



September 17, 2012

Mr. Andrew Shapiro
Assistant Secretary of State for Political-Military Affairs
U.S. Department of State
Washington, DC 20522

Re: Small Business Innovative Research

Dear Mr. Shapiro:

Advocacy Background

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates.

Small Business Innovative Research and Commodity Jurisdiction Determinations

SBIR is a highly competitive program that encourages small business to explore their technological potential and provides the incentive to profit from its commercialization. By including qualified small businesses in the nation's research and development arena, high-tech innovation is stimulated and the United States gains entrepreneurial spirit as it meets its specific research and development needs.

Since its enactment in 1982, SBIR has helped thousands of small businesses to compete for federal research and development awards. Their contributions have enhanced the nation's defense, protected our environment, advanced health care, and improved our ability to manage information and manipulate data.

Each year, eleven federal departments and agencies, including the Department of Defense, are required by SBIR to reserve a portion of their research and development funds for

awards to small business. The Small Business Administration plays an important role as the coordinating agency for the SBIR program. It directs the 11 agencies' implementation of SBIR, reviews their progress, and reports annually to Congress on its operation.

The Office of Advocacy ("Advocacy") is concerned about the potential for unintended consequences arising from the process of Commodity Jurisdiction ("CJ") determinations. Specifically, Advocacy is concerned that in some cases the CJ process could unintentionally impact negatively broader U.S. Government interests in promoting the Small Business Innovative Research ("SBIR") program.

Advocacy has heard concerns about how the commodity jurisdiction determination process interacts with the SBIR program. Specifically, small businesses are concerned that items that ought to be developed commercially will be prevented from doing so, simply because Department of Defense SBIR funds were used at some point in the product's development.

The Small Business Innovation Development Act explicitly states that SBIR money can be used for the development of weapons systems. The statute provides that:

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. (15 U.S.C. § 638(e)(9))

Advocacy supports the Department of State in its efforts to ensure that SBIR-funded weapons systems are appropriately regulated on the USML. However, there is a concern that because weapons systems cannot be excluded from SBIR funding, a situation where SBIR funding categorically establishes that an item meets the criteria for inclusion on the USML is now established. Advocacy is aware that other items initially funded by DOD SBIR grants have been allowed to develop commercial applications.

Advocacy believes that an innovative technology that has useful commercial applications and that has no useful military application should be allowed into the commercial marketplace. While there are very good reasons for a presumption that an item initially funded by a DoD

SBIR grant belongs on the USML, in some cases there are convincing reasons for removing these items from that list.

Advocacy Suggests an Administrative Process

Advocacy has heard from small businesses that seek an administrative process that would allow SBIR companies to show why their product or process should not be included on the USML be especially attuned to the concerns of small businesses. Advocacy would be happy to assist in whatever way possible to develop a process that protects both the interests of SBIR firms who seek to market or further develop their products and the overall interests of the United States as established in the CJ determination process.

Sincerely,

Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy

Major L. Clark, III
Assistant Chief Counsel for Advocacy