owned and independently operated
*For-profit
*Principal researcher need not be employed by small business
*Company size limited to 500 employees

The nonprofit research institution must also meet certain eligibility criteria. (no size limit)

*Located in the US
*Meet one of three definitions:
--Nonprofit college or university
--Domestic nonprofit research organization
--Federally funded R&D center (FFRDC)

Each year, five federal departments and agencies are required by STTR to reserve a portion (.3 percent) of their R&D funds for award to small business/nonprofit research institution partnerships. The agencies are: the Department of Defense, the Department of Energy, the Department of Health and Human Services, the National Aeronautics and Space Administration and the National Science Foundation.

The awards are given in a three-phase program similar to the SBIR program:

*Phase I is the startup phase. Awards of up to $100,000 for approximately one year fund the exploration of the scientific, technical, and commercial feasibility of an idea or technology.

*Phase II awards of up to $750,000, for as long as two years, expand Phase I results. During this period, the R&D work is performed and the developer begins to consider commercial potential. Only Phase I award winners are considered for Phase II.

*Phase III is the period during which Phase II innovation moves from the laboratory into the marketplace. No STTR funds support this phase. The small business must find funding in the private sector or other non-STTR federal agency funding.

Legislative Situation

Ever since the SBIR program was created in 1982, there have been struggles to reauthorize the program whenever it has expired. Some federal agencies have resisted any effort to divert their research dollars. In addition, they have resisted having their discretion to manage the program limited.

The program's last long-term reauthorization expired in 2008. It has been extended ten times for shorter terms since.

In recent years, there has been some "in fighting" that has plagued the effort to reauthorize the program on a long-term basis. Firms owed by venture capital companies were not eligible for the awards. There was resistance by the community of small businesses that received the funding over the years from letting such firms into the program. The fear was they would be more successful in winning the funds and the funding pie was small to begin with.

The parties have settled on a compromise and the bill under consideration in the Senate reflects the compromise. Firms majority owned and controlled by multiple venture capital firms would be eligible for up to 25 percent of the SBIR funds at NIH, NSF, and DOE and up to 15 percent of the funds at the other eight agencies.

The bill would reauthorize the SBIR and STTR programs for eight years. There are some members of Congress who feel this is too long.

In addition the bill:

*Increases the SBIR program allocation by one percent, from 2.5 to 3.5 percent, at all agencies, spread out over ten years;
*Increases the STTR program allocation from.3 percent to .6 percent over six years;
*Allows for up to 3 percent of the SBIR allocation for administrative, oversight and processing costs if there is an allocation increase.
*Codifies the award guidelines for SBIR and STTR awards from $100,000 to $150,000 for Phase I and from $750,000 to $1 million for Phase II; Allows for a sequential Phase II.
*Limits award increases to 50 percent ($225,000 for Phase I, $1.5 million for Phase II) to address "jumbo" awards that have greatly exceeded the guidelines for Phase I and Phase II and cut out other.

In addition to the "in fighting," among the members of the small business research community, there have also been differences of opinions between the House and Senate on various elements of the program ranging from the design of the phases to the size of the awards. It is not clear whether the House would consider the pending Senate bill a viable option in the House.

A LEGISLATIVE VEHICLE

Ironically, when the Senate finishes its work on the "small business" bill, it probably will include a repeal of the Form 1099 expansion. Like the Federal Aviation Administration reauthorization bill that also included a repeal of the Form 1099 expansion, it will also probably have the same fatal flaw – it is not a revenue bill.

Article I, Section 7 states: "All Bills for raising Revenue shall originate in the House of Representatives." This is often referred to as the "origination" clause. Over the years, the House has interpreted this requirement in the broadest manner. Generally, "raising" has come to mean "affecting" The term used to describe the House's exercise of its prerogative is called "blue slipping." This refers to the color of the paper used for the resolution by which the House rejects the Senate action regarding revenues. Technically, the motion informs the Senate it has infringed upon the privileges of the House and the motion returns the bill to the Senate. As far as I know, any time the House has chosen to "blue-slip" a bill, it has been upheld.

In addition to the revenue issue, resolution of the SBIR/STTR debate between the House and the Senate is not a slam dunk.

Therefore, we continue to press the Senate to consider H.R. 4, the House passed free-standing version of the Form 1099 expansion repeal.

WEEKLY

With Congress out on recess, it was either no Weekly this week or next.
So, catch you in two.