

Recommendation 21: Refocus DoD's small business policies and programs to prioritize mission and advance warfighting capabilities and capacities.

Problem

Today's increasingly complex and contested security environment places pressure on DoD to optimize warfighting capabilities and allocate its resources efficiently. Secretary of Defense James Mattis prioritized improving DoD's warfighting capabilities and lethality in his January 2017 memo, "Implementation Guidance for Budget Directives in the National Security Presidential Memorandum on Rebuilding the U.S. Armed Forces."¹ In his memo, Secretary Mattis stated that DoD will make "critical investments in advanced capabilities" as a means to "build a larger, more capable, and more lethal force."² Harnessing innovation is an essential component of DoD's Third Offset Strategy; however, DoD's slow acquisition system and ineffectiveness in engaging with small, innovative businesses, put DoD at risk of losing the race to advanced capabilities, as potential adversaries such as China work aggressively to acquire U.S. innovations and new technology.³

Small businesses produce many of the innovative capabilities, emerging technologies, and complex services DoD must acquire for warfighting dominance in a dynamic and uncertain strategic environment. Large contractors traditionally provide products and support to DoD yet studies indicate small companies are more innovative per dollar of research and development funds spent and per employee than large firms.⁴ Therefore, DoD's challenges in working effectively with small businesses to address critical needs and achieve the strategic objectives of DoD are of substantial concern.

DoD would benefit if it aligned its acquisitions from small business with its strategic priorities of improving warfighting capabilities and lethality, as well as the Third Offset. Instead, DoD's small business policies and programs currently focus on acquiring supplies and services that further socioeconomic goals but do not fully leverage innovative and unique capabilities of small businesses to support DoD's mission. A complex and cumbersome acquisition system, coupled with few clear entry

¹ Implementation Guidance for Budget Directives in the National Security Presidential Memorandum on Rebuilding the U.S. Armed Forces, Memorandum from Secretary of Defense (2017).

² Ibid.

³ Paul Mozur and Jane Perlez, "China Bets on Sensitive U.S. Start-Ups, Worrying the Pentagon," New York Times (2017), accessed January 2, 2018, https://www.nytimes.com/2017/03/22/technology/china-defense-start-ups.html?emc=edit_dk_20170323&nl=dealbook&nid=69253745&ref=dealbook&te=1&r=1. Supporting journalistic reporting on Chinese government investment into U.S. technologies with potential defense applications, four companies in the San Francisco area and three venture capitalists independently informed the Section 809 Panel that Chinese government-backed firms are increasingly pursuing acquisition of U.S. companies, start-ups, and technologies.

⁴ Jose M. Plehn-Dujowich, *Product Innovation by Young and Small Firms*, accessed August 4, 2017,

<https://www.sba.gov/sites/default/files/files/rs408tot.pdf>. Anthony Breitzman, D. Hicks, M. Albert, *Small Firms and Technology: Acquisitions, Inventor Movement, and Technology Transfer*, accessed August 4, 2017,

http://rdw.rowan.edu/cgi/viewcontent.cgi?article=1012&context=csm_facpub. Diana Hicks and Anthony Breitzman, *Small Serial Innovators: The Small Firm Contribution to Technical Change*, 2003, accessed August 4, 2017,

http://rdw.rowan.edu/cgi/viewcontent.cgi?article=1038&context=csm_facpub. Anthony Breitzman and Patrick Thomas, *Analysis of Small Business Innovation in Green Technologies*, accessed August 4, 2017, <https://www.nist.gov/sites/default/files/documents/2017/05/09/analysis-of-SM-innovation-Technologies.pdf>.

points into the defense market and uncoordinated outreach to small businesses, deters many small businesses from pursuing DoD as a customer.

Background

DoD has an extensive history of supporting small businesses. Congress first tasked DoD with establishing a small business program in the Armed Services Procurement Act of 1947.⁵ The 1953 Small Business Act also explicitly linked small business set-asides to DoD's core mission of national defense. Section 214 of the Act read,

To effectuate the purposes of this title, small-business concerns within the meaning of this title shall receive any award or contract of any part thereof as to which it is determined by the Administration and the contracting procurement agency (A) to be in the interest of mobilizing the Nation's full productive capacity, or (B) to be in the interest of war or national defense programs.⁶

With a large budget and extensive presence across the country, DoD has played, and continues to play, a substantial role in achieving Congress's goal of supporting small American businesses. In 1958, the Small Business Act minimized the importance of using set-asides to fulfill national defense needs in favor of maximizing benefits to small businesses by requiring a *fair portion* of contracts for property and services go to small businesses in each industry category.⁷ Concerns that small businesses could not win a *fair portion* of contracts, however, ultimately led to Congress creating set-asides for minority-owned small businesses via amendments to the Small Business Act in 1978.⁸ The statute now emphasizes the role of small business set-asides and programs in furthering socio-economic policy objectives and supporting the U.S. economy.⁹

The Small Business Act, as it stands today, does not state a goal for government agencies to leverage small businesses as a means to enhance or support mission execution. The statute includes a reference that the American economic system of private enterprise and competition is essential to the "security of this Nation," but contains no direct references to agency missions or national defense.¹⁰ DoD's small business activities are dollar-goal-oriented, with little focus on supporting the warfighter and DoD's mission. Furthermore, small business provisions and programs in statute today are codified in a disorganized manner, making it difficult for both government and the private sector to understand and follow relevant statute.

⁵ Section 202 of the 1947 Armed Services Procurement Act stated, "It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for supplies and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of \$10,000 by negotiation and without advertising, pursuant to the authority of paragraph (7) or (8) of section 2 (c) of this Act, suitable advance publicity, as determined by the agency head with due regard to the type of supplies involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head."

⁶ Small Business Act of 1953, Pub. L. No. 163-83, 67 Stat. 238 (1953).

⁷ Andrew G. Sakallaris, "Questioning the Sacred Cow: Reexamining the Justifications for Small Business Set Asides," *Public Contract Law Journal*, 36 (2007): 685-700. Small Business Act of 1953, Pub. L. No. 16-83, 67 Stat. 238 (1953).

⁸ Andrew G. Sakallaris, "Questioning the Sacred Cow: Reexamining the Justifications for Small Business Set Asides," *Public Contract Law Journal*, 36 (2007): 685-700.

⁹ Aid to Small Business, 15 U.S.C. Chapter 14a.

¹⁰ Declaration of Policy, 15 U.S.C. § 631.

Findings

DoD's Lack of a Coherent Small Business Strategy

A principal challenge for DoD is establishing a coherent strategy and infrastructure for aligning small business programs and policies with DoD's mission-related needs. A number of previous advisory groups have identified challenges related to DoD's lack of a strategic approach to working with industry. For example, a 2012 report produced by the House Committee on Armed Services Panel on Business Challenges noted, "[T]he Panel found that DoD lacks a clearly articulated strategy that would provide a corporate vision of DoD's future technology needs."¹¹ A decline of nearly 100,000 small companies registered in the System for Award Management (SAM) to do business with the federal government since 2012¹² may be one issue caused by a lack of strategy. Steve Chabot, in 2015 testimony before the U.S. House of Representatives Committee on Armed Services, noted a lack of policy for driving small businesses toward "gaps in our industrial base."¹³ Although this lack of policy was framed as a governmentwide problem, it is consistent with the Section 809 Panel's finding that DoD lacks an effective small business strategy.

Numerous offices and organizations exist across DoD to either shape the industrial base or promote small business use across the department. Examples of such offices include the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy (DASD(MIBP)), Office of Small Business Programs (OSBP), and Defense Logistics Agency (DLA) Office of Small Business Programs.¹⁴ Coordination among small-business-related offices and DASD(MIBP) is minimal, which has resulted in a disjointed and incomplete view of small business capabilities and innovations, as well as their importance to the health and robustness of the defense market.

DASD(MIBP) conducts analyses of the defense base to ensure critical capabilities and systems are protected and preserved. DASD(MIBP) does not place meaningful or specific focus on critical capabilities or emerging technologies developed by small businesses. For example, the *2015 Annual Industrial Capabilities Report to Congress* produced by DASD(MIBP) does not indicate an industrial base analysis was conducted to identify unique capabilities or preserve critical skills among small technology companies.¹⁵ Although the report references establishment of Defense Innovation Unit Experimental (DIUx), it includes no information to suggest a robust industrial base assessment of small technology firms and start-ups has occurred.¹⁶ Not including a thorough assessment of small businesses or technology in the report suggests DoD has not paid sufficient attention to either component as being critical to the defense market and enablers of DoD's strategic imperatives.

¹¹ Panel on Business Challenges in Defense Industry, *Challenges to Doing Business with the Department of Defense: Findings of the Panel on Business Challenges in Defense Industry*, March 2012, vii, accessed November 7, 2017, <https://wcoeusa.org/sites/default/files/Challenges%20to%20Bus%20with%20DOD.3.12.pdf>.

¹² Steve Chabot, Chairman, Committee on Small Business, testimony before U.S. House of Representatives Committee on Armed Services, April 14, 2015, accessed November 8, 2017, https://smallbusiness.house.gov/uploadedfiles/chabot_written_statement_fy_16_ndaa.pdf.

¹³ Ibid.

¹⁴ DLA's Office of Small Business Programs administers the Procurement Technical Assistance Program.

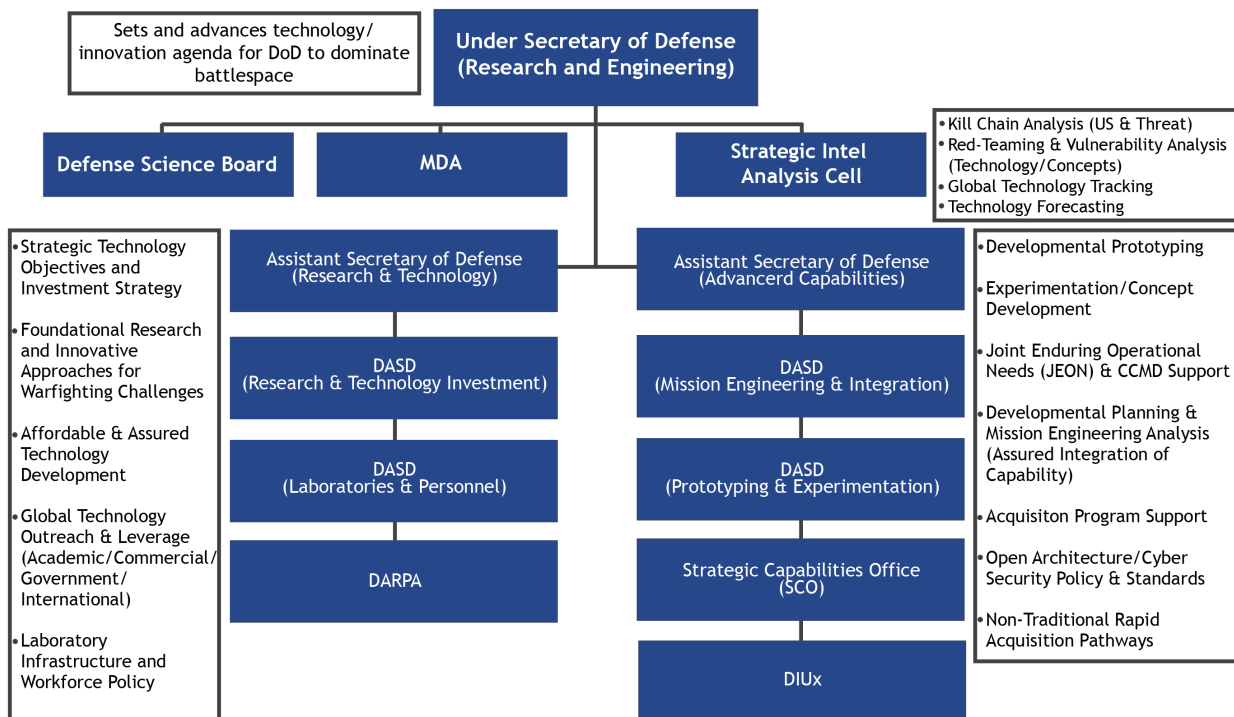
¹⁵ OSD(AT&L), *Annual Industrial Capabilities Report to Congress for 2015*, accessed August 4, 2017, <http://www.acq.osd.mil/mibp/resources/2015%20AIC%20RTC%2010-03-16%20-%20Public%20Unclassified.pdf>.

¹⁶ Ibid.

OSBP oversees DoD’s implementation of small business policies and programs such as the 8(a) Business Development Program set-asides, SBIR, STTR, and RIF through small business offices across DoD. OSBP focuses on ensuring DoD’s compliance with statutorily established small business contracting goals and administration of programs such as SBIR, STTR, and RIF. Data gathered in interviews conducted by the Section 809 Panel indicate there is no system or recurring dialogue between DASD(MIBP) and OSBP to align small business program objectives with critical needs in the broader defense market.

DLA administers the Procurement Technical Assistance Program (PTAP), which is designed to help small businesses enter the government market and navigate government contracting. DLA’s administration of the program, prescribed in statute,¹⁷ lacks a clear link to DASD(MIBP) or OSBP priorities, much less the SBA. Disjointedness among PTAP, industry, and DoD small business organizations is not new. In FY 1997 DLA unsuccessfully recommended repeal of Chapter 142 of Title 10, which requires DLA to administer PTAP, citing overlap between PTAP and SBA’s Small Business Development Center (SBDC) program.¹⁸ (PTAP is discussed again in greater detail below).

Figure 6-1. Proposed USD(R&E) Organization



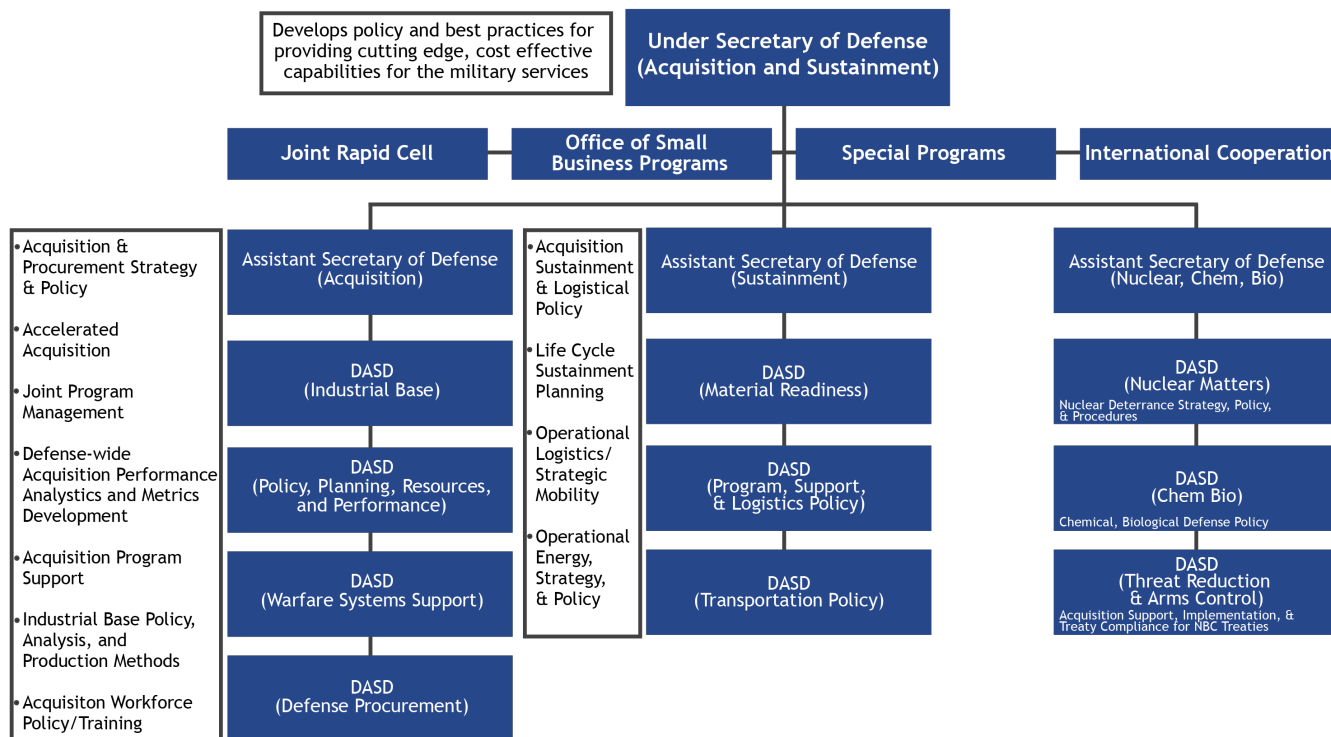
Source: Report to Congress, August 2017¹⁹

¹⁷ Cooperative Agreements, 10 U.S.C. § 2413.

¹⁸ Office of the Inspector General, Department of Defense Procurement Technical Assistance Cooperative Agreement Program, accessed August 4, 2017, <http://www.dodig.mil/Audit/reports/FY97/97-007.pdf>.

¹⁹ DoD, Report to Congress: Restructuring the Department of Defense Acquisition, Technology and Logistics Organization and Chief Management Officer Organization, August 2017, accessed November 8, 2017, https://www.sba.gov/sites/default/files/articles/FY2017_Final_Agency_Goals_Spreadsheet_20161201.pdf.

Figure 6-2. Proposed USD(A&S) Organization



Source: Report to Congress, August 2017²⁰

A proposed reorganized structure was released in August 2017 outlining a potential realignment of USD(AT&L) functions under an Under Secretary of Defense (Research and Engineering) (USD[R&E]) and Under Secretary of Defense (Acquisition and Sustainment) (USD[A&S]) (see Figures 6-1 and 6-2 above). Of note, the proposal includes giving USD(A&S) responsibility for DASD(MIBP)'s current portfolio of industrial base policy and analysis, as well as oversight of DoD's OSBP. The proposal leaves OSBP as a distinct office, answering to USD(A&S).

The proposal further suggests realigning the SBIR, STTR, and RIF programs to fall under USD(R&E) instead of the OSBP.²¹ DIUx, tasked with helping attract innovative companies and commercial technologies into the defense market, also would be aligned to USD(R&E). Moving SBIR, STTR, and RIF under USD(R&E) is a positive step toward aligning small business programs with acquiring innovations that enhance DoD's mission-essential capabilities. The proposed reorganization, however, does not clearly address the need to create a coordinated outreach program, identify clear points of entry for companies seeking to enter the defense market (discussed below), or the need for greater alignment of small business policy and programs with needs across the broader defense market.

²⁰ Ibid.

²¹ Ibid.

Coupled with a disjointed management structure (at least as offices and programs are arranged currently), DoD's small business use is driven by the dollar value of contracts awarded to small businesses with little regard for effect on DoD's mission. This situation may be due in some part to the fact that for FY 2017, DoD set a target for at least 22 percent of its government prime contract dollars to be awarded to small businesses and small, disadvantaged businesses.²² Five percent of prime contracts and 5 percent of subcontracts are to be awarded to women-owned small businesses; 5 percent to disadvantaged business owners; 3 percent to HUBZone small businesses; and 3 percent to service-disabled, veteran-owned small businesses.²³

Contracting officers and program managers, not DoD's small business specialists, are held accountable for ensuring small businesses receive contracts, small business requirements are met, and goals are achieved. As a result, small business programs focus almost exclusively on the amount of money and number of contracts awarded to small businesses.²⁴ One RAND study notes,

*Small business utilization is generally judged on input. That is, the entire goal-setting process, as well as data collection on its effects and reporting of its results, is geared to measuring the dollars and contracts awarded to small business.*²⁵

Although small business specialists in the field conduct outreach to the small business community, the Section 809 Panel did not find any information to indicate outreach is informed by a strategy or aligned to mission-related needs.

Multiple experts with whom the Section 809 Panel spoke indicated most DoD small business contracts go toward procuring basic services and commodities, given an almost singular focus on the aggregate dollar value of small business contracts.²⁶ It is easier and less risky for contracting officers to meet their contracting goals by acquiring basic commodities and services than it is to conduct market research and find new small businesses with which to work; available data confirm this assertion. Small businesses disproportionately account for the acquisition of basic commodities and services like administrative support, construction, building and grounds maintenance, and food-related support. FY 2017's top-10 DoD obligations to small businesses (see Table 6-1), as a percentage of DoD's total reported obligations, shows small businesses account for approximately 94 percent of obligated dollars toward fruits and vegetables; 83 percent toward maintenance of *other* administrative facilities and service buildings; and 90 percent toward highway and road maintenance.²⁷

²² Small Business Administration, Small Business Procurement—Final FY2017 Goals—As of 12/01/16, accessed Dec. 8, 2017, https://www.sba.gov/sites/default/files/articles/FY2017_Final_Agency_Goals_Spreadsheet_20161201.pdf.

²³ "Goaling," U.S. Small Business Administration, accessed August 4, 2017, <https://www.sba.gov/contracting/contracting-officials/goaling>.

²⁴ The Section 809 Panel arrived at this finding through interviews with senior officials and staff responsible for small business policy and programs across DoD and Small Business Administration.

²⁵ Clifford A. Grammich, et al., *Small Business and Defense Acquisitions: A Review of Policies and Current Practices*, RAND National Defense Research Institute (2011), 35, accessed November 8, 2017, <http://www.dtic.mil/dtic/tr/fulltext/u2/a551005.pdf>.

²⁶ There is no definition in the FAR for the term *commodity*. For the purposes of this paper, the Section 809 Panel refers to the Merriam-Webster definition of a commodity as "an economic good, such as a mass-produced unspecialized product."

²⁷ Calculations based on Product and Service Code (PSC) contract obligation data retrieved from the Federal Procurement Data System as of January 2, 2018. Categories refer to PSC 8915: Fruits and vegetables; PSC Z1AZ: Other administrative facilities and service buildings maintenance services; and PSC Z1LB: Highways, roads, streets, bridges, and railways maintenance services.

Table 6-1. Top Ten FY 2017 DoD Obligations to Small Businesses as a Percentage of Total FY 2017 DoD Obligations (for total obligations more than \$100 million)²⁸

PSC and Description	Small business USD obligations	Percent small business
PSC Y1BF: Missile system facilities construction services	\$121.8 million	98.9%
PSC 4220: Marine lifesaving and diving equipment	\$1.69 billion	97.6%
PSC Z2EB: Maintenance buildings repair or alteration services	\$152.2 million	93.9%
PSC 8915: Fruits and vegetables	\$100.1 million	93.5%
PSC Z1LB: Highways, roads, streets, bridges, and railways maintenance services	\$107.7 million	89.9%
PSC AC32: Ships applied research and exploratory development defense systems R&D	\$109.1 million	89.7%
PSC Z2EZ: Other industrial buildings repair or alteration services	\$119.9 million	86.7%
PSC Z1JZ: Miscellaneous buildings maintenance services	\$217.2 million	85.0%
PSC AD22: Other applied research and exploratory development defense R&D services	\$144.5 million	84.5%
PSC Z1AZ: Other administrative facilities and service buildings maintenance services	\$261.1 million	83.1%

Further analysis of FPDS data indicates that approximately 55 percent of all obligated dollars for maintenance, repair, and alteration of structures and facilities went to small businesses in 2017.²⁹ By contrast, only 20 percent of R&D-related dollars went to small businesses.³⁰ DoD’s dollars obligated to small businesses ultimately skew toward acquiring commoditized and noninnovative products and services (see Figure 6-3).

Meeting small business goals by acquiring basic commodities and services, rather than obtaining innovative products and support from small companies, will ultimately hurt DoD’s ability to maintain warfighting dominance. Research shows small businesses can provide advanced capabilities and support to DoD; however, data show DoD is not prioritizing working with small businesses to acquire innovation and technology. According to one study, small companies generate “13 to 14 times more patents per employee” and produce more cutting-edge technologies than large companies.³¹ Large companies in the technology industry with which the Section 809 Panel met indicated small businesses often are more innovative and capable of developing unique solutions for their customers. DoD is not capitalizing on the innovative potential of small businesses; the majority of DoD’s small business contracts do not prioritize or align with its mission and warfighting needs.

²⁸ Data retrieved from FPDS on January 2, 2018.

²⁹ Calculations based on PSC contract obligation data retrieved from the Federal Procurement Data System on January 2, 2018. Categories refer to PSC Z (maintenance, repair, alteration of structures/facilities) and PSC A (research and development).

³⁰ Ibid.

³¹ Diana Hicks and Anthony Breitzman, *Small Serial Innovators: The Small Firm Contribution to Technical Change*, 2003, accessed August 4, 2017, http://rdw.rowan.edu/cgi/viewcontent.cgi?article=1038&context=cs_m_facpub.

Figure 6-3. Percentage of DoD Contract Dollars Obligated to Small Business, by Service Contract Category³²



In addition to potentially undermining the acquisition community’s focus on furthering DoD’s core mission, DoD’s current approach to working with small businesses may not support DoD’s long-term interests. The number of small business contract actions dropped nearly 70 percent from FY 2011 to FY 2016, but during that same timeframe the value of DoD small business contracts rose approximately 290 percent.³³ Small companies are receiving contracts of substantial value from the government, including DoD, but the decline in the number of small business contract actions indicates DoD’s small business contracting is not promoting competition and fostering robustness in the defense market.

Small business programs, such as the 8(a) Business Development Program and Mentor–Protégé Program, aim to help small businesses mature and become capable of handling larger prime contracts. In theory, helping companies mature promotes healthier competition for federal contracts; however, small companies that successfully grow beyond the small business threshold for their NAICS code must compete with large companies for contracts, putting *other than large* companies at a substantial disadvantage compared to large contractors. For example, SBA’s Table of Small Business Size Standards indicates many technology-related companies have limited room to grow before becoming

³² Data extracted from Federal Procurement Data System on January 2, 2018. Service contract categories represent PSCs aggregated at the one-digit level.

³³ Steve Chabot, Chairman, Committee on Small Business, testimony before U.S. House of Representatives Committee on Armed Services, April 14, 2015, accessed November 8, 2017, https://smallbusiness.house.gov/uploadedfiles/chabot_written_statement_fy_16_ndaa.pdf.

other than small. Companies offering custom computer programming services, for instance, cannot grow beyond \$27.5 million in average annual revenue over the previous 3 years before losing their small business classification.³⁴ Companies that exceed this threshold must bid against large competitors that offer the same services such as Booz Allen Hamilton, Lockheed Martin, and Northrop Grumman, which respectively posted \$5.4 billion, \$47.2 billion, and \$24.5 billion in revenue in FY 2016.³⁵ Many companies that are not small, but far from large, struggle to compete for government contracts against large, well-established companies without set-aside programs and other support.

This structure incentivizes small companies to adopt strategies that may be inconsistent with DoD's interests and small business programs' goals. For example, some small defense contractors adopt a practice of restricting their growth to ensure they retain their small business classification and maintain access to preferential contracting and small business programs.³⁶ This practice may run counter to DoD's interest in leveraging its small business programs, such as the 8(a) Business Development Program, to create greater robustness in the defense market.

Given the complexity and wide range of issue areas included in socio-economic programs and provisions, the Section 809 Panel will assess their effect on defense acquisition more fully in a subsequent report. The panel recognizes the importance of products and services to DoD that do not directly enhance warfighting capabilities or capacities and will outline alternative means for companies offering such support to sell to DoD in a future report.

Impediments to Working with Small, Innovative Companies

The complexity and slowness of DoD's acquisition system impedes working with small, innovative companies. To better understand barriers to entry into the defense market for small businesses, the Section 809 Panel met with more than 50 small companies. Of those companies, at least 30 explicitly stated that doing business with DoD is too complex and burdensome. Many of these companies also stressed that the slowness of the acquisition system presents challenges. Small businesses, particularly those in the technology sector, operate on rapid business cycles. Such companies must raise funds at least every 12 to 18 months, yet according to one investor DoD often takes at least two years to award a contract.³⁷ The amount of time it takes DoD to get to *yes* on executing an acquisition, as well as the amount of time to say *no*, is especially problematic for small companies. In a meeting with the Section 809 Panel, Heidi Roizen, a renowned venture capitalist stated, "Companies would rather reach

³⁴ U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, accessed August 4, 2017, https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

³⁵ Booz Allen Hamilton Holding Corporation, *Form 10-K*, accessed August 4, 2017, http://investors.boozallen.com/secfiling.cfm?filingID=1443646-16-138#BAH-20160331X10K_HTM_S366CB8D67F54551397F4E49AC59D9239. Lockheed Martin Corporation, *2016 Annual Report*, accessed August 4, 2017, <http://www.lockheedmartin.com/content/dam/lockheed/data/corporate/documents/2016-annual-report.pdf>. Northrop Grumman, *2016 Annual Report*, accessed August 4, 2017, http://www.northropgrumman.com/AboutUs/AnnualReports/Documents/pdfs/2016_noc_ar.pdf.

³⁶ Donna Huneycutt, Wittenberg Weiner Consulting, presentation to Section 809 Panel, April 25, 2017. Jacques Gansler, William Lucyshyn, and Jinee Burdg, *Unintended Outcomes of Small Business Legislation & Policy: Opportunities for Improvement*, accessed August 4, 2017, https://www.publicpolicy.umd.edu/sites/default/files/SPP_Unintended%20Outcomes%20of%20Small%20Business%20Legislation%20and%20Policy_March%202015_FINAL_0.pdf.

³⁷ Heidi Roizen, DFJ Venture Capital, meeting with Section 809 Panel, February 16, 2017.

a quick ‘no’ than deal with a drawn-out ‘maybe.’ ”³⁸ Setting aside time, personnel, and money to pursue business with DoD is too risky for many small companies.³⁹ Given the risks of relying on DoD for revenue, five of six venture capitalists with whom the Section 809 Panel met indicated they advise the companies in which they invest to avoid doing business with DoD.

Many companies not familiar with DoD struggle to understand requirements as they are articulated in requests for proposal. Acronyms and jargon that are widely used across DoD are not always comprehensible for small businesses lacking experience in the defense market, which leads them to develop proposals that are noncompliant with what DoD actually requires.⁴⁰ Similarly, DoD’s workforce may not be sufficiently versed on the language used by small businesses, particularly those in the technology sector, and might pass on awarding contracts that would acquire potentially better technologies and solutions.⁴¹

Small companies also desire more open communication with DoD’s acquisition community, much like the communication they have in private-sector acquisitions. A roundtable discussion with four small business in San Diego, CA, highlighted that small businesses experience barriers to entry into the defense market due to the inability to speak with DoD’s acquisition officials to ask questions about requirements and receive feedback on proposals. DoD’s lack of transparency and communication with small businesses subsequently leaves small companies struggling to learn and understand DoD’s needs and expectations. This situation may lead to small businesses producing noncompliant proposals and missing opportunities. Some small companies indicated they need more communication and support to understand administrative requirements, such as how to certify compliance with complex legal liability and risk provisions included in many contracts, such as cyber security, counterfeit electronic parts controls, and export controls. Empowering and encouraging contracting officers to engage with small businesses and help them understand and navigate requirements and processes is one way to reduce such barriers to entry.

Need for Clear Entry Points and Effective Outreach

Small and large businesses alike express frustration over the lack of clear entry points into the defense market. Companies can spend months or years searching for the appropriate person or office with the authority to initiate the acquisition process. For example, a San Francisco-based company met with multiple potential customers in DoD, and despite those potential customers expressing strong interest in acquiring the company’s product, the company was unable to find a client with appropriate

³⁸ Ibid.

³⁹ Scott Fredrick, NEA, meeting with Section 809 Panel, June 12, 2017. For further reports demonstrating the effects of complexity and slowness of the defense acquisition system on businesses, see also GAO, *Military Acquisitions: DoD is Taking Steps to Address Challenges Faced by Certain Companies*, accessed August 4, 2017, <http://www.gao.gov/assets/690/686012.pdf>. Panel on Business Challenges in Defense Industry, *Challenges to Doing Business with the Department of Defense: Findings of the Panel on Business Challenges in Defense Industry*, March 2012, accessed November 7, 2017, <https://wcoesa.org/sites/default/files/Challenges%20to%20Bus%20with%20DOD.3.12.pdf>.

⁴⁰ Meagan Metzger, Dcode42, meeting with Section 809 Panel, March 29, 2017. Additionally, during a roundtable discussion with the Section 809 Panel on June 30, 2017, six small companies seeking entry into the defense market indicated requests for proposals and requirements often are unclear, making it difficult for small companies new to the defense market to understand client needs and offer effective solutions.

⁴¹ Meagan Metzger, Dcode42, meeting with Section 809 Panel, June 30, 2017. Scott Fredrick, NEA, meeting with Section 809 Panel, June 12, 2017.

acquisition authorities to carry out the acquisition. Because of the cost and burden of pursuing DoD contracts, the company decided to abandon all efforts to work with DoD. This company was among 18 companies that told the Section 809 Panel they have no interest or plans to do business with DoD in the near future.

Anecdotal evidence gathered by the Section 809 Panel indicates that the example above is not a unique experience; companies with new technology unknown to DoD cannot easily introduce their products and services into the defense market, to the ultimate detriment of warfighters. Six California-based companies independently indicated similar challenges, stating to the Section 809 Panel they had *no idea where to begin* when it came to pursuing DoD contracts. Difficulties finding points of entry often lead to increased costs and burdens for companies actively seeking opportunities in the defense market. For instance, representatives from one small company that manufactures custom industrial equipment indicated their company outsources searching for requests for proposal, because it cannot afford to hire a team with the knowledge to find and pursue business opportunities with DoD.⁴²

To understand what infrastructure exists to help companies to enter the defense market, the Section 809 Panel reviewed PTAP. Under the program, DoD established Procurement Technical Assistance Centers (PTACs) nationwide to help businesses “compete successfully in the government marketplace.”⁴³ Awards are made annually to eligible entities (e.g., nonprofits, states, Indian tribes, and universities) to serve as PTACs, but due to cost-sharing requirements, becoming a PTAC often is unaffordable or unattractive to such entities.⁴⁴

PTACs operating on a statewide basis can receive up to \$750,000 per fiscal year, and those operating on *less than a statewide basis* can receive up to \$450,000.⁴⁵ The centers must find matching funds, as DoD cannot bear more than 65 percent of the cost of providing assistance (or in the case of distressed areas, 75 percent of the cost).⁴⁶ For example, in the case of the San Diego PTAC, DoD provides \$300,000 in funding per fiscal year, and the center must find matching funds from other sources, such as state and local governments.⁴⁷ Funds go to covering administrative costs, including salaries.⁴⁸ After covering such expenses, PTACs often find themselves with inadequate funds for advertising and outreach, causing low awareness among small businesses of the existence of PTACs. During interviews, the Section 809 Panel asked representatives from 14 small businesses in Silicon Valley if they knew about the existence of PTACs. None were familiar with the centers.

A DoDIG report from 1996 expressed concerns over PTAC roles. The report noted PTACs duplicate some roles of the SBA’s SBDCs, primarily because of an expansion of PTAP’s authorities in the FY 1994

⁴² The Section 809 Panel met with the company in Seattle, WA, in March 2017; the company operates in the manufacturing industry, producing custom-designed components for machines, engines, etc.

⁴³ “About the PTAP and APTAC,” Association of Procurement Technical Assistance Centers, accessed August 4, 2017, <http://www.aptac-us.org/about-us/>.

⁴⁴ Sherry Savage, Defense Logistics Agency, meeting with Section 809 Panel, July 10, 2017.

⁴⁵ Limitation, 10 U.S.C. § 2414.

⁴⁶ Cooperative Agreements, 10 U.S.C. § 2413.

⁴⁷ Rachel Fischer, San Diego Procurement Technical Assistance Center, meeting with Section 809 Panel, June 19, 2017.

⁴⁸ *Ibid.*

NDAA,⁴⁹ allowing PTAPs to provide assistance on contracts with other federal agencies, as well as state and local governments.⁵⁰

Each PTAC is different due to the nature of its environment, local industries, and other factors. For instance, the technical competency of companies from rural, agricultural regions may be very different from those in urban areas.⁵¹ PTACs must develop a unique approach to supporting small businesses within their areas of responsibility. As such, DLA includes in its assessment of PTACs their performance against three goals: the number of new clients, number of outreach events, and number of counseling hours.⁵²

PTACs with limited staffs and high demand, like the one in San Diego, also struggle at times with backlog. For instance, in 2009 during the economic downturn, the San Diego PTAC faced a 12-week waiting period for small companies to get an appointment. Although the PTAC dealt successfully with the problem, the experience highlights the lack of integration among PTACs. Additionally, the PTACs lack a system, and sufficient visibility within DoD, necessary to help build DoD-wide awareness of small businesses' unique offerings and innovations.

Beyond PTAP, the Section 809 Panel was not able to identify a DoD-wide program or system designed to conduct outreach to bring small businesses into the defense market. Although DIUx represents a concerted effort to work more closely with small technology companies, it does not conduct broad outreach and technology scouting to discover new technologies and companies. Stated requirements from DoD customers, such as the Military Service branches, drive DIUx's process, which only solicits commercial solutions for DoD's known needs.⁵³ There are, however, isolated models within DoD that have demonstrated successes in conducting outreach, and DoD can look to other agencies for lessons on how to better reach small, nontraditional partners.

U.S. Special Operations Command (USSOCOM), in partnership with the Doolittle Institute, launched SOFWERX. SOFWERX aims to cultivate an ecosystem of innovative companies that can deliver solutions to the special operations community's unique challenges.⁵⁴ To do so, SOFWERX accepts unsolicited proposals, hosts challenges, and advertises widely across social media and through its university and industry partners. SOFWERX has facilities in which companies can collaborate, conduct rapid prototyping, and demonstrate capabilities.⁵⁵ To attract and leverage the ideas of young, innovative, and entrepreneurial people, the organization offers fellowships, summer camps, and college internships. USSOCOM reported that for a low cost, SOFWERX gives USSOCOM awareness to

⁴⁹ Office of the Inspector General, Department of Defense Procurement Technical Assistance Cooperative Agreement Program, accessed August 4, 2017, <http://www.dodig.mil/audit/reports/fy97/97-007.pdf>.

⁵⁰ Authority to Provide Certain Types of Technical Assistance, 10 U.S.C. § 2418.

⁵¹ Sherry Savage, Defense Logistics Agency, meeting with Section 809 Panel, July 10, 2017.

⁵² *Ibid.*

⁵³ "Work With Us," Defense Innovation Unit Experimental, accessed October 26, 2017, <https://www.diux.mil/work-with-us/companies>.

⁵⁴ SOFWERX, accessed October 26, 2017, <http://www.sofwerx.org/>. See also Defensewerx, accessed October 26, 2017, <http://defensewerx.org/>.

⁵⁵ "Frequently Asked Questions," SOFWERX, accessed October 26, 2017, <http://www.sofwerx.org/faqs/>.

unknown and emerging technologies, and is successfully cultivating partnerships with innovative small businesses to support warfighters.⁵⁶

Part of SOFWERX's success may be attributable to the brand and public recognition of the special operations community. Similarly, the National Aeronautics and Space Administration's (NASA's) iTech program ascribes a portion of its success to NASA's globally recognizable brand. Small companies and innovators place great value on recognition from organizations with high visibility, like the U.S. Special Forces and NASA, because that recognition may attract venture capital investments for their companies or technology.⁵⁷

Similar to SOFWERX, NASA's iTech program targets nonspace small startup companies, as well as universities and labs seeking to discover innovative technologies that can potentially solve critical challenges necessary for future space exploration. NASA iTech does not post specific requirements, but rather posts a broad topic of interest for a given challenge.⁵⁸ For example, iTech's third challenge cycle accepted white papers from potential participants on artificial intelligence, augmented reality, autonomy, high performance computing, and medical breakthroughs.⁵⁹ If applicants have a technology they believe NASA needs, but does not fit into one of the focus areas listed, NASA accepts white papers submitted under an undefined X Factor category.⁶⁰ NASA evaluates the white papers, and semifinalists have an opportunity to demonstrate their technology to all NASA chief technologists, venture capitalists, and representatives of large companies.⁶¹ For little cost, iTech provides NASA an effective outreach capability and point of entry to identify groundbreaking technologies with both NASA mission-related and commercial viability.

Compliance-Related Requirements

Based on data gathered from Section 809 Panel interviews with small companies, many that pursue business with DoD for the first time either are unaware of or underestimate the potential effects of audits, paperwork, and other processes on their companies' ability to operate. In one instance, a small business owner with whom the panel spoke shut down his business due to alleged delays and inappropriate application of accounting standards by the Defense Contract Audit Agency (DCAA), causing the company to lose a contract.⁶² Although that company's experience may be an extreme case, the Section 809 Panel consistently heard that auditability requirements place undue burden on small companies. For example, the panel participated in a roundtable with four small businesses that had substantial experience operating in the aerospace and defense industries. Despite having experience in the defense market, all four companies expressed consistent struggles to meet DCAA requirements and cover audit-related costs.⁶³ Due to the complexity and depth of audit-related challenges, this report

⁵⁶ James Geurts, Special Operations Command, presentation to the Section 809 Panel, May 25, 2017.

⁵⁷ Kira Blackwell, NASA iTech, presentation to the Section 809 Panel, September 14, 2017.

⁵⁸ Ibid.

⁵⁹ NASA iTech, accessed October 26, 2017, <https://nasaitech.com/#intro>.

⁶⁰ Kira Blackwell, NASA iTech, presentation to the Section 809 Panel, September 14, 2017.

⁶¹ Ibid.

⁶² The company was based in the San Diego, CA, vicinity and had been in business for 16 years before ending operations.

⁶³ The roundtable took place in Seattle, WA, in March 2017. Though the companies all operated in aerospace and defense, each offered different products and services.

includes a separate section that explores the issue and offers recommendations on that topic (see Section 2).

In addition to challenges caused by audits, some companies, particularly those without prior experience in the defense or national security sectors, indicated they have difficulty obtaining security clearances. Valerie Muck, the Air Force's Director of Small Business Programs summarized small businesses' challenge with security clearances: "Small businesses cannot get a clearance without a contract, but cannot win a contract without having a clearance."⁶⁴ Failure to address such burdens on small businesses will continue to deter companies from entering the defense market and drive innovative companies out of the market.

Small Business Programs and Authorities Enabling Research and Development and Innovation

The Section 809 Panel researched the SBIR and STTR programs, RIF, Mentor-Protégé Program, and consortia to assess their ability to help small businesses gain entry into the defense market.⁶⁵

Small Business Innovation and Research Program and Small Business Technology Transfer Program

Congress created the SBIR and STTR programs in 1982 and 1992 respectively to encourage small businesses to contribute innovation to solve the nation's public policy challenges through federal research and development funding.⁶⁶ SBIR and STTR encourage domestic small businesses to engage in federal research/research and development (R/R&D) that has the potential for commercialization.⁶⁷ SBIR and STTR allow small businesses to profit from the commercialization of products developed through the program.⁶⁸ The SBIR and STTR programs have similar structures, but the STTR program requires the small business to collaborate with a research institution throughout the program.

Past reports and performance evaluations indicate the SBIR program generates positive outcomes for participants and the government. The Government Accountability Office (GAO) found that agencies were funding high quality and innovative proposals through the program; indicating positive returns on investment for the agencies involved.⁶⁹ An analysis of employment and sales growth among 1,435 companies over a 10-year span indicated that companies participating in SBIR programs across the U.S. government, particularly companies in the high-tech sector located in areas with high volumes

⁶⁴ Valerie Muck, United States Air Force Office of Small Business Programs, meeting with Section 809 Panel, September 22, 2017.

⁶⁵ The Section 809 Panel also identified the Comprehensive Subcontracting Test Program as potentially effecting small businesses' access to the defense market. The Section 809 Panel intends to research the program more extensively as part of its research on subcontracting separately from this report.

⁶⁶ David Metzger, *While the Nation Slept: The Struggle of Small Innovative Businesses in the U.S.* (Herndon, VA: Mascot Books, 2016), 180.

⁶⁷ DoD tends to view commercialization differently than most other agencies administering an SBIR program. DoD typically defines commercialization as a product being acquired by a DoD entity; most other agencies define commercialization as a product being marketed and sold outside the government market.

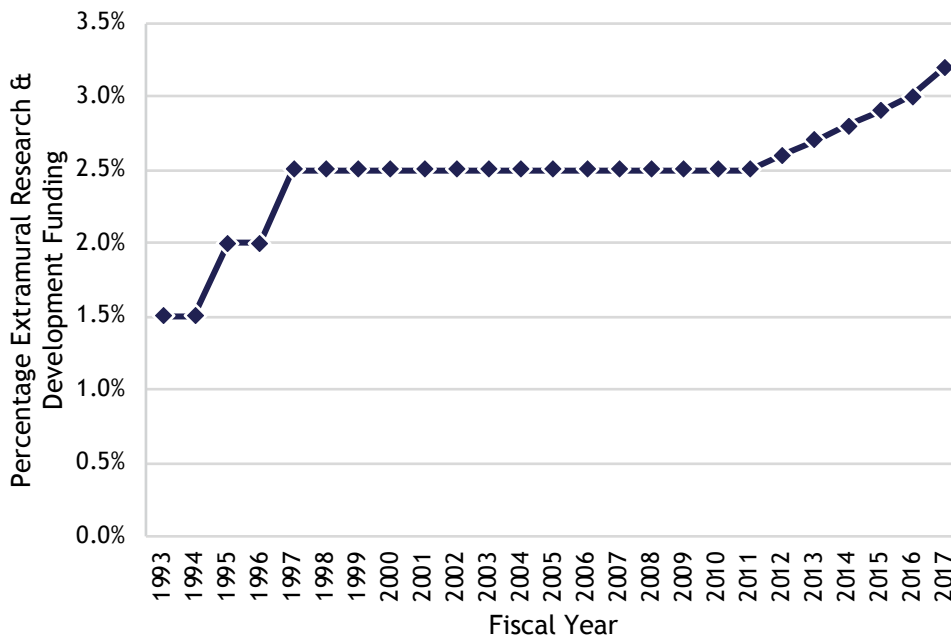
⁶⁸ "About SBIR," U.S. Small Business Administration, accessed August 4, 2017, https://www.sbir.gov/about/about-sbir#embedded_flash_111707621.

⁶⁹ U.S. General Accounting Office, *Federal Research: Effectiveness of Small Business Innovation Research Program Procedures*, accessed August 4, 2017, <http://www.gao.gov/assets/150/145342.pdf>.

of private venture capital investment, were more likely to receive venture capital investments and grow in size than those companies that did not participate in SBIR.⁷⁰

SBIR also offers a rather direct connection between innovative technology companies and the acquisition community. A survey conducted by the National Research Council revealed SBIR allows participants “direct access to DoD acquisition officers and other staff without the need to work through a prime contractor.”⁷¹ Statutory requirements for DoD to increase technology transition from SBIR into programs of record encourage connections between program participants and the acquisition community.⁷² Small companies offering niche capabilities that may not attract venture capital funding can leverage SBIR’s resources and support to improve their products and find potential DoD customers.⁷³

Figure 6-4. Minimum Expenditures Toward SBIR (By Fiscal Year)



⁷⁰ Josh Lerner, “The Government as Venture Capitalist: The Long-Run Impact of the SBIR Program,” *The Journal of Business*, 72, no. 3, (1999): 285-318.

⁷¹ Jacques Gansler, et al., *SBIR at the Department of Defense* (Washington, DC: The National Academies Press, 2014), 143-144.

⁷² Goal for SBIR and STTR Technology Insertion, 15 U.S.C. § 638(y)(6).

⁷³ Jacques Gansler et al., *SBIR at the Department of Defense* (Washington, DC: The National Academies Press, 2014), 142.

SBIR's funding is currently set at 3.2 percent of DoD's extramural R&D funds.⁷⁴ The SBIR program has received incremental increases in its percentage allocation from DoD's extramural R&D funds since 2011.⁷⁵ STTR receives an allocation of just 0.45 percent of the extramural budget.⁷⁶ A study commissioned by the U.S. Air Force offers some insights into the SBIR and STTR programs' returns on investment. The study evaluated the economic effects of the U.S. Air Force's \$4 billion investment into SBIR and STTR from 2000 to 2013, and indicated that the service's SBIR and STTR investments yielded \$47.9 billion in economic output nationwide.⁷⁷ The benefits of the SBIR and STTR programs have led to calls for them to become permanent. Currently, the programs' reauthorization requires periodic renewal, with the risk of not being reauthorized.⁷⁸ Several experts in acquisition and small business innovation advocate for the permanent authorization of SBIR and STTR. Jacques Gansler, a scholar and former USD(AT&L), stated in a 2015 Senate Small Business Committee hearing that it is time for the programs to become permanent.⁷⁹ During this hearing, the committee asked other outside expert acquisition witnesses if there were any possible objections to making SBIR and STTR permanent; none were given.⁸⁰ Other small business and innovation experts have called for the programs to be improved and made permanent.⁸¹

Although the SBIR program is lauded as being successful, the program has some limitations. Of greatest concern to the Section 809 Panel is that the SBIR program lacks speed, agility, and flexibility. The program's processes are increasingly onerous.⁸² Companies, program experts, and prior studies indicate the topics, time to Phase III, contracting process, and audits undermine the program's innovative potential.⁸³ Many companies struggle to transition to Phase III of DoD's SBIR program and see their technologies inserted into DoD programs of record.⁸⁴

Numerous small companies shared concern about DoD's SBIR topics. Representatives from one San Diego-based company noted that the only SBIR topics for which their organization had received an award were the topics the company wrote themselves and provided to the DoD program managers for

⁷⁴ Required Expenditure Amounts, 15 U.S.C. § 638(f)(1).

⁷⁵ Ibid.

⁷⁶ Given the relatively small size of the STTR program compared to SBIR, the Section 809 Panel put greater emphasis on researching opportunities to improve the SBIR program as a means to reduce barriers to entry for small businesses and better work with the small business community to support DoD's mission.

⁷⁷ United States Air Force, *The Air Force Impact to the Economy via SBIR/STTR*, accessed October 30, 2017, <https://www.sbir.gov/sites/default/files/USAF%20SBIR-STTR%20Economic%20Impact%20Study%20FY2015.pdf>.

⁷⁸ SBIR and STTR must be reauthorized by September 30, 2022 under Section 1834 of the FY 2017 NDAA.

⁷⁹ Jacques Gansler, *Acquisition Reform: Next Steps*, testimony before United States Senate Committee on Armed Services, December 1, 2015.

⁸⁰ Ibid.

⁸¹ David Metzger, *While the Nation Slept: The Struggle of Small Innovative Businesses in the U.S.* (Herndon, VA: Mascot Books, 2016), 279-282.

⁸² Small Business Technology Council, *Small Business Innovation Research (SBIR): Leveraging American Business Growth and Jobs, SBIR: Entrepreneur-Driven R&D to Support American Economic Revitalization*, 2017, accessed November 20, 2017, <http://sbtc.org/wp-content/uploads/2017/01/SBTC-SBIR-White-Paper-2017.pdf>.

⁸³ Jacques Gansler et al., *SBIR at the Department of Defense* (Washington, DC: The National Academies Press, 2014). For further information on SBIR topics and program phases, see "About SBIR," U.S. Small Business Administration, accessed November 30, 2017, <https://www.sbir.gov/about/about-sbir#sbir-three-phase-program>.

⁸⁴ Ibid, 220. The report notes improvements have been made in helping small companies reach Phase III, but also notes a number of ways in which DoD can improve Phase III transition.

inclusion in a broad agency announcement (BAA). Topics often are prescriptive, outlining specific requirements and thus creating barriers for innovative companies trying to participate in SBIR. Transitioning away from requirements-based topics to problem statements or theme-based topics may help alleviate this issue. The National Science Foundation (NSF) may serve as a model for such an approach. NSF's SBIR topics are thematic in nature; posting broad needs and interests encourages many companies with different capabilities and ideas to generate SBIR proposals.

Awarding a Phase I contract often takes at least a year.⁸⁵ The speed at which technologies mature in DoD's SBIR program simply does not happen quickly enough; DoD SBIR technologies take 8 to 12 years to reach commercialization.⁸⁶ The rate of technological advancement far outpaces the speed of DoD's SBIR program, potentially causing DoD to acquire already outdated or suboptimal technologies through SBIR Phase III.⁸⁷ Other agencies have struggled with lack of speed in the SBIR program in the past, and have found success in accelerating their programs through rather modest initiatives. For example, the NSF adopted the Lean LaunchPad methodology⁸⁸ for its Innovation Corps (I-Corps) program. In an effort to improve the pace and effect of its SBIR program, NSF also established an I-Corps boot camp program that exposes all SBIR grantees and their program officers to the Lean LaunchPad process.⁸⁹

A master release schedule, which SBA manages,⁹⁰ determines when DoD can make SBIR awards.⁹¹ This approach constrains DoD from awarding SBIR contracts in response to unsolicited proposals. DoD also awards all of its SBIR funds using contracts. Federal regulations require that DoD grants officers make a determination as to whether the proposed activity is for a *public purpose* or is in support of DoD's mission.⁹² The SBIR program supports research that meets both criteria and could be grant funded. Even though other federal agencies fund SBIR projects through grants, as well as contracts, current regulations that apply only to DoD restrict DoD's options for funding companies' innovation- and research-related efforts through SBIR.

Relative to grant and cooperative agreement funding, FAR-based contracts are more complex, and SBIR participants and DoD officials have difficulty with contracting and FAR-based requirements

⁸⁵ David Sikora, Acting DoD SBIR/STTR Program Administrator, meeting with Section 809 Panel, May 4, 2017.

⁸⁶ *Ibid.*

⁸⁷ Ample research exists demonstrating the rate of technological change happens exponentially. For example, Moore's Law projected that computing power would double approximately every 2 years (see: Gordon E. Moore, "Cramming More Components onto Integrated Circuits," *Electronics*, April 19, 1965). Ray Kurzweil's Law of Accelerating Returns further indicates technological change happens exponentially, and the rate of technological advancement is consistently increasing (see Ray Kurzweil, *The Law of Accelerating Returns*, accessed August 4, 2017, <http://www.kurzweilai.net/the-law-of-accelerating-returns>).

⁸⁸ The Lean Launchpad methodology, pioneered by Steve Blank, consists of three elements: (1) Companies or organizations develop a one-page business or mission model canvas, which outlines core assumptions and hypotheses about a product to be developed and its end-users; (2) Companies or organizations gather data from potential end-users to ensure the product to be developed is solving actionable problems, rather than meeting prescriptive requirements; and (3) Agile development of the product allows for incremental testing and iterative feedback by and from the anticipated end-users.

⁸⁹ Errol Arkilic, former Innovation Corps Program Director, phone call with Section 809 Panel, June 28, 2017.

⁹⁰ Assistance to Small-Business Concerns, 15 U.S.C. § 638(b)(5).

⁹¹ David Sikora, Acting DoD SBIR/STTR Program Administrator, meeting with Section 809 Panel, May 4, 2017.

⁹² Distinguishing Assistance from Procurement, 32 CFR § 22.205.

applicable to the SBIR program.⁹³ Small businesses also struggle to overcome the delays and costs inherent in DoD's contracting process and acquisition regulations,⁹⁴ which introduces difficulties and delays that can otherwise be avoided.⁹⁵ At a 2016 hearing on the SBIR program, a Navy senior official testified,

Our challenge...[is] the FAR and DFAR. When my SBIR companies have to comply with the same regulations, procedures, and processes that we expect of our defense primes, it is very difficult if it is two people in a garage.⁹⁶

Leveraging grants and cooperative agreements for Phases I and II, as is done by other SBIR administering agencies, could offer benefits in terms of speed and program flexibility. Grants and cooperative agreements require less preaward effort than contracts and facilitate awarding contracts faster.

By statute, companies can receive only one additional Phase II SBIR award for a given project, which further limits the flexibility of SBIR to support small companies and promote innovation.⁹⁷ New companies that may have more innovative, high-quality proposals, but also are in need of more capital to bridge the *valley of death*⁹⁸ are restricted to the same number of Phase II awards for a project as companies with prior SBIR experience. This situation limits DoD's ability to lend greater support to small businesses new to SBIR compared to companies that already understand SBIR and likely have greater knowledge of how to successfully commercialize their technologies.

Another challenge for small companies is the required audit of the firm's accounting systems and procedures. DCAA performs this function for DoD SBIR participants. According to DCAA, SBIR small businesses potentially are subject to two audits: a preaward audit of the financial system and a postaward audit of the contract.⁹⁹ During a roundtable held by the Section 809 Panel, Army contracting officers identified the requirements for DCAA audits and the onerous contracting process as a substantial impediment to SBIR participants.¹⁰⁰ Audit compliance, (see Section 2), is often burdensome and costly, especially for small businesses. DoD is by far the largest SBIR agency in terms of dollars and has the highest number of awardees. DCAA conducts many audits each year, especially if the awardees are new. Delays and backlogs can range from 6 months to more than a year.¹⁰¹ These timelines,

⁹³ National Research Council, Charles Wessner, ed., *Committee for Capitalizing on Science, Technology, and Innovation: An Assessment of the Small Business Innovation Research Program* (Washington, DC: National Academies Press, 2009), 25, 194, 201, 210.

⁹⁴ *Ibid.*, 20.

⁹⁵ *Ibid.*, 201.

⁹⁶ Robert Smith, *Commercializing on Innovation: Reauthorizing the Small Business Innovation Research and Small Business Technology Transfer Program*, testimony before United States House of Representatives Committee on Small Business, March 2, 2016.

⁹⁷ Express Authority for Awarding a Sequential Phase II Award, 15 U.S.C. § 638(ff)(1).

⁹⁸ The *valley of death* is a commonly used term in the technology and start-up industries. The term refers to the period of time between when a company first receives money to support research and development, to when the product becomes commercialized and generates steady revenue.

⁹⁹ Defense Contract Audit Agency, *Resource Guide for the Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) Programs*, accessed August 4, 2017, <http://www.acq.osd.mil/osbp/sbir/sb/resources/index.shtml>.

¹⁰⁰ U.S. Army contracting officers, meeting with the Section 809 Panel, November 2016.

¹⁰¹ National Research Council, Charles Wessner, ed., *Committee for Capitalizing on Science, Technology, and Innovation: An Assessment of the Small Business Innovation Research Program* (Washington, DC: National Academies Press, 2009), 201.

although normal for larger contractors, can introduce additional cost and risk analysis on potential SBIR firms.

Efforts to improve commercialization rates and processes date back to 1992,¹⁰² nevertheless, problems remain. Federal agencies are required by statute to issue Phase III (commercialization) awards “to the greatest extent practicable.”¹⁰³ Research indicates there is uneven emphasis on Phase III awards across DoD, with the Navy being a notable exception, accounting for 70 percent of all DoD Phase III awards.¹⁰⁴ Due to inadequate resources dedicated to Phase III, DoD struggles to help SBIR companies reach commercialization.¹⁰⁵ Given that Phase III resources are limited, and that the program receives funds by taking money from extramural R&D accounts, managers often view SBIR as a tax on their programs.¹⁰⁶ The fact that SBIR does not factor prominently in acquisition strategies and programs may also inhibit commercialization. The only reference to SBIR in DoDI 5000.02 is a single bullet point requiring program managers to “establish goals” for applying SBIR technologies in programs of record.¹⁰⁷

Rapid Innovation Fund

The RIF was created in 2011.¹⁰⁸ In FY 2016, the program was appropriated \$250 million.¹⁰⁹ DoD OSBP and ASD(R&E) Emerging Capability and Prototyping (EC&P) manage the RIF program jointly with funding administered by OSBP.¹¹⁰ After appropriations, Congress disburses program funds to DoD OSBP, which allocates a portion of the RIF funds to each of the Military Services and retains a portion used for projects proposed by the Defense Agencies and Combatant Commands.¹¹¹ The Services select and manage their RIF projects, and OSBP and EC&P jointly select projects that defense agencies and combatant commands manage.¹¹² OSBP, as the program element manager, funds all RIF projects.¹¹³

RIF awards cannot exceed \$3 million.¹¹⁴ For RIF, BAAs solicit white papers and initiate a competitive selection process.¹¹⁵ Small businesses receive preference; as of FY 2016, 88 percent of all RIF awards

¹⁰² Jacques Gansler, et al., *SBIR at the Department of Defense* (Washington, DC: The National Academies Press, 2014), 96-97.

¹⁰³ Phase III Awards, 15 U.S.C. § 638(r)(4).

¹⁰⁴ National Research Council, Charles Wessner, ed., *Committee for Capitalizing on Science, Technology, and Innovation: An Assessment of the Small Business Innovation Research Program* (Washington, DC: National Academies Press, 2009), 29.

¹⁰⁵ Jacques Gansler et al., *SBIR at the Department of Defense* (Washington, DC: The National Academies Press, 2014), 167.

¹⁰⁶ David Sikora, Acting DoD SBIR/STTR Program Administrator, meeting with Section 809 Panel, May 4, 2017. Jacques Gansler et al., *SBIR at the Department of Defense* (Washington, DC: The National Academies Press, 2014), 167, 211, 221.

¹⁰⁷ Operation of the Defense Acquisition System, DoDI 5000.02, Enclosure 1, 48 (2015).

¹⁰⁸ FY 2011 NDAA, Pub. L. No. 111-383, 124 Stat. 4137 (2011).

¹⁰⁹ Ellen Purdy and Ted Bujewski, *Rapid Innovation Fund (RIF): Program Overview*, accessed August 4, 2017, http://business.defense.gov/Portals/57/Documents/RIF_Overview-Feb2017.pdf.

¹¹⁰ Ted Bujewski, DoD Office of Small Business Programs, email to Section 809 Panel, October 12, 2017.

¹¹¹ *Ibid.*

¹¹² *Ibid.* Memorandum from Office of the Undersecretary of Defense, Acquisition, Technology, and Logistics, *Announcement of Implementation Guidelines and Use of Technology Transition Best Practices for Components Planning to Participate in the Rapid Innovation Fund (RIF) Program for Fiscal Year 2017*, April 11, 2017.

¹¹³ *Ibid.*

¹¹⁴ Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation, 10 U.S.C. § 2359.

¹¹⁵ Ellen Purdy and Ted Bujewski, *Rapid Innovation Fund (RIF): Program Overview*, accessed August 4, 2017, http://business.defense.gov/Portals/57/Documents/RIF_Overview-Feb2017.pdf.

have gone to small businesses.¹¹⁶ A large business can receive a RIF award if a small business cannot produce a mature prototype.¹¹⁷

RIF is a useful tool for enabling acquisition and integration of innovative capabilities developed by small businesses. For example, RIF provides fiscal resources to help DoD transition SBIR technologies from Phase II into Phase III; approximately 60 percent of RIF technologies are developed through SBIR.¹¹⁸ RIF, however, is constrained by inflexibility. The program only posts BAAs once per year on FedBizOpps, the main source for businesses to find opportunities to contract with the federal government. Because the statute requires a competitive selection process for RIF awards,¹¹⁹ unsolicited proposals for technologies may not receive a RIF contract outside the BAA cycle. It is unclear whether the SBIR process qualifies as a competitive process for RIF awards,¹²⁰ despite the statute allowing sole source Phase III awards for SBIR technologies.¹²¹

Survey feedback, as reported by DoD's OSBP, indicated more than 90 percent of RIF awardees stated that RIF helped their businesses, and 57 percent reported RIF succeeded in helping transition technology.¹²² Given requirements to compete RIF awards, however, the process is slower than intended. One small company shared with the Section 809 Panel that it took nearly 2 years from a white paper through the proposal process to get on a RIF contract, concluding, "The Rapid Innovation Fund wasn't rapid at all."¹²³ A 2015 U.S. GAO report expressed similar concerns and indicated the process for awarding RIF contracts takes approximately 18 months.¹²⁴ The program's speed suffers, at least in part, from lack of dedicated contracting offices and infrastructure.¹²⁵ Executing a RIF contract, especially for organizations like combatant commands and defense agencies without contracting offices of their own, typically requires searching for a contracting office with the bandwidth and willingness to take on the work.¹²⁶

The \$3 million cap on RIF project funding (unless the Secretary of Defense or the Secretary's designee approves greater funding)¹²⁷ does not ensure the program can help small companies navigate past the *valley of death* and transition their technologies into programs of record. The same company that

¹¹⁶ Ibid.

¹¹⁷ Ted Bujewski, DoD Office of Small Business Programs, meeting with Section 809 Panel, May 19, 2017.

¹¹⁸ Ibid.

¹¹⁹ Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation, 10 U.S.C. § 2359.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ellen Purdy and Ted Bujewski, *Rapid Innovation Fund (RIF): Program Overview*, accessed August 4, 2017, http://business.defense.gov/Portals/57/Documents/RIF_Overview-Feb2017.pdf.

¹²³ Eric Patten, Ocean Aero, presentation to Section 809 Panel, June 21, 2017.

¹²⁴ GAO, *DoD Rapid Innovation Program: Some Technologies Have Transitioned to Military Users, but Steps Can Be Taken to Improve Program Metric and Outcome*, accessed August 5, 2017, <http://www.gao.gov/assets/680/670090.pdf>.

¹²⁵ Ted Bujewski, DoD Office of Small Business Programs, phone call with Section 809 Panel staff, September 29, 2017.

¹²⁶ Ibid.

¹²⁷ Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation, 10 U.S.C. § 2359.

pointed to slowness in the program indicated \$3 million is insufficient to develop the contracted platform. As a result, the company is taking a loss on the project.¹²⁸

Mentor-Protégé Program

The Mentor–Protégé Program facilitates partnerships between small and large businesses, with the goal of leveraging large businesses’ resources and expertise to help small companies win defense contracts and promote technology transfer.¹²⁹ DoD is not the only agency to administer a mentor–protégé program (although DoD’s program is agency-specific, whereas other such programs across the federal government fall under the SBA’s purview).¹³⁰

Small business protégés with which the Section 809 Panel spoke, indicated that mentors occasionally pressure small business protégés to transfer their rights to intellectual property to the mentors. Because neither DoD nor SBA has tangible data on the program, however, the Section 809 Panel did not identify any compelling findings on the program’s efficacy. Based on interviews with DoD’s OSBP, efforts are underway to change the Mentor-Protégé Program’s data collection and reporting requirements.¹³¹

Consortia and Accelerators

Consortia and accelerators (referred to as consortia here) are effective resources for DoD to access small business innovations and technologies. Consortia pool companies with specific technical capabilities and service offerings, effectively building a community of companies that can collaborate and compete with one another to deliver better products and services to DoD. Such organizations can tap into their communities to help connect small businesses with DoD, especially organizations executing other transaction authorities (OTAs) for R&D and prototyping, allowing DoD to quickly make awards to small businesses offering innovative capabilities and technologies.¹³²

For instance, NSTXL helps small businesses pursue, win, and receive awards via OTAs within 80 to 100 days.¹³³ DIUx employs a similar approach to getting companies awards via OTAs.¹³⁴ The speed at which consortia can help DoD administer OTAs to acquire innovative capabilities and technologies meets the needs of small companies for DoD acquisitions to move more quickly, and is an important tool for enhancing DoD’s warfighting capabilities.

¹²⁸ Eric Patten, Ocean Aero, presentation to Section 809 Panel, June 21, 2017.

¹²⁹ “Mentor-Protégé Program (MPP),” U.S. Department of Defense Office of Small Business Programs, accessed August 5, 2017, <http://www.acq.osd.mil/osbp/sb/programs/mpp/>. Robert Stewart, *DoD Mentor Protégé Program*, accessed August 5, 2017, http://www.acq.osd.mil/osbp/docs/DoD-MPP_FY16_SlideDeck-15DEC15.pdf.

¹³⁰ Robert J. Dilger and Kate M. Manuel, *Small Business-Protégé Programs*, accessed August 5, 2017, <https://fas.org/sgp/crs/misc/R41722.pdf>.

¹³¹ Alice Williams, Acting Deputy Director of DoD Office of Small Business Programs, meeting with Section 809 Panel, May 4, 2017

¹³² OTAs are established in 10 U.S.C. § 2371 and give DoD the authority to enter into agreements other than contracts, grants, or cooperative agreements. OTAs are not covered by the FAR, and are intended for use on basic, applied, advance research and prototyping projects. The Section 809 Panel found that OTAs are of increased interest to DoD and an important vehicle for companies to deliver innovative products and services to the Department. The Section 809 Panel continues to research OTAs and may offer findings and recommendations in a later report.

¹³³ Tim Greeff, NSTXL, presentation to Section 809 Panel, April 25, 2017.

¹³⁴ Michael Bold, *Speed Contracting*, accessed August 5, 2017, https://www.army.mil/article/178968/speed_contracting.

Consortium managers have no incentives to search for new technologies and recruit new members into the community. Consortium managers search for technologies within the consortia in response to a specific DoD requirement, but consortia managers do not typically provide technology-scouting support to DoD.¹³⁵ Because consortium managers may not proactively identify new technologies for DoD application, finding new technologies by way of consortium managers is not consistent and may cause innovative technologies to remain unknown to, or overlooked by, DoD.

Some stakeholders the Section 809 Panel met with expressed concern that leveraging consortia to execute OTAs is creating a pay-to-play system in which small companies looking to do business with DoD through OTAs must pay consortium membership fees.¹³⁶ The panel noted, however, that consortium membership fees often are minimal, no more than a few hundred dollars per year.¹³⁷ Absent alternative revenue sources, membership fees and transaction administration fees are necessary to fund consortium operations.¹³⁸ Although this funding approach may not present a substantial barrier today, the situation may require future consideration if fees become a major barrier for businesses looking to enter the defense market.

Conclusions

Small business policy objectives and programs, as executed today, do not emphasize promoting small businesses that directly enable DoD to better execute its missions. The pressures that DoD faces, and will increasingly face, to execute its mission necessitate a clear-minded focus on leveraging small businesses to maximize warfighting effectiveness. DoD should refocus its small business policies, programs, and practices to maximize warfighting capabilities and capacities. A number of issues need resolution for DoD to work more effectively with small businesses:

- Greater unity of effort is necessary to direct and align DoD's small business policy, programs, and strategy with DoD's mission. DoD lacks the infrastructure and connectivity between the small business community and industrial base policy to align small business programs with the DoD's strategic needs. Regardless of the ultimate outcome of the current reorganization, it is important to increase the connectedness of DASD(MIBP), OSBP, and PTAP to develop a complete view of the defense market, support innovative small businesses, and leverage small businesses to meet the DoD's mission-related needs.
- DoD must better support small businesses, and in doing so, it should prioritize working with innovative small businesses that can directly enhance mission capabilities. DoD needs to articulate a strategy and implementation policy for how it will leverage the innovative capacity and potential of the small business community to meet critical, mission-related needs. DoD's small business professionals at the field-level are not focused on finding innovative small companies with offerings that can enhance DoD's warfighting capabilities and capacities. DoD should repurpose its small business assets to find and connect innovative small businesses with contract opportunities supporting DoD's strategic needs.

¹³⁵ Chris Van Metre, Advanced Technology International, phone call with Section 809 Panel, May 11, 2017.

¹³⁶ Meagan Metzger, Dcode42, presentation to the Section 809 Panel, April 25, 2017.

¹³⁷ Chris Van Metre, Advanced Technology International, phone call with Section 809 Panel, May 11, 2017.

¹³⁸ Ibid.

- Small businesses seeking entry into the defense market need better communication and clearer points of entry. Small companies require coaching, support, and feedback to enable their growth, development, and success in supporting DoD. PTAP could help address the need for greater and more effective communication with small businesses; however, PTAP is not exclusively DoD-focused, lacks sufficient resources, and struggles to reach small businesses that may be interested in the defense market. In addition to increasing small businesses' awareness of PTACs and PTACs' capacities to help small businesses across the country, DoD needs to align PTAC goals and operations with DoD's strategic needs and priorities. Open innovation centers like SOFWERX present another viable approach because they could offer a low-cost, yet effective method of attracting innovators into the defense market. DoD should use such centers more widely to provide entry points and host challenges (like those put on by both SOFWERX and NASA iTech) to leverage small, innovative companies to solve unique DoD problems. The mentor–protégé program also helps small businesses grow and mature. To allow for detailed reviews and studies of the program in the future, DoD should continue to improve data collection and reporting should continue.
- DoD should invest more heavily in SBIR and RIF, as both effectively leverage small businesses to further DoD's mission-related capabilities; however, both programs could benefit from greater speed and flexibility. DoD should factor SBIR technologies more explicitly into its acquisition strategies and plans. Greater speed, as well as the ability to disburse large awards under both programs, will help companies bridge the *valley of death* and successfully commercialize their products.
- Consortia and technology accelerators can help DoD gain greater awareness of emerging technologies and quickly connect small businesses to DoD customers. Consortia need to provide greater technology scouting support and services to DoD to maximize their effect. Consortium fees need to remain affordable for small companies to prevent emergence of additional barriers to entry into the defense market.

Implementation

Legislative Branch

- Enact a Defense Small Business Act, consolidating all statutes pertaining to DoD's small business programs under Title 10.

Executive Branch

- Introduce policy directing a refocus to working with small businesses to support and enhance DoD's warfighting capabilities and capacities.

Subrecommendation 21a: Establish the infrastructure necessary to create and execute a DoD small business strategy, ensuring alignment of DoD's small business programs with the agency's critical needs.

Legislative Branch

- Introduce a requirement for DoD to develop a small business strategy within 180 days of enactment, to include the following provisions:
 - Integration of small business into a holistic view of industry;
 - Alignment of DoD small business programs with agency mission; and
 - Clarifying points of entry into the defense market, including enabling and promoting the PTAP to facilitate small business entry into the defense market.
- Amend 10 U.S.C. § 2504 to require DoD to include the following in its annual report to Congress on the defense base:
 - An analysis of capabilities and emerging technologies relevant to DoD's warfighting mission across the small business community and among non-traditional partners.
 - How DoD will incorporate small business goals and strategies into the greater industrial base strategy.
 - How relevant offices are integrating small business activities into a greater industrial base strategy.
- Amend Chapter 142 of 10 U.S.C. to provide PTACs the flexibility and resources necessary to conduct greater outreach and provide greater support to small businesses by: increasing funding of PTACs to cover all operational costs up to a cap that is double what can currently be allocated to each individual PTAC and eliminating the requirement for PTACs to secure matching funds.
- Increase the annual appropriation made to the Procurement Technical Assistance Cooperative Agreement Program to no less than \$68 million.
- Encourage small DoD contractors to grow and mature their capabilities by allowing small businesses that grow beyond their size thresholds to retain their status as a small business and/or 8(a) for 3 years unless a large company acquires the small businesses.

Executive Branch

- No Executive Branch changes are required.

Subrecommendation 21b: Build on the successes of the SBIR/STTR and RIF programs.

Legislative Branch

- Amend 15 U.S.C. § 638 to make SBIR and STTR permanent.
- Amend 10 U.S.C., in recognition of the success of the SBIR program, to increase DoD's percentage allocation of extramural R&D funds allocated to SBIR to 7 percent, phased in during 5 years.
- Amend 10 U.S.C. to authorize DoD SBIR Phase I awards of \$500,000 and Phase II awards of \$1.5 million.
- Amend 10 U.S.C. to allow explicitly the application of simplified acquisition procedures to SBIR Phases I and II, while ensuring SBIR intellectual property protections remain.
- Amend 10 U.S.C. to allow DoD to issue sole-source SBIR Phase I and Phase II awards outside the master release schedule and to nonconforming proposals, not requiring a Justification and Approval (J&A), and not subject to protest.
- Amend 10 U.S.C. to allow for DoD SBIR Phase II awards without regard for whether a small business received a Phase I award.
- Amend U.S.C. Title 10 to ensure small business concerns participating in the SBIR program for the first time may receive more than two Phase II awards.
- Amend U.S.C. Title 10 to allow for the use of grants, cooperative agreements, and other transaction authority for SBIR and STTR.
- Amend 10 U.S.C. § 2359 to explicitly allow SBIR and STTR technologies entering into Phase III to be eligible for sole-source RIF awards, not requiring a J&A, and not subject to protest.
- Increase the annual appropriation to RIF to \$750 million.
- Amend 10 U.S.C. § 2359 to eliminate the \$3 million spending cap per RIF award, and allow agencies to issue sole-source RIF awards to unsolicited proposals deemed critical for enhancing DoD's warfighting capabilities and capacities.

Executive Branch

- Update DoD policy on major weapons system programs to emphasize SBIR technologies as essential components of acquisition strategies and plans.
- Change DoD policy to disburse a share of RIF money to the defense agencies, USSOCOM, U.S. Transportation Command, and any Combatant Command granted contracting authority; give those entities the ability to select and manage RIF projects.

- Create a specific exemption for the SBIR and STTR programs within Title 32 CFR § 22.205, and exempt SBIR and STTR funding agreements from Title 32 CFR § 22.205b and § 34.18.

Subrecommendation 21c: Enable innovation in the acquisition system and among industry partners.

Legislative Branch

- Authorize through legislation a DoD Nontraditional Technology Partner Initiative to incentivize outreach and working with nontraditional partners through the following:
 - Awards (to include cash prizes) to DoD civilians and uniformed personnel for efforts to leverage nontraditional partners for the delivery and/or development of new technologies directly enhancing warfighting capabilities.
 - Cash or noncash awards to DoD contractors for the identification of and subcontracting with nontraditional partners offering new technologies to DoD.
 - Cash or noncash awards to consortia that successfully assist non-traditional partners in obtaining DoD contracts (to include other transactions) for the first time.
- Direct the establishment of a Defense Innovation Center Program, expanding the use of robust open innovation centers, like SOFWERX, across DoD, the Services, and organizations. Under the program, DoD should do the following:
 - Identify DoD components with sufficient public recognition under which open innovation centers can be established.
 - Budget for the establishment and operation of open innovation centers in regions enabling small, innovative companies to interact directly with DoD end-users and operators.
 - Give sponsoring organizations under which the centers are established authority and necessary resources to execute business arrangements, to include OTAs and grants, and host challenges.

Executive Branch

- No Executive Branch changes are required.

Implications for Other Agencies

- Because SBA oversees governmentwide small business activities, changes to DoD's small business activities and programs may affect SBA's oversight of DoD's programs. Some recommendations made by the Section 809 Panel may require coordination between SBA and DoD to implement.



**SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000**

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDERSECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM EVALUATION
DIRECTOR, OFFICE OF SMALL BUSINESS PROGRAMS
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Refocusing Small Business Activities to Enhance Warfighting Effectiveness and Readiness

On February 17, 2017, I announced my expressed intent to field a larger, more capable and more lethal Joint force. In furtherance of my Memorandum on Implementation Guidance for Budget Directives in the National Security Presidential Memorandum on Rebuilding the U.S. Armed Forces, I am directing the Department to refocus its small business activities to fully capitalize on the small business community's unique capabilities to deliver lethality to the U.S. Armed Forces and align the Department's small business activities to its strategic priorities to better meet warfighting needs.

The Department was the first agency following World War II to establish a requirement to have a program leveraging small businesses to meet its mission. The Department continues to rely on and emphasize working with the small business community, evidenced by great progress towards meeting our small business utilization goals. Small businesses provide innovative capabilities to the Department, and are essential to maintaining warfighting dominance in an increasingly contested global environment. It is therefore critical that we take further steps to more fully align our commitment to small businesses with the Department's mission.

I am directing the Deputy Secretary of Defense, in conjunction with the Chief Management Officer (CMO), Undersecretary of Defense for Acquisition & Sustainment (USD (A&S)) and the Undersecretary of Defense for Research & Engineering (USD (R&E)), to develop a strategic plan for my approval within three (3) months from the release of this memorandum. The strategic plan shall provide, at a minimum, ways to accomplish the following objectives:

- Conduct deeper industrial assessments and build market awareness. To maintain dominance and most effectively deter threats from State and non-State actors, the Department must increase its market awareness, including intelligence on existing and emerging capabilities available in the market. Given the pace of technological advancement and sometimes rapid emergence of new threats, industrial base analysis must occur continuously. The strategic plan will therefore articulate how to leverage small business and industrial base-related functions currently performed by the Office of Small Business Programs, Deputy Assistance Secretary of Defense for Manufacturing and Industrial Base Policy (DASD (MIBP)), and small business offices throughout the Department and Services to:

- deepen annual industrial assessments currently required by Congress to increase awareness and understanding of existing and emerging capabilities and technologies across the market;
 - determine areas of opportunity and risk in how the Department accesses innovation and developmental technologies across the small business community and among non-traditional partners;
 - identify how small businesses and emerging technologies can be better leveraged to enhance the U.S. Armed Forces' warfighting capabilities; and
 - share industrial assessments and market intelligence with program managers and widely across the acquisition community, to inform acquisition strategies and programs.
- Increase outreach to small businesses. Establish a coordinated program to reach out to small, innovative businesses, including those without prior experience working with the Department. The outreach shall be informed by the industrial assessments discussed above to target new technologies and capabilities, build relationships with potential suppliers, and ensure the Department's access to small business capabilities that enhance warfighting capabilities and readiness.
 - Enhance points of entry into the defense market. Establish and effectively communicate a plan for creating clear points of entry for small businesses seeking to provide the Department and its components with products, services and solutions that enhance warfighting capabilities and readiness. Points of entry should consist of easily accessible information for all companies irrespective of their experience with and knowledge of the Department of Defense. Points of entry should provide companies with information on how to present and share their capabilities with the Department of Defense, and provide for regular opportunity to interact directly with potential end-users and the acquisition community. In support of this objective, the Procurement Technical Assistance Program (PTAP) shall be revitalized. In keeping with Congressional direction regarding the PTAP, management of the PTAP will be integrated with this strategic plan and realigned small business capabilities (discussed below). Procurement Technical Assistance Centers should therefore become a central and effective point of entry for small business.
 - Repurpose the Department's small business resources. Working with the Services, establish a plan to repurpose and realign the Department's small business resources, including personnel, as necessary to support the aforementioned strategic objectives.

To ensure execution of the strategic plan, it will also be codified in policy, regulation, processes, and, if necessary, in our organizational structure. Therefore, in addition to development of this strategic plan, I am directing USD (A&S) and USD (R&E) to oversee changes to relevant regulations, policies, and directives to reflect process changes, roles, and responsibilities necessary to execute the strategy. USD (A&S) and USD (R&E) shall also work with the Services to ensure performance management systems and program evaluation metrics promote organizational alignment with the Department's focus on leveraging small businesses to enhance warfighting capabilities.

Furthermore, I am directing USD (A&S) and USD (R&E) to lead changes to Department acquisition policies to maximize use of the Small Business Innovation Research (SBIR) program, Small Business Technology Transfer (STTR) program, and Rapid Innovation Fund (RIF) in all acquisition plans. Policies shall be updated to promote the usage of the RIF to facilitate SBIR and STTR technologies' maturation and optimization, as well as integration into programs of record.

LEGISLATIVE PROVISIONS — 809 PANEL RECOMMENDATIONS RELATING TO SMALL BUSINESS AND INNOVATION PROGRAMS

[NOTE: The draft legislative text below is followed by a “Sections Affected” display, showing the text of each provision of law affected by the draft legislative text below.]

1 TITLE IV—SMALL BUSINESS AND INNOVATION 2 PROGRAMS

- Sec. 401. Department of Defense small business strategy.
- Sec. 402. Permanent Government-wide authority for Small Business Innovation Research Program and Small Business Technology Transfer Program.
- Sec. 403. Enhancements to Department of Defense authorities relating to Small Business Innovation Research Program and Small Business Technology Transfer Program.
- Sec. 404. Enhancements to Department of Defense research and development rapid innovation program.
- Sec. 405. Authority for Department of Defense small business contractors to retain small business status for limited period.
- Sec. 406. Enhancements to Procurement Technical Assistance Cooperative Agreement Program.
- Sec. 407. Department of Defense nontraditional technology partner initiative.
- Sec. 408. Department of Defense innovation centers program.
- Sec. 409. Additional elements in annual report on defense technology and industrial base policy.
- Sec. 410. Cross references to certain small business provisions applicable to Department of Defense.
- Sec. 411. Codification of NDAA section on role of Directors of Small Business Programs in Department of Defense acquisition processes.
- Sec. 412. Codification of NDAA section on Department of Defense test program for negotiation of comprehensive small business subcontracting plans.
- Sec. 413. Codification of Mentor-Protégé program.
- Sec. 414. Repeal of certain obsolete NDAA provisions.

3 SEC. 401. DEPARTMENT OF DEFENSE SMALL BUSINESS STRATEGY.

4 (a) NEW TITLE 10 CHAPTER.—Part IV of subtitle A of title 10, United States

5 Code, is amended by striking chapter 133 and inserting the following new chapter:

6 “CHAPTER 132—DEPARTMENT OF DEFENSE SMALL BUSINESS 7 PROGRAMS

“Subchapter	
“I. General	2231
“II. SBIR and STTR Programs	2235
“III. Mentor-Protégé Program	2238

1

“Subchapter I—General

“Sec.

“2231. Department of Defense small business strategy.

“2231a. References to Directors and Offices of Small Business Programs.

“2232. References to certain programs provided in Small Business Act.

“2233. Department of Defense small business contractors: retention of small business status for limited period to complete contracts.

“2234. Role of the Directors of Small Business Programs in acquisition processes of the Department of Defense.

“2234a. Program for negotiation of comprehensive small business subcontracting plans.

2

“§ 2231. Department of Defense small business strategy

3

“(a) IN GENERAL.—The Secretary of Defense shall implement a small business strategy for the Department of Defense.

5

“(b) UNIFIED MANAGEMENT STRUCTURE.—As part of the Department of Defense small business strategy, the Secretary shall ensure that there is a unified management structure within the Department for the functions of the Department relating to—

8

“(1) small business programs;

9

“(2) manufacturing and industrial base policy; and

10

“(3) the Procurement Technical Assistance Program under chapter 142 of

11

this title.

12

“(c) PURPOSE OF SMALL BUSINESS PROGRAMS IN DOD.—As part of the

13

Department of Defense small business strategy, the Secretary shall ensure that

14

Department of Defense small business activities and programs are carried out so as to

15

further national defense programs and priorities and the statements of purpose for

16

Department of Defense acquisition set forth in section 801 of the National Defense

17

Authorization Act for Fiscal Year 2018 (Public Law 115-91).

18

“(d) POINTS OF ENTRY INTO DEFENSE MARKET.—As part of the Department of

19

Defense small business strategy, the Secretary shall ensure—

1 “(1) that points of entry for small business firms into opportunities for
2 contracting with the Department of Defense are identified clearly and are
3 provided in a form that allows convenient and universal user access; and

4 “(2) that small business firms are able to have access to end-item users,
5 operators, program managers, and contracting officers to the extent necessary to
6 inform them of emerging and existing capabilities.

7 “(e) ENHANCED OUTREACH UNDER PROCUREMENT TECHNICAL ASSISTANCE
8 PROGRAM MARKET.—As part of the Department of Defense small business strategy, the
9 Secretary shall enable and promote activities to provide coordinated outreach to small
10 business concerns through the Procurement Technical Assistance Program under chapter
11 142 of this title to facilitate small business contracting with the Department of Defense.”.

12 (b) IMPLEMENTATION.—

13 (1) DEADLINE.—The Secretary of Defense shall develop the small
14 business strategy required by section 2231 of title 10, United States Code, as
15 added by subsection (a), not later than 180 days after the date of the enactment of
16 this Act.

17 (2) NOTICE TO CONGRESS AND PUBLICATION.—Upon completion of the
18 defense small business strategy pursuant to paragraph (1), the Secretary shall—

19 (A) transmit the strategy to Congress; and

20 (B) publish the strategy on a public website of the Department of
21 Defense.

22 (c) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of subtitle
23 A of title 10, United States Code, and at the beginning of part IV of such subtitle, are

1 amended by striking the item relating to chapter 133 and inserting the following new
2 item:

“132. Department of Defense Small Business Programs 2231”.

3 **SEC. 402. PERMANENT GOVERNMENT-WIDE AUTHORITY FOR SMALL**
4 **BUSINESS INNOVATION RESEARCH PROGRAM AND SMALL**
5 **BUSINESS TECHNOLOGY TRANSFER PROGRAM.**

6 (a) PERMANENT AUTHORITY FOR SBIR PROGRAM.—Section 9 of the Small
7 Business Act (15 U.S.C. 638) is amended by striking subsection (m).

8 (b) PERMANENT AUTHORITY FOR STTR PROGRAM.—Subsection (n)(1) of such
9 section is amended—

10 (1) by striking “With respect to each fiscal year through fiscal year 2022,
11 each Federal agency” and inserting “Each Federal agency”; and

12 (2) by striking “for that fiscal year” and inserting “for any fiscal year”.

13 (c) TECHNICAL AMENDMENT TO DELETE PROVISION REDUNDANT WITH CURRENT
14 SUBSECTION (s).—Such section is further amended by striking subsection (oo).

15 **SEC. 403. ENHANCEMENTS TO DEPARTMENT OF DEFENSE AUTHORITIES**
16 **RELATING TO SMALL BUSINESS INNOVATION RESEARCH**
17 **PROGRAM AND SMALL BUSINESS TECHNOLOGY TRANSFER**
18 **PROGRAM.**

19 Chapter 132 of title 10, United States Code, as added by section 401(a), is
20 amended by adding at the end the following new subchapter:

21 **“Subchapter II—SBIR and STTR Programs**

“Sec.

“2235. Definitions.

“2235a. SBIR Program: required percentage of extramural research and development funds.

“2235b. SBIR and STTR Programs: use of grants, cooperative agreements, and other transaction authority; use of simplified acquisition procedures.

“2235c. SBIR Program: maximum award amounts.

“2235d. SBIR Program: sole-source awards.

“2235e. SBIR Program: authority for Phase II awards without Phase I awards.

“2235f. SBIR Program: additional Phase II awards for projects of critical importance.

1 **“§2235. Definitions**

2 “In this subchapter:

3 “(1) SBIR PROGRAM.—The term ‘SBIR Program’ has the meaning given
4 the term ‘Small Business Innovation Research Program’ in section 2500(11) of
5 this title.

6 “(2) STTR PROGRAM.—The term ‘STTR Program’ has the meaning given
7 the term ‘Small Business Technology Transfer Program’ in section 2500(12) of
8 this title.

9 **“§2235a. SBIR Program: required percentage of extramural research and
10 development funds**

11 “The percentage applicable to the Department of Defense under section 9(f)(1) of
12 the Small Business Act (15 U.S.C. 638(f)(1)) for any fiscal year beginning after the date
13 of the enactment of this section is as follows (in lieu of the percentage specified in that
14 section):

15 “(1) For the first fiscal year beginning after the date of the enactment of
16 this section, 3.9 percent.

17 “(2) For the second fiscal year beginning after the date of the enactment of
18 this section, 4.6 percent.

19 “(3) For the third fiscal year beginning after the date of the enactment of
20 this section, 5.4 percent.

1 “(4) For the fourth fiscal year beginning after the date of the enactment of
2 this section, 6.2 percent.

3 “(5) For the fifth fiscal year beginning after the date of the enactment of
4 this section and each fiscal year thereafter, 7.0 percent.

5 **“§2235b. SBIR and STTR Programs: use of grants, cooperative agreements, and**
6 **other transaction authority; use of simplified acquisition procedures**

7 “(a) USE OF GRANTS, COOPERATIVE AGREEMENTS, AND OTHER TRANSACTION
8 AUTHORITY.—The Secretary of Defense shall provide that grants, cooperative
9 agreements, and other transactions authorized under section 2371 of this title may be used
10 in carrying out the SBIR Program and the STTR Program within the Department of
11 Defense.

12 “(b) USE OF SIMPLIFIED ACQUISITION PROCEDURES FOR CONTRACTS IN AMOUNTS
13 GREATER THAN SIMPLIFIED ACQUISITION THRESHOLD.—

14 “(1) AUTHORITY TO USE SIMPLIFIED ACQUISITION PROCEDURES.—In
15 carrying out the SBIR Program and the STTR Program within the Department of
16 Defense, the Secretary of Defense may use simplified acquisition procedures for a
17 contract under such program without regard to the amount of the contract.

18 “(2) INAPPLICABLE LAWS.—Section 2302a(b) of this title, and any other
19 provision of law for which the applicability of the provision depends on whether
20 the amount of a contract is not greater than the simplified acquisition threshold,
21 shall apply to a contract for which the Secretary uses simplified acquisition
22 procedures by reason of the authority under paragraph (1) in the same manner as

1 if the amount of the contract were not greater than the simplified acquisition
2 threshold.

3 “(3) INTELLECTUAL PROPERTY RIGHTS.—In carrying out paragraph (1), the
4 Secretary shall ensure that the applicability of the provisions of the Small
5 Business Act providing for the determination of the respective rights of the United
6 States and the small business concern with respect to intellectual property rights,
7 and with respect to any right to carry out follow-on research, under a funding
8 agreement under the SBIR Program or the STTR Program is not affected by the
9 use of simplified acquisition procedures.

10 “(4) DEFINITIONS.—In this subsection:

11 “(A) The term ‘simplified acquisition procedures’ means the
12 simplified acquisition procedures described in section 2302b of this title.

13 “(B) The term ‘simplified acquisition threshold’ has the meaning
14 given that term in section 134 of title 41.

15 **“§2235c. SBIR Program: maximum award amounts**

16 “(a) MAXIMUM AMOUNTS.—For purposes of the SBIR Program, the amounts in
17 effect under section 9(j)(2)(D) of the Small Business Act (15 U.S.C. 638(j)(2)(D)) as the
18 amounts generally established for awards for Phase I, and for Phase II, of an SBIR
19 program shall, for the Department of Defense, be considered to be—

20 “(1) for Phase I awards, the amount of \$500,000, as adjusted pursuant to
21 subsection (b); and

22 “(2) for Phase II awards, the amount of \$1,500,000, as adjusted pursuant
23 to subsection (b).

1 “(b) ANNUAL ADJUSTMENT FOR INFLATION.—The Secretary of Defense shall
2 adjust the amounts in effect under subsection (a) every year for inflation.

3 **“§2235d. SBIR Program: sole-source awards**

4 “(a) AUTHORITY.—In carrying out the SBIR Program in the Department of
5 Defense, the Secretary of Defense may make an SBIR Phase I or Phase II award on a
6 sole-source basis in response to an unsolicited proposal that was submitted outside the
7 Department’s solicitation schedule, and outside the master release schedule prepared by
8 the Administrator of the Small Business Administration under section 9(b)(5) of the
9 Small Business Act (15 U.S.C. 638(b)(5)), in order for the Department to invest rapidly
10 in an innovative technology or solution that may not have been contemplated in relevant
11 solicitations. When such a sole-source award is made, the Secretary may also make a
12 follow-on SBIR Phase III award on a sole-source basis.

13 “(b) OTHER PROVISIONS OF LAW.—

14 “(1) INAPPLICABILITY OF LAWS REQUIRING USE OF COMPETITIVE
15 PROCEDURES.—This section applies without regard to section 9(s) of the Small
16 Business Act (15 U.S.C. 638(s)) or any other provision of law that otherwise
17 requires the use of competitive procedures.

18 “(2) INAPPLICABILITY OF CERTAIN OTHER PROCEDURES.—An award may
19 be made on a sole-source basis under this section without regard to any otherwise
20 applicable requirement relating to justification and approval of the decision to
21 make the award on a sole-source basis, and such an award under this section is not
22 subject to any protest process.

23 **“§2235e. SBIR Program: authority for Phase II awards without Phase I awards**

1 “(a) INAPPLICABILITY OF TIME LIMIT UNDER SMALL BUSINESS ACT.—Subsection
2 (cc) of section 9 of the Small Business Act (15 U.S.C. 638), relating to authority for the
3 provision of a Phase II SBIR award to a small business concern for a project without
4 regard to whether the small business concern was provided a Phase I SBIR award for the
5 project, shall apply to the Department of Defense without regard to any limitation on the
6 period of applicability of authority under that subsection that is otherwise in effect.

7 “(b) INAPPLICABILITY OF CERTAIN PROCEDURES.—A Phase II SBIR award may be
8 made by the Department of Defense as authorized by section 9(cc) of the Small Business
9 Act (15 U.S.C. 638(cc)) and subsection (a) of this section without regard to any otherwise
10 applicable requirement relating to justification and approval of the decision to make the
11 award, and such an award is not subject to any protest process.

12 **“§2235f. SBIR Program: additional Phase II awards for projects of critical**
13 **importance**

14 “(a) AUTHORITY.—In carrying out the SBIR Program in the Department of
15 Defense, in the case of a project for which the Secretary of Defense makes an additional
16 Phase II SBIR award for continued work on the project under the authority of section
17 9(ff)(1) of the Small Business Act (15 U.S.C. 638(ff)(1)), the Secretary may subsequently
18 make additional Phase II SBIR awards for the project if—

19 “(1) the small business concern developing the project is participating in
20 the SBIR Program for the first time; and

21 “(2) the project is described in subsection (b),

22 “(b) COVERED PROJECTS.—A project described in this subsection is a project that
23 is determined by the Secretary of Defense—

1 “(1) to be of critical importance to the national security; and

2 “(2) to have the potential to transition to SBIR Phase III.

3 (c) PUBLICATION OF DETERMINATION.—Any determination by the Secretary under
4 subsection (b) shall be published on a publicly available website of the Department of
5 Defense except to the extent that the determination includes classified information.”.

6 **SEC. 404. ENHANCEMENTS TO DEPARTMENT OF DEFENSE RESEARCH**
7 **AND DEVELOPMENT RAPID INNOVATION PROGRAM.**

8 (a) AUTHORITY FOR SBIR AND STTR TECHNOLOGIES ENTERING PHASE III TO BE
9 ELIGIBLE FOR SOLE-SOURCE AWARDS.—Section 1073 of the National Defense
10 Authorization Act for Fiscal Year 2011 (Public Law 111-383; 10 U.S.C. 2359 note) is
11 amended—

12 (1) in subsection (a), by inserting “and Small Business Technology
13 Transfer Program” after “Small Business Innovation Research Program”; and

14 (2) in subsection (b)(6)—

15 (A) by inserting “(A)” after “(6)”; and

16 (B) by adding at the end the following new subparagraph:

17 “(B)(i) Use of selection procedures under the Small Business Innovation
18 Research Program or the Small Business Technology Transfer Program shall be
19 considered to be use of merit-based selection procedures for purposes of this
20 paragraph, and, to accelerate the fielding of technologies developed pursuant to a
21 phase II project under the Small Business Innovation Research Program or the
22 Small Business Technology Transfer Program, the Secretary may authorize the
23 selection of a proposal for Phase III funding under the program on a sole-source

1 basis (and without regard to any requirement for a broad agency announcement or
2 use of other competitive procedures).

3 “(ii) An award may be made on a sole-source basis under this
4 subparagraph without regard to any otherwise applicable requirement relating to
5 justification and approval of the decision to make the award on a sole-source
6 basis, and such an award is not subject to any protest process.”.

7 (b) AUTHORITY FOR SOLE-SOURCE AWARDS FOR CERTAIN UNSOLICITED

8 PROPOSALS.—Subsection (b) of such section is further amended by adding at the end the
9 following new paragraph:

10 “(7) The Secretary may provide that, in the case of an unsolicited proposal
11 for a technology that the Secretary determines would meet a critical need for
12 enhancement of warfighting capabilities, funding may be provided for the
13 proposal under the program on a sole-source basis (and without regard to any
14 requirement for a broad agency announcement or use of other competitive
15 procedures).’

16 (c) REPEAL OF LIMITATION RELATING TO AMOUNT OF FUNDS THAT MAY BE
17 AWARDED TO ANY PROJECT.—Subsection (b) of such section is further amended by
18 striking paragraph (3).

19 **SEC. 405. AUTHORITY FOR DEPARTMENT OF DEFENSE SMALL BUSINESS**

20 **CONTRACTORS TO RETAIN SMALL BUSINESS STATUS FOR**
21 **LIMITED PERIOD.**

22 Subchapter I of chapter 132 of title 10, United States Code, as added by section
23 401(a), is amended by inserting after section 2231 the following new section:

1 **“§ 2233. Department of Defense small business contractors: retention of small**
2 **business status for limited period to complete contracts**

3 “(a) APPLICABILITY.—This section applies to a business concern (in this section
4 referred to as a ‘covered small business concern’) that is a small business concern and is a
5 party to a contract with the Department of Defense or to a subcontract (at any tier) under
6 a contract with the Department of Defense.

7 “(b) RETENTION OF STATUS AS SMALL BUSINESS CONCERN FOR LIMITED
8 PERIOD.—A small business concern that grows beyond a small business size standard
9 while it is a covered small business concern shall, for the purpose of any later award of a
10 contract (or subcontract) referred to in subsection (a), retain its status as a small business
11 concern during the three-year period beginning on the date as of which the business
12 concern grew beyond a small business size standard.

13 “(c) TERMINATION.—Subsection (b) shall cease to apply to a covered small
14 business concern upon the acquisition of that business concern by another business
15 concern, unless the acquiring business concern is a small business concern and the
16 resulting entity is itself a small business concern.

17 “(d) DEFINITIONS.—In this section:

18 “(1) The term ‘small business concern’ means a business concern that is a
19 small business concern under section 3 of the Small Business Act (15 U.S.C.
20 632).

21 “(2) The term ‘small business size standard’ means a size standard
22 applicable to the determination of whether a business concern is a small business
23 concern.”.

1 **SEC. 406. ENHANCEMENTS TO PROCUREMENT TECHNICAL ASSISTANCE**
2 **COOPERATIVE AGREEMENT PROGRAM.**

3 (a) MAXIMUM ANNUAL AMOUNT OF ASSISTANCE.—

4 (1) PROGRAMS OPERATED ON A STATEWIDE BASIS.—Subsection (a)(1) of
5 section 2414 of title 10, United States Code, is amended by striking “\$750,000”
6 and inserting “\$1,500,000”.

7 (2) PROGRAMS OPERATED ON A LESS THAN A STATEWIDE BASIS.—
8 Subsection (a)(2) of such section is amended by striking “\$450,000” and inserting
9 “\$900,000”.

10 (3) PROGRAMS OPERATED BY ELIGIBLE TRIBAL ORGANIZATIONS.—

11 (A) Subsection (a)(3) of such section is amended by striking
12 “\$300,000” and inserting “\$600,000”.

13 (B) Subsection (a)(4) of such section is amended by striking
14 “\$750,000” and inserting “\$1,550,000”.

15 (b) REPEAL OF MATCHING FUNDS REQUIREMENT.—Section 2413(b) of such title is
16 amended—

17 (1) by striking “agreement, the eligible” and inserting “agreement—

18 “(1) the eligible”;

19 (2) by striking “entities and the Secretary” and inserting “entities; and

20 “(2) the Secretary”;

21 (3) by striking “defray not more than 65 percent of” and all that follows
22 and inserting “furnish to the eligible entity the full cost of the assistance furnished

1 by the eligible entity under such programs, subject to the applicable annual
2 limitation under section 2414(a) of this title.”.

3 **SEC. 407. DEPARTMENT OF DEFENSE NONTRADITIONAL TECHNOLOGY**
4 **PARTNER INITIATIVE.**

5 (a) PROGRAM.—Subchapter II of chapter 148 of title 10, United States Code, is
6 amended by adding at the end the following new section:

7 **“§2509. Nontraditional technology partner initiative**

8 “(a) PROGRAM.—The Secretary of Defense shall carry out a program to provide
9 incentives for Department of Defense acquisition personnel and for Department of
10 Defense contractors (and consortia of such contractors) to increase efforts to provide
11 outreach to, and to contract with, technology firms that are nontraditional defense
12 contractors. The program shall focus on technology firms with capacity for the
13 development or delivery of new technologies directly enhancing warfighting capabilities.

14 “(b) INCENTIVES.—Incentives under the program may include the following:

15 “(1) Awards (including payment of cash prizes) to Department of Defense
16 civilian employees and members of the armed forces for identifying, and entering
17 into contracts, grants, and other transactions section under section 2371 of this
18 title with nontraditional defense contractors for the development or delivery of
19 new technologies directly enhancing warfighting capabilities.

20 “(2) Awards (including payment of cash prizes) to Department of Defense
21 contractors for the identification of, and subcontracting with, nontraditional
22 defense contractors offering new technologies to the Department of Defense that
23 directly enhance warfighting capabilities.

1 “(3) Awards (including payment of cash prizes) to consortia which
2 successfully assist nontraditional defense contractor in obtaining Department of
3 Defense contracts, grants, and other transactions for the first time.

4 “(c) DEFINITION.—In this section, the term ‘nontraditional defense contractor’ has
5 the meaning given that term in section 2302(9) of this title.”.

6 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such
7 subchapter is amended by adding at the end the following new item:

 “2509. Nontraditional technology partner initiative.”.

8 **SEC. 408. DEPARTMENT OF DEFENSE INNOVATION CENTERS PROGRAM.**

9 (a) PROGRAM.—Subchapter II of chapter 148 of title 10, United States Code, is
10 amended by adding after section 2509, as added by section 406, the following new
11 section:

12 **“§2510. Defense Innovation Centers Program**

13 “(a) USE OF OPEN INNOVATION CENTERS.—The Secretary of Defense shall carry
14 out a program, to be known as the Defense Innovation Centers Program, to expand the
15 use of robust open innovation centers across the Department of Defense (including within
16 the military departments, appropriate Defense Agencies and Department of Defense Field
17 Activities, and the combatant commands that have acquisition authority).

18 “(b) PROGRAM ACTIVITIES.—Under the program, Secretary shall—

19 “(1) identify Department of Defense components with sufficient public
20 recognition under which an open innovation center may be established;

21 “(2) budget for the establishment and operation of open innovation centers
22 in regions enabling small, innovative companies to interact directly with potential
23 Department of Defense end-users and operators; and

1 “(3) provide any sponsoring organization under which such a center is
2 established with authority and necessary resources to execute business
3 arrangements, including use of other transaction authority and grants and prizes.”.

4 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such
5 subchapter is amended by adding after the item relating to section 2509, as added by
6 section 407(b), the following new item:

 “2510. Defense Innovation Centers Program.”.

7 **SEC. 409. ADDITIONAL ELEMENTS IN ANNUAL REPORT ON DEFENSE**
8 **TECHNOLOGY AND INDUSTRIAL BASE POLICY.**

9 Section 2504 of title 10, United States Code, is amended by adding at the end the
10 following new paragraphs:

11 “(5) An analysis of capabilities and emerging technologies relevant to the
12 warfighting mission of the Department of Defense across the small business
13 community and among non-traditional partners.

14 “(6) A description of how the Department of Defense will incorporate
15 small business goals and strategies into an overall industrial base strategy of the
16 department.

17 “(7) A description of how relevant offices within the department are
18 integrating small business activities into an overall industrial base strategy.”.

SEC. 410. CROSS REFERENCES TO CERTAIN SMALL BUSINESS
 PROVISIONS APPLICABLE TO DEPARTMENT OF DEFENSE.

19 Subchapter I of chapter 132 of title 10, United States Code, as added by section
20 401(a), is amended by inserting after section 2231 the following new sections:

21 “§ 2231a. References to Directors and Offices of Small Business Programs

1 “(a) DEPARTMENT OF DEFENSE.—For the Director and the Office of Small
2 Business Programs of the Department of Defense, see section 144 of this title.

3 “(b) MILITARY DEPARTMENTS.—For the Director and the Office of Small
4 Business Programs of the Department of the Army, the Department of the Navy, and the
5 Department of the Air Force, see sections 3024, 5028, and 8024, respectively, of this title.

6 **“§ 2232. References to certain programs provided in Small Business Act**

7 “Numerous programs that are applicable to contracting by the Department of
8 Defense are set forth in the Small Business Act (15 U.S.C. 631et seq.), including the
9 following:

10 “(1) The Business Development Program under section 8(a) of the Small
11 Business Act (15 U.S.C. 637(a)).

12 “(2) The Women-Owned Small Businesses Program, including the
13 Economically Disadvantaged Women-Owned Small Business Program, under
14 section 8(m) of the Small Business Act (15 U.S.C. 637(m)).

15 “(3) The Historically Underutilized Business Zones (HUBZone) Program
16 under section 31 of the Small Business Act (15 U.S.C. 657a).

17 “(4) The Service Disabled Veteran-Owned Businesses Program under
18 section 36 of the Small Business Act (15 U.S.C. 657f).

19 “(5) The Small Disadvantaged Business Set-Aside Program.

20 “(6) The Small Business Subcontracting Program.”.

21 **SEC. 411. CODIFICATION OF NDAA SECTION ON ROLE OF DIRECTORS OF**
22 **SMALL BUSINESS PROGRAMS IN DEPARTMENT OF DEFENSE**
23 **ACQUISITION PROCESSES.**

1 (a) CODIFICATION.—Subchapter I of chapter 132 of title 10, United States Code,
2 as added by section 401(a), is amended by inserting after section 2233, as added by
3 section 405(a), the following new section:

4 **“§ 2234. Role of the Directors of Small Business Programs in acquisition processes**
5 **of the Department of Defense**

6 “(a) GUIDANCE REQUIRED.—The Secretary of Defense shall issue guidance to
7 ensure that the head of each Office of Small Business Programs of the Department of
8 Defense is a participant as early as practicable in the acquisition processes—

9 “(1) of the Department, in the case of the Director of Small Business
10 Programs of the Department of Defense; and

11 “(2) of the military department concerned, in the case of the Director of
12 Small Business Programs of the Department of the Army, the Department of the
13 Navy, and the Department of the Air Force.

14 “(b) MATTERS TO BE INCLUDED.—Such guidance shall—

15 “(1) require the Director of Small Business Programs of the Department of
16 Defense to provide advice —

17 “(A) to the Defense Acquisition Board; and

18 “(B) to the Information Technology Acquisition Board; and

19 “(2) require coordination as early as practical in the relevant acquisition
20 processes between—

21 “(A) the chiefs of staff of the armed forces and the service
22 acquisition executives, as appropriate (or their designees); and

1 “(B) the Director of Small Business Programs of the military
2 department concerned.”.

3 (b) CONFORMING REPEAL OF CODIFIED SECTION.—Section 1611 of the National
4 Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 10 U.S.C. 144
5 note) is repealed.

6 **SEC. 412. CODIFICATION OF NDAA SECTION ON DEPARTMENT OF**
7 **DEFENSE TEST PROGRAM FOR NEGOTIATION OF**
8 **COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING**
9 **PLANS.**

10 (a) CODIFICATION.—Subchapter I of chapter 132 of title 10, United States Code,
11 as added by section 401(a), is amended by inserting after section 2234, as added by
12 section 411(a)(1), the following new section:

13 **“§ 2234a. Program for negotiation of comprehensive small business subcontracting**
14 **plans**

15 “(a) PROGRAM.—

16 “(1) IN GENERAL.—The Secretary of Defense shall establish a program
17 under which contracting activities in the military departments and the Defense
18 Agencies are authorized to undertake one or more demonstration projects to
19 determine whether the negotiation and administration of comprehensive
20 subcontracting plans will reduce administrative burdens on contractors while
21 enhancing opportunities provided under Department of Defense contracts for
22 covered small business concerns. In selecting the contracting activities to
23 undertake demonstration projects, the Secretary shall take such action as is

1 necessary to ensure that a broad range of the supplies and services acquired by the
2 Department of Defense are included in the test program.

3 “(2) CONSULTATION AND PUBLIC COMMENT.—In developing the program,
4 the Secretary of Defense shall—

5 “(A) consult with the Administrator of the Small Business
6 Administration; and

7 “(B) provide an opportunity for public comment on the test
8 program.

9 “(b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—

10 “(1) IN GENERAL.—In a demonstration project under the program, the
11 Secretary of a military department or head of a Defense Agency shall negotiate,
12 monitor, and enforce compliance with a comprehensive subcontracting plan with
13 a Department of Defense contractor described in paragraph (4).

14 “(2) ELEMENTS OF COMPREHENSIVE PLAN.—The comprehensive
15 subcontracting plan of a contractor—

16 “(A) shall apply to the entire business organization of the
17 contractor or to one or more of the contractor's divisions or operating
18 elements, as specified in the subcontracting plan; and

19 “(B) shall cover each Department of Defense contract that is
20 entered into by the contractor and each subcontract that is entered into by
21 the contractor as the subcontractor under a Department of Defense
22 contract.

1 “(3) SEMIANNUAL REPORTS BY CONTRACTOR.—Each comprehensive
2 subcontracting plan of a contractor shall require that the contractor report to the
3 Secretary of Defense on a semiannual basis the following information:

4 “(A) The amount of first-tier subcontract dollars awarded during
5 the six-month period covered by the report to covered small business
6 concerns, with the information set forth separately—

7 “(i) by North American Industrial Classification System
8 code;

9 “(ii) by major defense acquisition program, as defined in
10 section 2430(a) of this title;

11 “(iii) by contract, if the contract is for the maintenance,
12 overhaul, repair, servicing, rehabilitation, salvage, modernization,
13 or modification of supplies, systems, or equipment and the total
14 value of the contract, including options, exceeds \$100,000,000;
15 and

16 “(iv) by military department.

17 “(B) The total number of subcontracts active under the test
18 program during the six-month period covered by the report that would
19 have otherwise required a subcontracting plan under paragraph (4) or (5)
20 of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

21 “(C) Costs incurred in negotiating, complying with, and reporting
22 on comprehensive subcontracting plans.

1 “(D) Costs avoided by adoption of a comprehensive subcontracting
2 plan.

3 “(4) COVERED CONTRACTORS.—A Department of Defense contractor
4 referred to in paragraph (1) is, with respect to a comprehensive subcontracting
5 plan negotiated in any fiscal year, a business concern that, during the immediately
6 preceding fiscal year, furnished the Department of Defense with supplies or
7 services (including professional services, research and development services, and
8 construction services) pursuant to at least three Department of Defense contracts
9 having an aggregate value of at least \$100,000,000.

10 “(c) WAIVER OF CERTAIN SMALL BUSINESS ACT SUBCONTRACTING PLAN
11 REQUIREMENTS.—A Department of Defense contractor is not required to negotiate or
12 submit a subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small
13 Business Act (15 U.S.C. 637(d)) with respect to a Department of Defense contract if—

14 “(1) the contractor has negotiated a comprehensive subcontracting plan
15 under the test program that includes the matters specified in section 8(d)(6) of the
16 Small Business Act (15 U.S.C. 637(d)(6));

17 “(2) such matters have been determined acceptable by the Secretary of the
18 military department or head of a Defense Agency negotiating such comprehensive
19 subcontracting plan; and

20 “(3) the comprehensive subcontracting plan applies to the contract.

21 “(d) FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH A
22 COMPREHENSIVE SUBCONTRACTING PLAN.—

1 “(1) LIQUIDATED DAMAGES.—A contractor that has negotiated a
2 comprehensive subcontracting plan under the test program shall be subject to
3 section 8(d)(4)(F) of the Small Business Act (15 U.S.C. 637(d)(4)(F)) regarding
4 the assessment of liquidated damages for failure to make a good faith effort to
5 comply with its comprehensive subcontracting plan and the goals specified in that
6 plan. In addition, any such failure shall be a factor considered as part of the
7 evaluation of past performance of an offeror.

8 “(2) Effective in fiscal year 2016 and each fiscal year thereafter in which
9 the program is in effect, the Secretary of Defense shall report to Congress on any
10 negotiated comprehensive subcontracting plan that the Secretary determines did
11 not meet the subcontracting goals negotiated in the plan for the prior fiscal year.

12 “(e) PROGRAM PERIOD.—The program authorized by subsection (a) shall
13 terminate on December 31, 2027.

14 “(f) COVERED SMALL BUSINESS CONCERN DEFINED.—In this section, the term
15 ‘covered small business concern’ includes each of the following:

16 “(1) A small business concern, as that term is defined under section 3(a) of
17 the Small Business Act (15 U.S.C. 632(a)).

18 “(2) A small business concern owned and controlled by veterans, as that
19 term is defined in section 3(q)(3) of such Act (15 U.S.C. 632(q)(3)).

20 “(3) A small business concern owned and controlled by service-disabled
21 veterans, as that term is defined in section 3(q)(2) of such Act (15 U.S.C.
22 632(q)(2)).

1 “(4) A qualified HUBZone small business concern, as that term is defined
2 in section 3(p)(5) of such Act (15 U.S.C. 632(p)(5)) and effective January 1,
3 2020, as defined in section 31(b) of such Act (15 U.S.C. 657a(b)).

4 “(5) A small business concern owned and controlled by socially and
5 economically disadvantaged individuals, as that term is defined in section
6 8(d)(3)(C) of such Act (15 U.S.C. 637(d)(3)(C)).

7 “(6) A small business concern owned and controlled by women, as that
8 term is defined in section 3(n) of such Act (15 U.S.C. 632(n)).”.

9 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of
10 subchapter I of chapter 132 of title 10, United States Code, as added by section
11 401(a), is amended by inserting after the item relating to section 2234, as added
12 by section 411(a)(2), the following new item:

“2234a. Test program for negotiation of comprehensive small business subcontracting plans.”.

13 (b) CONFORMING REPEAL OF CODIFIED SECTION.—Section 834 of the National
14 Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 15
15 U.S.C. 637 note) is repealed.

16 **SEC. 413. CODIFICATION OF MENTOR-PROTÉGÉ PROGRAM.**

17 (a) CODIFICATION.—Chapter 132 of title 10, United States Code, as added by
18 section 401(a), is amended by adding after subchapter II, as added by section 403, the
19 following new subchapter:

20 **“Subchapter III—Mentor Protégé Program**

[Sec 831 of the FY91 NDAA, Public Law 101–510 (10 USC 2302 note)]

“Sec.

“2238. [Sec 831(a)&(b)] Mentor-Protégé Program.

“2238a. [Sec 831(c)&(d)] Program participants.

“2238b. [Sec 831(e)] Mentor-protégé agreement.
“2238c. [Sec 831(f)] Forms of assistance.
“2238d. [Sec 831(g)] Incentives for mentor firms.
“2238e. [Sec 831(h)] Relationship to Small Business Act.
“2238f. [Sec 831(i)] Participation in Mentor-Protégé Program not to be a condition for award of a contract or subcontract.
“2238g. [Sec 831(j)] Expiration of authority.
“2238h. [Sec 831(k)] Regulations.
“2238i. [Sec 831(l)&(m)] Annual reports by mentor firms.
“2238j. [Sec 831(n)] Definitions.

1 **“§ 2238. [Sec 831(a)&(b)] Mentor-Protégé Program**

2 “(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall carry out a
3 program to be known as the ‘Mentor-Protégé Program’.

4 “(b) PURPOSE.—The purpose of the program is to provide incentives for major
5 Department of Defense contractors to furnish disadvantaged small business concerns with
6 assistance designed to—

7 “(1) enhance the capabilities of disadvantaged small business concerns to
8 perform as subcontractors and suppliers under Department of Defense contracts
9 and other contracts and subcontracts; and

10 “(2) increase the participation of such business concerns as subcontractors
11 and suppliers under Department of Defense contracts, other Federal Government
12 contracts, and commercial contracts.

13 **“§ 2238a. [Sec 831(c)&(d)] Program participants**

14 “ (a) [831(c)(1)] MENTOR FIRMS.—A business concern meeting the eligibility
15 requirements set out in subsection (d) may enter into agreements under section 2238b of
16 this title and furnish assistance to disadvantaged small business concerns upon making
17 application to the Secretary of Defense and being approved for participation in the
18 program by the Secretary. A business concern participating in the program pursuant to
19 such an approval shall be known, for the purposes of the program, as a ‘mentor firm’.

1 “(b) **[831(c)(2)]** PROTÉGÉ FIRMS.—A disadvantaged small business concern
2 eligible for the award of Federal contracts may obtain assistance from a mentor firm upon
3 entering into an agreement with the mentor firm as provided in section 2238b of this title.
4 A disadvantaged small business concern may not be a party to more than one agreement
5 concurrently, and the authority to enter into agreements under such section shall only be
6 available to such concern during the five-year period beginning on the date such concern
7 enters into the first such agreement. A disadvantaged small business concern receiving
8 such assistance shall be known, for the purposes of the program, as a ‘protégé firm’.

9 “(c) **[831(c)(3)]** STATUS OF BUSINESS CONCERNS AS DISADVANTAGED SMALL
10 BUSINESS CONCERNS.—In entering into an agreement pursuant to section 2238b of this
11 title, a mentor firm may rely in good faith on a written representation of a business
12 concern that such business concern is a disadvantaged small business concern. The Small
13 Business Administration shall determine the status of such business concern as a
14 disadvantaged small business concern in the event of a protest regarding the status of
15 such business concern. If at any time the business concern is determined by the Small
16 Business Administration not to be a disadvantaged small business concern, assistance
17 furnished such business concern by the mentor firm after the date of the determination
18 may not be considered assistance furnished under the program.

19 “(d) **[831(d)]** MENTOR FIRM ELIGIBILITY.—

20 “(1) **[831(d)(1)(A)]** IN GENERAL.—Subject to subsection (a), a mentor firm
21 may enter into an agreement with one or more protégé firms under section 2238b
22 of this title and provide assistance under the program pursuant to that agreement if

1 the mentor firm is eligible for award of Federal contracts and meets the
2 requirements of paragraph (2).

3 “(2) [831(d)(1)(B)] REQUIREMENTS FOR MENTOR FIRM—A mentor firm
4 may enter into an agreement as described in paragraph (1) only if it demonstrates
5 that it meets each of the following requirements:

6 “(A) That it is qualified to provide assistance that will contribute to
7 the purpose of the program.

8 “(B) That it is of good financial health and character and does not
9 appear on a Federal list of debarred or suspended contractors.

10 “(C) That it can impart value to a protégé firm—

11 “(i) because of experience gained as a Department of
12 Defense contractor; or

13 “(ii) through knowledge of general business operations and
14 government contracting.

15 “(3) DEMONSTRATION THAT MENTOR FIRM CAN IMPART VALUE.—Whether
16 a mentor firm can impart value to a protégé firm for purposes of meeting the
17 requirement of subparagraph (C) of paragraph (2) shall be demonstrated by
18 evidence that—

19 “(A) during the fiscal year preceding the fiscal year in which the
20 mentor firm enters into the agreement, the total amount of the Department
21 of Defense contracts awarded such mentor firm and the subcontracts
22 awarded such mentor firm under Department of Defense contracts was
23 equal to or greater than \$100,000,000; or

1 “(B) the mentor firm demonstrates the capability to assist in the
2 development of protégé firms, and is approved by the Secretary of
3 “Defense pursuant to criteria specified in the regulations prescribed for
4 purposes of the Mentor-Protégé program.

5 “(4) EFFECT OF AFFILIATION BETWEEN MENTOR FIRM AND PROTÉGÉ FIRM.—

6 “(A) [831(d)(2)] AGREEMENT PROHIBITED.—A mentor firm may
7 not enter into an agreement with a protégé firm under section 2238b of
8 this title if the Administrator of the Small Business Administration has
9 made a determination finding affiliation between the mentor firm and the
10 protégé firm.

11 “(B) [831(d)(3)] REQUEST FOR DETERMINATION.—If the
12 Administrator of the Small Business Administration has not made such a
13 determination and if the Secretary has reason to believe (based on the
14 regulations promulgated by the Administrator regarding affiliation) that
15 the mentor firm is affiliated with the protégé firm, the Secretary shall
16 request a determination regarding affiliation from the Administrator of the
17 Small Business Administration.

18 **“§ 2238b. [Sec 831(e)] Mentor-protégé agreement**

19 “(a) AGREEMENT.—Before providing assistance to a protégé firm under the
20 program, a mentor firm shall enter into a mentor-protégé agreement with the protégé firm
21 regarding the assistance to be provided by the mentor firm.

22 “(b) MATTERS TO BE INCLUDED.—The agreement shall include the following:

1 “(1) DEVELOPMENTAL PROGRAM.—A developmental program for the
2 protégé firm, in such detail as may be reasonable, including—

3 “(A) factors to assess the protégé firm's developmental progress
4 under the program;

5 “(B) a description of the quantitative and qualitative benefits to the
6 Department of Defense from the agreement, if applicable;

7 “(C) goals for additional awards that the protégé firm can compete
8 for outside the Mentor-Protégé Program; and

9 “(D) the assistance the mentor firm will provide to the protégé firm
10 in understanding contract regulations of the Federal Government and the
11 Department of Defense (including the Federal Acquisition Regulation and
12 the Defense Federal Acquisition Regulation Supplement) after award of a
13 subcontract under this section, if applicable.

14 “(2) PROGRAM PARTICIPATION TERM.—A program participation term for
15 any period of not more than three years, except that the term may be a period of
16 up to five years if the Secretary of Defense determines in writing that unusual
17 circumstances justify a program participation term in excess of three years.

18 “(3) PROCEDURES FOR AGREEMENT TERMINATION.—Procedures for the
19 protégé firm to terminate the agreement voluntarily and for the mentor firm to
20 terminate the agreement for cause.

21 **“§ 2238c. [Sec 831(f)] Forms of assistance**

22 “(a) [Sec 831(f)(1)-(5)] FORMS OF ASSISTANCE FROM MENTOR FIRM.—A mentor
23 firm may provide a protégé firm the following:

1 “(1) Assistance, by using mentor firm personnel, in—

2 “(A) general business management, including organizational
3 management, financial management, and personnel management,
4 marketing, and overall business planning;

5 “(B) engineering and technical matters such as production,
6 inventory control, and quality assurance; and

7 “(C) any other assistance designed to develop the capabilities of
8 the protégé firm under the developmental program referred to in section
9 2238b of this title.

10 “(2) Award of subcontracts on a noncompetitive basis to the protégé firm
11 under the Department of Defense or other contracts.

12 “(3) Payment of progress payments for performance of the protégé firm
13 under such a subcontract in amounts as provided for in the subcontract, but in no
14 event may any such progress payment exceed 100 percent of the costs incurred by
15 the protégé firm for the performance.

16 “(4) Advance payments under such subcontracts.

17 “(5) Loans.

18 “(b) [Sec 831(f)(6)] ASSISTANCE FROM OTHER SOURCES.—In addition to
19 assistance provided under subsection (a), a mentor firm may provide a protégé firm
20 assistance obtained by the mentor firm for the protégé firm from one or more of the
21 following:

22 “(1) A small business development center established pursuant to section
23 21 of the Small Business Act (15 U.S.C. 648).

1 “(2) An entity providing procurement technical assistance pursuant to
2 chapter 142 of this title.

3 “(3) A historically Black college or university or a minority institution of
4 higher education.

5 “(4) A women's business center described in section 29 of the Small
6 Business Act (15 U.S.C. 656).

7 **“§ 2238d. [Sec 831(g)] Incentives for mentor firms**

8 “(a) [Sec 831(g)(1)] REIMBURSEMENT FOR PROGRESS PAYMENTS AND ADVANCE
9 PAYMENTS.—The Secretary of Defense may provide to a mentor firm reimbursement for
10 the total amount of any progress payment or advance payment made under the program
11 by the mentor firm to a protégé firm in connection with a Department of Defense contract
12 awarded the mentor firm.

13 “(b) [Sec 831(g)(2)] REIMBURSEMENT FOR COSTS OF ASSISTANCE.—

14 “(1) IN GENERAL.—The Secretary of Defense may provide to a mentor
15 firm reimbursement for the costs of the assistance furnished to a protégé firm
16 pursuant to section 2238c of this title (except as provided in paragraph (4)) as
17 provided for in a line item in a Department of Defense contract under which the
18 mentor firm is furnishing products or services to the Department, subject to a
19 maximum amount of reimbursement specified in such contract. However, the
20 preceding sentence does not apply in a case in which the Secretary of Defense
21 determines in writing that unusual circumstances justify reimbursement using a
22 separate contract.

1 “(2) ANNUAL PERFORMANCE REVIEWS AS FACTOR IN DETERMINATION OF
2 AMOUNT.—The determinations made in annual performance reviews of a mentor
3 firm's mentor-protégé agreement shall be a major factor in the determinations of
4 amounts of reimbursement, if any, that the mentor firm is eligible to receive in the
5 remaining years of the program participation term under the agreement.

6 “(3) LIMITATION ON TOTAL AMOUNT OF REIMBURSEMENT FOR COSTS OF
7 ASSISTANCE.—The total amount reimbursed under this subsection to a mentor firm
8 for costs of assistance furnished in a fiscal year to a protégé firm may not exceed
9 \$1,000,000, except in a case in which the Secretary of Defense determines in
10 writing that unusual circumstances justify a reimbursement of a higher amount.

11 “(4) NO REIMBURSEMENT FOR CERTAIN FEES.—The Secretary may not
12 reimburse any fee assessed by the mentor firm—

13 “(A) for services provided to the protégé firm pursuant to section
14 2238c(b) of this title; or

15 “(B) for business development expenses incurred by the mentor
16 firm under a contract awarded to the mentor firm while participating in a
17 joint venture with the protégé firm.

18 “(c) [Sec 831(g)(3)] CERTAIN UNREIMBURSED EXPENSES CREDITED TOWARD
19 ATTAINMENT OF SUBCONTRACTING GOALS.—

20 “(1) IN GENERAL.—Costs incurred by a mentor firm in providing
21 assistance to a protégé firm that are not reimbursed pursuant to subsection (b)
22 shall be recognized as credit in lieu of subcontract awards for purposes of
23 determining whether the mentor firm attains a subcontracting participation goal

1 applicable to such mentor firm under a Department of Defense contract, under a
2 contract with another executive agency, or under a divisional or company-wide
3 subcontracting plan negotiated with the Department of Defense or another
4 executive agency.

5 “(2) AMOUNT OF CREDIT.—The amount of the credit given a mentor firm
6 for any such unreimbursed costs shall be equal to—

7 “(A) four times the total amount of such costs attributable to
8 assistance provided by entities described in section 2238c(b) of this title;

9 “(B) three times the total amount of such costs attributable to
10 assistance furnished by the mentor firm's employees; and

11 “(C) two times the total amount of any other such costs.

12 “(3) AUTHORITY FOR ADJUSTMENT TO AMOUNT OF CREDIT.—Under
13 regulations prescribed to carry out the Mentor-Protégé Program, the Secretary of
14 Defense shall adjust the amount of credit given a mentor firm pursuant to
15 paragraphs (1) and (2) if the Secretary determines that the firm's performance
16 regarding the award of subcontracts to disadvantaged small business concerns has
17 declined without justifiable cause.

18 “(d) [Sec 831(g)(4)] CREDITS TOWARD ATTAINMENT OF SUBCONTRACTING GOALS
19 IN CASE OF CERTAIN BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND
20 ECONOMICALLY DISADVANTAGED INDIVIDUALS.—A mentor firm shall receive credit
21 toward the attainment of a subcontracting participation goal applicable to such mentor
22 firm for each subcontract for a product or service awarded under such contract by a
23 mentor firm to a business concern that, except for its size, would be a small business

1 concern owned and controlled by socially and economically disadvantaged individuals,
2 but only if—

3 “(1) the size of such business concern is not more than two times the
4 maximum size specified by the Administrator of the Small Business
5 Administration for purposes of determining whether a business concern
6 furnishing such product or service is a small business concern; and

7 “(2) the business concern formerly had a mentor-protégé agreement with
8 such mentor firm that was not terminated for cause.

9 **“§ 2238e. [Sec 831(h)] Relationship to Small Business Act**

10 “(a) [Sec 831(h)(1)] LIMITATION ON DETERMINATIONS OF AFFILIATION OR
11 CONTROL BETWEEN MENTOR FIRMS AND PROTÉGÉ FIRMS.—For purposes of the Small
12 Business Act (15 U.S.C. 631 et seq.), no determination of affiliation or control (either
13 direct or indirect) may be found between a protégé firm and its mentor firm on the basis
14 that the mentor firm has agreed to furnish (or has furnished) to its protégé firm pursuant
15 to a mentor-protégé agreement any form of developmental assistance described in section
16 2238c of this title.

17 “(b) [Sec 831(h)(2)] LIMITATION ON DETERMINATIONS OF DISADVANTAGED
18 SMALL BUSINESS CONCERNS AS BEING INELIGIBLE FOR ASSISTANCE UNDER SMALL
19 BUSINESS ACT.—Notwithstanding section 8 of the Small Business Act (15 U.S.C. 637),
20 the Small Business Administration may not determine a disadvantaged small business
21 concern to be ineligible to receive any assistance authorized under the Small Business
22 Act on the basis that such business concern has participated in the Mentor-Protégé

1 Program or has received assistance pursuant to any developmental assistance agreement
2 authorized under such program.

3 “(c) [Sec 831(h)(3)] MENTOR-PROTÉGÉ AGREEMENTS AND CERTAIN OTHER
4 PROGRAM DOCUMENTS NOT REQUIRED TO BE SUBMITTED TO SBA.—The Small Business
5 Administration may not require a firm that is entering into, or has entered into, an
6 agreement under section 2238b of this title as a protégé firm to submit the agreement, or
7 any other document required by the Secretary of Defense in the administration of the
8 Mentor-Protégé Program, to the Small Business Administration for review, approval, or
9 any other purpose.

10 “§ 2238f. [Sec 831(i)] **Participation in Mentor-Protégé Program not to be a condition**
11 **for award of a contract or subcontract**

12 “A mentor firm may not require a business concern to enter into an agreement
13 with the mentor firm pursuant to section 2238b of this title as a condition for being
14 awarded a contract by the mentor firm, including a subcontract under a contract awarded
15 to the mentor firm.

16 “§ 2238g. [Sec 831(j)] **Expiration of authority**

17 “(a) AUTHORITY TO ENTER INTO AGREEMENTS.—No mentor-protégé agreement
18 may be entered into under section 2238b of this title after **September 30, 2018**.

19 “(b) AUTHORITY TO PAY REIMBURSEMENTS AND GRANT CREDITS.—No
20 reimbursement may be paid, and no credit toward the attainment of a subcontracting goal
21 may be granted, under section 2238d of this title for any cost incurred after the date that
22 is three years after the date specified in subsection (a).

23 “§ 2238h. [Sec 831(k)] **Regulations**

1 “(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to carry
2 out the Mentor-Protégé Program. Such regulations—

3 “(1) shall include the requirements set forth in section 8(d) of the Small
4 Business Act (15 U.S.C. 637(d)); and

5 “(2) shall prescribe procedures by which mentor firms may terminate
6 participation in the program.

7 “(b) APPENDIX TO DFARS.—The Department of Defense policy regarding the
8 Mentor-Protégé Program shall be published and maintained as an appendix to the
9 Department of Defense Supplement to the Federal Acquisition Regulation.

10 **“§ 2238i. [Sec 831(l)&(m)] Annual reports by mentor firms**

11 “(a) [Sec 831(l)] REPORT BY MENTOR FIRMS.—To comply with section 8(d)(7) of
12 the Small Business Act (15 U.S.C. 637(d)(7)), each mentor firm shall submit to the
13 Secretary not less than once each fiscal year a report that includes, for the preceding
14 fiscal year, the following:

15 “(1) All technical or management assistance provided by mentor firm
16 personnel for the purposes described in section 2238b(a)(1) of this title.

17 “(2) Any new awards of subcontracts on a competitive or noncompetitive
18 basis to the protégé firm under Department of Defense contracts or other
19 contracts, including the value of such subcontracts.

20 “(3) Any extensions, increases in the scope of work, or additional
21 payments not previously reported for prior awards of subcontracts on a
22 competitive or noncompetitive basis to the protégé firm under Department of
23 Defense contracts or other contracts, including the value of such subcontracts.

1 “(4) The amount of any payment of progress payments or advance
2 payments made to the protégé firm for performance under any subcontract made
3 under the Mentor-Protégé Program.

4 “(5) Any loans made by the mentor firm to the protégé firm.

5 “(6) All Federal contracts awarded to the mentor firm and the protégé firm
6 as a joint venture, designating whether the award was a restricted competition or a
7 full and open competition.

8 “(7) Any assistance obtained by the mentor firm for the protégé firm from
9 one or more—

10 “(A) small business development centers established pursuant to
11 section 21 of the Small Business Act (15 U.S.C. 648);

12 “(B) entities providing procurement technical assistance pursuant
13 to chapter 142 of this title; or

14 “(C) historically Black colleges or universities or minority
15 institutions of higher education.

16 “(8) Whether there have been any changes to the terms of the mentor-
17 protégé agreement.

18 “(9) A narrative—

19 “(A) describing the success assistance provided under section
20 2238b of this title has had in addressing the developmental needs of the
21 protégé firm and the impact on Department of Defense contracts, and

22 “(B) addressing any problems encountered.

1 “(b) [Sec 831(m)] REVIEW OF MENTOR FIRM REPORTS BY THE OFFICE OF SMALL
2 BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of
3 Defense shall review each report required by subsection (a) and, if the Office finds that
4 the mentor-protégé agreement is not furthering the purpose of the Mentor-Protégé
5 Program, may decide not to approve any continuation of the agreement.

6 “§ 2238j. [Sec 831(n)] Definitions

7 “In this subchapter:

8 “(1) The term ‘small business concern’ has the meaning given that term
9 under section 3 of the Small Business Act (15 U.S.C. 632).

10 “(2) The term ‘disadvantaged small business concern’ means a firm that—

11 “(A) has less than half the size standard corresponding to its
12 primary North American Industry Classification System code;

13 “(B) is not owned or managed by individuals or entities that
14 directly or indirectly have stock options or convertible securities in the
15 mentor firm; and

16 “(C) is any of the following:

17 “(i) A small business concern owned and controlled by
18 socially and economically disadvantaged individuals.

19 “(ii) A business entity owned and controlled by an Indian
20 tribe as defined by section 8(a)(13) of the Small Business Act (15
21 U.S.C. 637(a)(13)).

1 “(3) The term ‘small business concern owned and controlled by socially
2 and economically disadvantaged individuals’ has the meaning given that term in
3 section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

4 “(4) The term ‘historically Black college and university’ means any of the
5 historically Black colleges and universities referred to in section 2323 of this title.

6 “(5) The term ‘minority institution of higher education’ means an
7 institution of higher education with a student body that reflects the composition
8 specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965
9 (20 U.S.C. 1058(b)(3), (4), and (5)).

10 “(6) The term ‘subcontracting participation goal’, with respect to a
11 Department of Defense contract, means a goal for the extent of the participation
12 by disadvantaged small business concerns in the subcontracts awarded under such
13 contract, as established pursuant to section 2323 of this title and section 8(d) of
14 the Small Business Act (15 U.S.C. 637(d)).

15 “(7) The term ‘qualified organization employing the severely disabled’
16 means a business entity operated on a for-profit or nonprofit basis that—

17 “(A) uses rehabilitative engineering to provide employment
18 opportunities for severely disabled individuals and integrates severely
19 disabled individuals into its workforce;

20 “(B) employs severely disabled individuals at a rate that averages
21 not less than 20 percent of its total workforce;

22 “(C) employs each severely disabled individual in its workforce
23 generally on the basis of 40 hours per week; and

1 “(D) pays not less than the minimum wage prescribed pursuant to
2 section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those
3 employees who are severely disabled individuals.

4 “(8) The term ‘severely disabled individual’ means an individual—

5 “(A) who is blind (as defined in section 8501 of title 41); or

6 “(B) who is a severely disabled individual (as defined in such
7 section).

8 “(9) The term ‘affiliation’, with respect to a relationship between a mentor
9 firm and a protégé firm, means a relationship described under section 121.103 of
10 title 13, Code of Federal Regulations (or any successor regulation).”.

11 (b) CONFORMING REPEAL OF CODIFIED SECTION.—Section 831 of the NDAA for
12 Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) is repealed.

13 **SEC. 414. REPEAL OF CERTAIN OBSOLETE NDAA PROVISIONS.**

14 (a) REPEAL OF OBSOLETE NDAA PROVISION RELATING TO SBIR PROGRAM.—
15 Section 4237 of the National Defense Authorization Act for Fiscal Year 1993 (Public
16 Law 102–484; 15 U.S.C. 638 note) is repealed.

17 (b) REPEAL OF OBSOLETE NDAA PROVISION RELATING TO CONTRACT
18 BUNDLING.—Section 801(b) of the National Defense Authorization Act for Fiscal Year
19 2004 (Public Law 108–136; 10 U.S.C. 2302 note) is repealed.

SECTIONS AFFECTED BY THE PROPOSAL

[The material below shows changes proposed to be made by the proposal to the text of existing statutes. Matter proposed to be deleted is shown in ~~stricken through text~~; matter proposed to be inserted is shown in *bold italic*. (Where an amendment in the

proposal would add a full new section to existing law, the text of that proposed new section is NOT set forth below since it is set out in full in the legislative text above.)]

[NOTE: Text shown as current law incorporates amendments made by the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91, enacted Dec. 12, 2017)]

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

SEC. 9. (a) ***

~~(m) TERMINATION.—The authorization to carry out the Small Business Innovation Research Program established under this section shall terminate on September 30, 2022.~~

(n) REQUIRED EXPENDITURES FOR STTR BY FEDERAL AGENCIES.—

(1) REQUIRED EXPENDITURE AMOUNTS.—

(A) IN GENERAL.—~~With respect to each fiscal year through fiscal year 2022, each~~ *Each* Federal agency that has an extramural budget for research, or research and development, in excess of \$1,000,000,000 for ~~that~~ *any* fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

~~(oo) COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.—All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit based selection procedures.~~

Section 1073 of the National Defense Authorization Act for Fiscal Year 2011 (P. L. 111–383; 10 USC 2359 note)

SEC. 1073. DEFENSE RESEARCH AND DEVELOPMENT RAPID INNOVATION PROGRAM.

(a) PROGRAM ESTABLISHED.—The Secretary of Defense shall establish a competitive, merit-based program to accelerate the fielding of technologies developed

pursuant to phase II Small Business Innovation Research Program *and Small Business Technology Transfer Program* projects, technologies developed by the defense laboratories, and other innovative technologies (including dual use technologies). The purpose of this program is to stimulate innovative technologies and reduce acquisition or lifecycle costs, address technical risks, improve the timeliness and thoroughness of test and evaluation outcomes, and rapidly insert such products directly in support of primarily major defense acquisition programs, but also other defense acquisition programs that meet critical national security needs.

(b) GUIDELINES.—Not later than 180 days after the date of the enactment of this Act [Jan. 7, 2011], the Secretary shall issue guidelines for the operation of the program. At a minimum such guidance shall provide for the following:

(1) The issuance of an annual broad agency announcement or the use of any other competitive or merit-based processes by the Department of Defense for candidate proposals in support of defense acquisition programs as described in subsection (a).

(2) The review of candidate proposals by the Department of Defense and by each military department and the merit-based selection of the most promising cost-effective proposals for funding through contracts, cooperative agreements, and other transactions for the purposes of carrying out the program.

~~(3) The total amount of funding provided to any project under the program shall not exceed \$3,000,000, unless the Secretary, or the Secretary's designee, approves a larger amount of funding for the project.~~

(4) No project shall receive more than a total of two years of funding under the program, unless the Secretary, or the Secretary's designee, approves funding for any additional year.

(5) Mechanisms to facilitate transition of follow-on or current projects carried out under the program into defense acquisition programs, through the use of the authorities of section 819 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 10 U.S.C. 2302 note) or such other authorities as may be appropriate to conduct further testing, low rate production, or full rate production of technologies developed under the program.

(6)(A) Projects are selected using merit-based selection procedures and the selection of projects is not subject to undue influence by Congress or other Federal agencies.

(B)(i) Use of selection procedures under the Small Business Innovation Research Program or the Small Business Technology Transfer Program shall be considered to be use of merit-selection procedures for purposes of this paragraph, and, for the purpose of accelerating the fielding of technologies developed pursuant to a phase II project under the Small Business Innovation Research Program or the Small Business Technology Transfer Program, the Secretary may authorize the selection of a proposal for funding for such a project on a sole-source basis (and without regard to any requirement for a broad agency announcement or use of other competitive procedures).

(ii) An award may be made on a sole-source basis under this subparagraph without regard to any otherwise applicable requirement relating

to justification and approval of the decision to make the award on a sole-source basis, and such an award is not subject to any protest process.

(7) The Secretary may provide that, in the case of an unsolicited proposal for a technology that the Secretary determines would meet a critical national security need for enhancement of warfighting capabilities, funding may be provided for the proposal under the program under this section on a sole-source basis (and without regard to any requirement for a broad agency announcement or use of other competitive procedures).

(c) TREATMENT PURSUANT TO CERTAIN CONGRESSIONAL RULES.—Nothing in this section shall be interpreted to require or enable any official of the Department of Defense to provide funding under this section to any earmark as defined pursuant to House Rule XXI, clause 9, or any congressionally directed spending item as defined pursuant to Senate Rule XLIV, paragraph 5.

(d) FUNDING.—Subject to the availability of appropriations for such purpose, the amounts authorized to be appropriated for research, development, test, and evaluation for a fiscal year may be used for such fiscal year for the program established under subsection (a).

(e) TRANSFER AUTHORITY.—The Secretary may transfer funds available for the program to the research, development, test, and evaluation accounts of a military department, defense agency, or the unified combatant command for special operations forces pursuant to a proposal, or any part of a proposal, that the Secretary determines would directly support the purposes of the program. The transfer authority provided in this subsection is in addition to any other transfer authority available to the Department of Defense.

TITLE 10, UNITED STATES CODE

CHAPTER 142—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

Sec.

2411. Definitions.

2412. Purposes.

2413. Cooperative agreements.

2414. Limitation [should be “Funding”].

2415. Distribution.

2416. Subcontractor information.

2417. Administrative costs.

2418. Authority to provide certain types of technical assistance.

2419. Advancing small business growth.

2420. Regulations.

§2411. Definitions

In this chapter:

(1) The term "eligible entity" means any of the following:

(A) A State.

- (B) A local government.
 - (C) A private, nonprofit organization.
 - (D) A tribal organization, as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (Public Law 93–638; 25 U.S.C. 450b(l)),¹ or an economic enterprise, as defined in section 3(e) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(e)), whether or not such economic enterprise is organized for profit purposes or nonprofit purposes.
- (2) The term "distressed area" means—
- (A) the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government) that—
 - (i) has a per capita income of 80 percent or less of the State average;
 - or
 - (ii) has an unemployment rate that is one percent greater than the national average for the most recent 24-month period for which statistics are available; or
 - (B) a reservation, as defined in section 3(d) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(d)).
- (3) The term "Secretary" means the Secretary of Defense acting through the Director of the Defense Logistics Agency.
- (4) The terms "State" and "local government" have the meaning given those terms in section 6302 of title 31.

§2412. Purposes

The purposes of the program authorized by this chapter are—

- (1) to increase assistance by the Department of Defense to eligible entities furnishing procurement technical assistance to business entities; and
- (2) to assist eligible entities in the payment of the costs of establishing and carrying out new procurement technical assistance programs and maintaining existing procurement technical assistance programs.

§2413. Cooperative agreements

(a) The Secretary, in accordance with the provisions of this chapter, may enter into cooperative agreements with eligible entities to carry out the purposes of this chapter.

(b) Under any such cooperative ~~agreement~~, **agreement**—

(1) the eligible entity shall agree to sponsor programs to furnish procurement technical assistance to business entities; and

(2) the Secretary shall agree to ~~defray not more than 65 percent of~~ **furnish to the eligible entity the full cost of the assistance furnished by** the eligible entity's cost of furnishing such assistance under such programs, **subject to the applicable annual limitation under section 2414(a) of this title** ~~except that—~~

(1) ~~in the case of a program sponsored by such an entity that provides services solely in a distressed area, the Secretary may agree to furnish more than 65~~

~~percent, but not more than 75 percent, of such cost with respect to such program;
and~~

~~(2) in the case of a program sponsored by such an entity that provides
assistance for covered small businesses pursuant to section 2419(b) of this title, the
Secretary may agree to furnish the full cost of such assistance.~~

(c) In entering into cooperative agreements under subsection (a), the Secretary shall assure that at least one procurement technical assistance program is carried out in each Department of Defense contract administration services district during each fiscal year.

(d) In conducting a competition for the award of a cooperative agreement under subsection (a), the Secretary shall give significant weight to successful past performance of eligible entities under a cooperative agreement under this section.

(e) In determining the level of funding to provide under an agreement under subsection (b), the Secretary shall consider the forecast by the eligible entity of demand for procurement technical assistance, and, in the case of an established program under this chapter, the outlays and receipts of such program during prior years of operation.

§2414. Funding

(a) IN GENERAL.—Except as provided in subsection (c), the value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed—

(1) in the case of a program operating on a Statewide basis, other than a program referred to in clause (3) or (4), ~~\$750,000~~ **\$1,500,000**;

(2) in the case of a program operating on less than a Statewide basis, other than a program referred to in clause (3) or (4), ~~\$450,000~~ **\$900,000**;

(3) in the case of a program operated wholly within one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, ~~\$300,000~~ **\$600,000**; or

(4) in the case of a program operated wholly within more than one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, ~~\$750,000~~ **\$1,500,000**.

(b) DETERMINATIONS ON SCOPE OF OPERATIONS.—A determination of whether a procurement technical assistance program is operating on a Statewide basis or on less than a Statewide basis or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title shall be made in accordance with regulations prescribed by the Secretary of Defense.

(c) Exception.—The value of the assistance provided in accordance with section 2419(b) of this title is not subject to the limitations in subsection (a).

(d) USE OF PROGRAM INCOME.—

(1) An eligible entity that earned income in a specified fiscal year from activities carried out pursuant to a procurement technical assistance program funded under this chapter may expend an amount of such income, not to exceed 25 percent of the cost of furnishing procurement technical assistance in such specified fiscal year, during the fiscal year following such specified fiscal year, to carry out a procurement technical assistance program funded under this chapter.

(2) An eligible entity that does not enter into a cooperative agreement with the Secretary for a fiscal year—

(A) shall notify the Secretary of the amount of any income the eligible entity carried over from the previous fiscal year; and

(B) may retain an amount of such income equal to 10 percent of the value of assistance furnished by the Secretary under this section during the previous fiscal year.

(3) In determining the value of assistance furnished by the Secretary under this section for any fiscal year, the Secretary shall account for the amount of any income the eligible entity carried over from the previous fiscal year.

§2415. Distribution

The Secretary shall allocate funds available for assistance under this chapter equally to each Department of Defense contract administrative services district. If in any such fiscal year there is an insufficient number of satisfactory proposals in a district for cooperative agreements to allow effective use of the funds allocated to that district, the funds remaining with respect to that district shall be reallocated among the remaining districts.

§2416. Subcontractor information

(a) The Secretary of Defense shall require that any defense contractor in any year shall provide to an eligible entity with which the Secretary has entered into a cooperative agreement under this chapter, on the request of such entity, the information specified in subsection (b).

(b) Information to be provided under subsection (a) is a listing of the name of each appropriate employee of the contractor who has responsibilities with respect to entering into contracts on behalf of such contractor that constitute subcontracts of contracts being performed by such contractor, together with the business address and telephone number and area of responsibility of each such employee.

(c) A defense contractor need not provide information under this section to a particular eligible entity more frequently than once a year.

(d) In this section, the term "defense contractor", for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of \$1,000,000.

§2417. Administrative costs

The Director of the Defense Logistics Agency may use, out of the amount appropriated for a fiscal year for operation and maintenance for the procurement technical assistance program authorized by this chapter, an amount not exceeding three percent of such amount to defray the expenses of administering the provisions of this chapter during such fiscal year.

§2418. Authority to provide certain types of technical assistance

(a) The procurement technical assistance furnished by eligible entities assisted by the Department of Defense under this chapter may include technical assistance relating to

contracts entered into with (1) Federal departments and agencies other than the Department of Defense, and (2) State and local governments.

(b) An eligible entity assisted by the Department of Defense under this chapter also may furnish information relating to assistance and other programs available pursuant to the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992.

(c) An eligible entity assisted by the Department of Defense under this chapter also may furnish education on the requirements applicable to small businesses under the regulations issued—

(1) under section 38 of the Arms Export Control Act (22 U.S.C. 2778), and on compliance with those requirements; and

(2) under section 9 of the Small Business Act (15 U.S.C. 638), and on compliance with those requirements.

§2419. Advancing small business growth

(a) CONTRACT CLAUSE REQUIRED.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall require the clause described in paragraph (2) to be included in each covered contract awarded by the Department of Defense.

(2) The clause described in this paragraph is a clause that—

(A) requires the contractor to acknowledge that acceptance of the contract may cause the business to exceed the applicable small business size standards (established pursuant to section 3(a) of the Small Business Act) for the industry concerned and that the contractor may no longer qualify as a small business concern for that industry; and

(B) encourages the contractor to develop capabilities and characteristics typically desired in contractors that are competitive as an other-than-small business in that industry.

(b) AVAILABILITY OF ASSISTANCE.—Covered small businesses may be provided assistance as part of any procurement technical assistance furnished pursuant to this chapter.

(c) DEFINITIONS.—In this section:

(1) The term "covered contract" means a contract—

(A) awarded to a qualified small business concern as defined pursuant to section 3(a) of the Small Business Act; and

(B) with an estimated annual value—

(i) that will exceed the applicable receipt-based small business size standard; or

(ii) if the contract is in an industry with an employee-based size standard, that will exceed \$70,000,000.

(2) The term "covered small business" means a qualified small business concern as defined pursuant to section 3(a) of the Small Business Act that has entered into a contract with the Department of Defense that includes a contract clause described in subsection (a)(2).

§2420. Regulations

The Secretary of Defense shall prescribe regulations to carry out this chapter.

**Section 1611 of the National Defense Authorization Act
for Fiscal Year 2013**

(P. L. 112–239; 10 USC 144 note)

[Note that the proposal proposes to codify this section in title 10, USC]

**~~SEC. 1611. ROLE OF THE DIRECTORS OF SMALL BUSINESS PROGRAMS IN
ACQUISITION PROCESSES OF THE DEPARTMENT OF
DEFENSE.~~**

~~(a) GUIDANCE REQUIRED.—The Secretary of Defense shall develop and issue guidance to ensure that the head of each Office of Small Business Programs of the Department of Defense is a participant as early as practicable in the acquisition processes—~~

~~(1) of the Department, in the case of the Director of Small Business Programs in the Department of Defense; and~~

~~(2) of the military department concerned, in the case of the Director of Small Business Programs in the Department of the Army, in the Department of the Navy, and in the Department of the Air Force.~~

~~(b) MATTERS TO BE INCLUDED.—Such guidance shall, at a minimum—~~

~~(1) require the Director of Small Business Programs in the Department of Defense—~~

~~(A) to provide advice to the Defense Acquisition Board; and~~

~~(B) to provide advice to the Information Technology Acquisition Board; and~~

~~(2) require coordination between the chiefs of staff of the Armed Forces and the service acquisition executives, as appropriate (or their designees), the Director of Small Business Programs in each military department as early as practical in the relevant acquisition processes.~~

**Section 834 of the National Defense Authorization Act
For Fiscal Years 1990 and 1991**

(Pub. L. 101–189; 15 U.S.C. 637 note)

[Note that the proposal proposes to codify this section in title 10, USC]

**~~SEC. 834. TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE
SMALL BUSINESS SUBCONTRACTING PLANS.~~**

~~(a) TEST PROGRAM.—(1) The Secretary of Defense shall establish a test program under which contracting activities in the military departments and the Defense Agencies are authorized to undertake one or more demonstration projects to determine whether the negotiation and administration of comprehensive subcontracting plans will reduce~~

~~administrative burdens on contractors while enhancing opportunities provided under Department of Defense contracts for covered small business concerns. In selecting the contracting activities to undertake demonstration projects, the Secretary shall take such action as is necessary to ensure that a broad range of the supplies and services acquired by the Department of Defense are included in the test program.~~

~~(2) In developing the test program, the Secretary of Defense shall —~~

~~(A) consult with the Administrator of the Small Business Administration;~~

~~and~~

~~(B) provide an opportunity for public comment on the test program.~~

~~(b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—(1) In a demonstration project under the test program, the Secretary of a military department or head of a Defense Agency shall negotiate, monitor, and enforce compliance with a comprehensive subcontracting plan with a Department of Defense contractor described in paragraph (4).~~

~~(2) The comprehensive subcontracting plan of a contractor —~~

~~(A) shall apply to the entire business organization of the contractor or to one or more of the contractor's divisions or operating elements, as specified in the subcontracting plan; and~~

~~(B) shall cover each Department of Defense contract that is entered into by the contractor and each subcontract that is entered into by the contractor as the subcontractor under a Department of Defense contract.~~

~~(3) Each comprehensive subcontracting plan of a contractor shall require that the contractor report to the Secretary of Defense on a semi-annual basis the following information:~~

~~(A) The amount of first tier subcontract dollars awarded during the six-month period covered by the report to covered small business concerns, with the information set forth separately —~~

~~(i) by North American Industrial Classification System code;~~

~~(ii) by major defense acquisition program, as defined in section 2430(a) of title 10, United States Code;~~

~~(iii) by contract, if the contract is for the maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment and the total value of the contract, including options, exceeds \$100,000,000; and~~

~~(iv) by military department.~~

~~(B) The total number of subcontracts active under the test program during the six-month period covered by the report that would have otherwise required a subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).~~

~~(C) Costs incurred in negotiating, complying with, and reporting on comprehensive subcontracting plans.~~

~~(D) Costs avoided by adoption of a comprehensive subcontracting plan.~~

~~(4) A Department of Defense contractor referred to in paragraph (1) is, with respect to a comprehensive subcontracting plan negotiated in any fiscal year, a business concern that, during the immediately preceding fiscal year, furnished the Department of Defense with supplies or services (including professional services, research and~~

development services, and construction services) pursuant to at least three Department of Defense contracts having an aggregate value of at least \$100,000,000.

~~(e) WAIVER OF CERTAIN SMALL BUSINESS ACT SUBCONTRACTING PLAN REQUIREMENTS.—A Department of Defense contractor is not required to negotiate or submit a subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) with respect to a Department of Defense contract if—~~

~~(1) the contractor has negotiated a comprehensive subcontracting plan under the test program that includes the matters specified in section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6));~~

~~(2) such matters have been determined acceptable by the Secretary of the military department or head of a Defense Agency negotiating such comprehensive subcontracting plan; and~~

~~(3) the comprehensive subcontracting plan applies to the contract.~~

~~(d) FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH A COMPREHENSIVE SUBCONTRACTING PLAN.—(1) A contractor that has negotiated a comprehensive subcontracting plan under the test program shall be subject to section 8(d)(4)(F) of the Small Business Act (15 U.S.C. 637(d)(4)(F)) regarding the assessment of liquidated damages for failure to make a good faith effort to comply with its comprehensive subcontracting plan and the goals specified in that plan. In addition, any such failure shall be a factor considered as part of the evaluation of past performance of an offeror.~~

~~(2) Effective in fiscal year 2016 and each fiscal year thereafter in which the test program is in effect, the Secretary of Defense shall report to Congress on any negotiated comprehensive subcontracting plan that the Secretary determines did not meet the subcontracting goals negotiated in the plan for the prior fiscal year.~~

~~(e) TEST PROGRAM PERIOD.—The test program authorized by subsection (a) shall begin on October 1, 1990, unless Congress adopts a resolution disapproving the test program. The test program shall terminate on December 31, 2027.~~

~~(f) REPORT.—Not later than September 30, 2015, the Comptroller General of the United States shall submit a report on the results of the test program to the Committees on Armed Services and on Small Business of the House of Representatives and the Committees on Armed Services and on Small Business and Entrepreneurship of the Senate.~~

~~(g) DEFINITIONS.—In this section, the term 'covered small business concern' includes each of the following:~~

~~(1) A small business concern, as that term is defined under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).~~

~~(2) A small business concern owned and controlled by veterans, as that term is defined in section 3(q)(3) of such Act (15 U.S.C. 632(q)(3)).~~

~~(3) A small business concern owned and controlled by service disabled veterans, as that term is defined in section 3(q)(2) of such Act (15 U.S.C. 632(q)(2)).~~

~~(4) A qualified HUBZone small business concern, as that term is defined under section 31(b) of such Act.~~

~~(5) A small business concern owned and controlled by socially and economically disadvantaged individuals, as that term is defined in section 8(d)(3)(C) of such Act (15 U.S.C. 637(d)(3)(C)).~~

~~(6) A small business concern owned and controlled by women, as that term is defined under section 3(n) of such Act (15 U.S.C. 632(n)).~~

SECTION 831 OF THE FISCAL YEAR 1991 NDAA, AS AMENDED
(P. L. 101-510; 10 U.S.C. 2302 note)

[Note that the proposal proposes to codify this section in title 10, USC]

SEC. 831. MENTOR PROTÉGÉ PILOT PROGRAM.

~~(a) ESTABLISHMENT OF PILOT PROGRAM.~~—The Secretary of Defense shall establish a pilot program to be known as the “Mentor Protégé Program”.

~~(b) PURPOSE.~~—The purpose of the program is to provide incentives for major Department of Defense contractors to furnish disadvantaged small business concerns with assistance designed to—

~~(1) enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts; and~~

~~(2) increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.~~

~~(c) PROGRAM PARTICIPANTS.~~—(1) A business concern meeting the eligibility requirements set out in subsection (d) may enter into agreements under subsection (e) and furnish assistance to disadvantaged small business concerns upon making application to the Secretary of Defense and being approved for participation in the pilot program by the Secretary. A business concern participating in the pilot program pursuant to such an approval shall be known, for the purposes of the program, as a “mentor firm”.

~~(2) A disadvantaged small business concern eligible for the award of Federal contracts may obtain assistance from a mentor firm upon entering into an agreement with the mentor firm as provided in subsection (e). A disadvantaged small business concern may not be a party to more than one agreement concurrently, and the authority to enter into agreements under subsection (e) shall only be available to such concern during the 5-year period beginning on the date such concern enters into the first such agreement. A disadvantaged small business concern receiving such assistance shall be known, for the purposes of the program, as a “protégé firm”.~~

~~(3) In entering into an agreement pursuant to subsection (e), a mentor firm may rely in good faith on a written representation of a business concern that such business concern is a disadvantaged small business concern. The Small Business Administration shall determine the status of such business concern as a disadvantaged small business concern in the event of a protest regarding the status of such business concern. If at any time the business concern is determined by the Small Business Administration not to be a disadvantaged small business concern, assistance furnished such business concern by the~~

mentor firm after the date of the determination may not be considered assistance furnished under the program.

~~(d) MENTOR FIRM ELIGIBILITY.—~~

~~(1) Subject to subsection (c)(1), a mentor firm may enter into an agreement with one or more protégé firms under subsection (c) and provide assistance under the program pursuant to that agreement if the mentor firm—~~

~~(A) is eligible for award of Federal contracts; and~~

~~(B) demonstrates that it—~~

~~(i) is qualified to provide assistance that will contribute to the purpose of the program;~~

~~(ii) is of good financial health and character and does not appear on a Federal list of debarred or suspended contractors; and~~

~~(iii) can impart value to a protégé firm because of experience gained as a Department of Defense contractor or through knowledge of general business operations and government contracting, as demonstrated by evidence that—~~

~~(I) during the fiscal year preceding the fiscal year in which the mentor firm enters into the agreement, the total amount of the Department of Defense contracts awarded such mentor firm and the subcontracts awarded such mentor firm under Department of Defense contracts was equal to or greater than \$100,000,000; or~~

~~(II) the mentor firm demonstrates the capability to assist in the development of protégé firms, and is approved by the Secretary of Defense pursuant to criteria specified in the regulations prescribed pursuant to subsection (k).~~

~~(2) A mentor firm may not enter into an agreement with a protégé firm if the Administrator of the Small Business Administration has made a determination finding affiliation between the mentor firm and the protégé firm.~~

~~(3) If the Administrator of the Small Business Administration has not made such a determination and if the Secretary has reason to believe (based on the regulations promulgated by the Administrator regarding affiliation) that the mentor firm is affiliated with the protégé firm, the Secretary shall request a determination regarding affiliation from the Administrator of the Small Business Administration.~~

~~(e) MENTOR PROTÉGÉ AGREEMENT.— Before providing assistance to a protégé firm under the program, a mentor firm shall enter into a mentor protégé agreement with the protégé firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:~~

~~(1) A developmental program for the protégé firm, in such detail as may be reasonable, including—~~

~~(A) factors to assess the protégé firm's developmental progress under the program;~~

~~(B) a description of the quantitative and qualitative benefits to the Department of Defense from the agreement, if applicable;~~

~~(C) goals for additional awards that protégé firm can compete for outside the Mentor-Protégé Program; and~~

~~(D) the assistance the mentor firm will provide to the protégé firm in understanding contract regulations of the Federal Government and the Department of Defense (including the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement) after award of a subcontract under this section, if applicable.~~

~~(2) A program participation term for any period of not more than three years, except that the term may be a period of up to five years if the Secretary of Defense determines in writing that unusual circumstances justify a program participation term in excess of three years.~~

~~(3) Procedures for the protégé firm to terminate the agreement voluntarily and for the mentor firm to terminate the agreement for cause.~~

~~(f) FORMS OF ASSISTANCE. — A mentor firm may provide a protégé firm the following:~~

~~(1) Assistance, by using mentor firm personnel, in —~~

~~(A) general business management, including organizational management, financial management, and personnel management, marketing, and overall business planning;~~

~~(B) engineering and technical matters such as production, inventory control, and quality assurance; and~~

~~(C) any other assistance designed to develop the capabilities of the protégé firm under the developmental program referred to in subsection (e).~~

~~(2) Award of subcontracts on a noncompetitive basis to the protégé firm under the Department of Defense or other contracts.~~

~~(3) Payment of progress payments for performance of the protégé firm under such a subcontract in amounts as provided for in the subcontract, but in no event may any such progress payment exceed 100 percent of the costs incurred by the protégé firm for the performance.~~

~~(4) Advance payments under such subcontracts.~~

~~(5) Loans.~~

~~(6) Assistance obtained by the mentor firm for the protégé firm from one or more of the following —~~

~~(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);~~

~~(B) entities providing procurement technical assistance pursuant to chapter 142 of this title;~~

~~(C) a historically Black college or university or a minority institution of higher education; or~~

~~(D) women's business centers described in section 29 of the Small Business Act (15 U.S.C. 656).~~

~~(g) INCENTIVES FOR MENTOR FIRMS. — (1) The Secretary of Defense may provide to a mentor firm reimbursement for the total amount of any progress payment or advance payment made under the program by the mentor firm to a protégé firm in connection with a Department of Defense contract awarded the mentor firm.~~

~~(2)(A) The Secretary of Defense may provide to a mentor firm reimbursement for the costs of the assistance furnished to a protégé firm pursuant to paragraphs (1) and (6) of subsection (f) (except as provided in subparagraph (D)) as provided for in a line item in a Department of Defense contract under which the mentor firm is furnishing products or services to the Department, subject to a maximum amount of reimbursement specified in such contract, except that this sentence does not apply in a case in which the Secretary of Defense determines in writing that unusual circumstances justify reimbursement using a separate contract.~~

~~(B) The determinations made in annual performance reviews of a mentor firm's mentor-protégé agreement shall be a major factor in the determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the program participation term under the agreement.~~

~~(C) The total amount reimbursed under this paragraph to a mentor firm for costs of assistance furnished in a fiscal year to a protégé firm may not exceed \$1,000,000, except in a case in which the Secretary of Defense determines in writing that unusual circumstances justify a reimbursement of a higher amount.~~

~~(D) The Secretary may not reimburse any fee assessed by the mentor firm for services provided to the protégé firm pursuant to subsection (f)(6) or for business development expenses incurred by the mentor firm under a contract awarded to the mentor firm while participating in a joint venture with the protégé firm.~~

~~(3)(A) Costs incurred by a mentor firm in providing assistance to a protégé firm that are not reimbursed pursuant to paragraph (2) shall be recognized as credit in lieu of subcontract awards for purposes of determining whether the mentor firm attains a subcontracting participation goal applicable to such mentor firm under a Department of Defense contract, under a contract with another executive agency, or under a divisional or company wide subcontracting plan negotiated with the Department of Defense or another executive agency.~~

~~(B) The amount of the credit given a mentor firm for any such unreimbursed costs shall be equal to—~~

~~(i) four times the total amount of such costs attributable to assistance provided by entities described in subsection (f)(6);~~

~~(ii) three times the total amount of such costs attributable to assistance furnished by the mentor firm's employees; and~~

~~(iii) two times the total amount of any other such costs.~~

~~(C) Under regulations prescribed pursuant to subsection (k), the Secretary of Defense shall adjust the amount of credit given a mentor firm pursuant to subparagraphs (A) and (B) if the Secretary determines that the firm's performance regarding the award of subcontracts to disadvantaged small business concerns has declined without justifiable cause.~~

~~(4) A mentor firm shall receive credit toward the attainment of a subcontracting participation goal applicable to such mentor firm for each subcontract for a product or service awarded under such contract by a mentor firm to a business concern that, except for its size, would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—~~

~~(A) the size of such business concern is not more than two times the maximum size specified by the Administrator of the Small Business~~

~~Administration for purposes of determining whether a business concern furnishing such product or service is a small business concern; and~~

~~(B) the business concern formerly had a mentor protégé agreement with such mentor firm that was not terminated for cause.~~

~~(h) RELATIONSHIP TO SMALL BUSINESS ACT.—For purposes of the Small Business Act (15 U.S.C. 631 et seq.), no determination of affiliation or control (either direct or indirect) may be found between a protégé firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protégé firm pursuant to a mentor protégé agreement any form of developmental assistance described in subsection (f).~~

~~(2) Notwithstanding section 8 of the Small Business Act (15 U.S.C. 637), the Small Business Administration may not determine a disadvantaged small business concern to be ineligible to receive any assistance authorized under the Small Business Act on the basis that such business concern has participated in the Mentor Protégé Program or has received assistance pursuant to any developmental assistance agreement authorized under such program.~~

~~(3) The Small Business Administration may not require a firm that is entering into, or has entered into, an agreement under subsection (e) as a protégé firm to submit the agreement, or any other document required by the Secretary of Defense in the administration of the Mentor Protégé Program, to the Small Business Administration for review, approval, or any other purpose.~~

~~(i) PARTICIPATION IN MENTOR PROTÉGÉ PROGRAM NOT TO BE A CONDITION FOR AWARD OF A CONTRACT OR SUBCONTRACT.—A mentor firm may not require a business concern to enter into an agreement with the mentor firm pursuant to subsection (e) as a condition for being awarded a contract by the mentor firm, including a subcontract under a contract awarded to the mentor firm.~~

~~(j) EXPIRATION OF AUTHORITY.—(1) No mentor protégé agreement may be entered into under subsection (e) after September 30, 2018.~~

~~(2) No reimbursement may be paid, and no credit toward the attainment of a subcontracting goal may be granted, under subsection (g) for any cost incurred after September 30, 2021.~~

~~(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the pilot Mentor Protégé Program. Such regulations shall include the requirements set forth in section 8(d) of the Small Business Act (15 U.S.C. 637(d)); and shall prescribe procedures by which mentor firms may terminate participation in the program. The Secretary shall publish the proposed regulations not later than the date 180 days after the date of the enactment of this Act [Nov. 5, 1990]. The Secretary shall promulgate the final regulations not later than the date 270 days after the date of the enactment of this Act. The Department of Defense policy regarding the pilot Mentor Protégé Program shall be published and maintained as an appendix to the Department of Defense Supplement to the Federal Acquisition Regulation.~~

~~(l) REPORT BY MENTOR FIRMS.—To comply with section 8(d)(7) of the Small Business Act (15 U.S.C. 637(d)(7)), each mentor firm shall submit to the Secretary not less than once each fiscal year a report that includes, for the preceding fiscal year—~~

~~(1) all technical or management assistance provided by mentor firm personnel for the purposes described in subsection (f)(1);~~

- ~~(2) any new awards of subcontracts on a competitive or noncompetitive basis to the protégé firm under Department of Defense contracts or other contracts, including the value of such subcontracts;~~
 - ~~(3) any extensions, increases in the scope of work, or additional payments not previously reported for prior awards of subcontracts on a competitive or noncompetitive basis to the protégé firm under Department of Defense contracts or other contracts, including the value of such subcontracts;~~
 - ~~(4) the amount of any payment of progress payments or advance payments made to the protégé firm for performance under any subcontract made under the Mentor-Protégé Program;~~
 - ~~(5) any loans made by mentor firm to the protégé firm;~~
 - ~~(6) All Federal contracts awarded to the mentor firm and the protégé firm as a joint venture, designating whether the award was a restricted competition or a full and open competition;~~
 - ~~(7) Any assistance obtained by the mentor firm for the protégé firm from one or more —~~
 - ~~(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);~~
 - ~~(B) entities providing procurement technical assistance pursuant to chapter 142 of this title; or~~
 - ~~(C) historically Black colleges or universities or minority institutions of higher education;~~
 - ~~(8) whether there have been any changes to the terms of the mentor-protégé agreement; and~~
 - ~~(9) a narrative —~~
 - ~~(A) describing the success assistance provided under subsection (f) has had in addressing the developmental needs of the protégé firm and the impact on Department of Defense contracts, and~~
 - ~~(B) addressing any problems encountered.~~
- ~~(m) REVIEW OF REPORT BY THE OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of Defense shall review the report required by subsection (l) and, if the Office finds that the mentor-protégé agreement is not furthering the purpose of the Mentor-Protégé Program, decide not to approve any continuation of the agreement.~~
- ~~(n) DEFINITIONS.—In this section:~~
- ~~(1) The term “small business concern” has the meaning given such term under section 3 of the Small Business Act (15 U.S.C. 632).~~
 - ~~(2) The term “disadvantaged small business concern” means a firm that has less than half the size standard corresponding to its primary North American Industry Classification System code, is not owned or managed by individuals or entities that directly or indirectly have stock options or convertible securities in the mentor firm, and is —~~
 - ~~(A) a small business concern owned and controlled by socially and economically disadvantaged individuals;~~

~~(B) a business entity owned and controlled by an Indian tribe as defined by section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));~~

~~(C) a business entity owned and controlled by a Native Hawaiian Organization as defined by section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15));~~

~~(D) a qualified organization employing severely disabled individuals;~~

~~(E) a small business concern owned and controlled by women, as defined in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D));~~

~~(F) a small business concern owned and controlled by service-disabled veterans (as defined in section 8(d)(3) of the Small Business Act); and~~

~~(G) a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p)); or~~

~~(H) a small business concern that—~~

~~(i) is a nontraditional defense contractor, as such term is defined in section 2302 of title 10, United States Code; or~~

~~(ii) currently provides goods or services in the private sector that are critical to enhancing the capabilities of the defense supplier base and fulfilling key Department of Defense needs.~~

~~(3) The term “small business concern owned and controlled by socially and economically disadvantaged individuals” has the meaning given such term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).~~

~~(4) The term “historically Black college and university” means any of the historically Black colleges and universities referred to in section 2323 of title 10, United States Code.~~

~~(5) The term “minority institution of higher education” means an institution of higher education with a student body that reflects the composition specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4), and (5)).~~

~~(6) The term “subcontracting participation goal”, with respect to a Department of Defense contract, means a goal for the extent of the participation by disadvantaged small business concerns in the subcontracts awarded under such contract, as established pursuant to section 2323 of title 10, United States Code and section 8(d) of the Small Business Act (15 U.S.C. 637(d)).~~

~~(7) The term “qualified organization employing the severely disabled” means a business entity operated on a for-profit or nonprofit basis that—~~

~~(A) uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;~~

~~(B) employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;~~

~~(C) employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and~~

~~(D) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.~~

~~(8) The term “severely disabled individual” means an individual—~~

~~(A) who is blind (as defined in section 8501 of title 41); or~~

~~(B) who is a severely disabled individual (as defined in such section).~~

~~(9) The term “affiliation”, with respect to a relationship between a mentor firm and a protégé firm, means a relationship described under section 121.103 of title 13, Code of Federal Regulations (or any successor regulation).~~

Section 4237 of the National Defense Authorization Act for Fiscal Year 1993

(P. L. 102–484; 15 U.S.C. 638 note)

[Note contingent effective date in subsection (h)]

~~SEC. 4237. SMALL BUSINESS INNOVATION RESEARCH PROGRAM IN DEPARTMENT OF DEFENSE.~~

~~(a) EXTENSION OF PROGRAM.—[Amended section 5 of Pub. L. 97–219.]~~

~~(b) LIMITATION ON PROGRAM AWARDS.—Amounts paid to a small business concern by the Department of Defense under the Small Business Innovation Research Program for a project—~~

~~(1) in phase I under the program may not exceed \$100,000; and~~

~~(2) in phase II under the program may not exceed \$750,000.~~

~~(c) COMMERCIAL APPLICATIONS STRATEGY.—Not later than 270 days after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense, in consultation with the Administrator of the Small Business Administration, shall develop and issue a strategy for effectuating the transition of successful projects under the Small Business Innovation Research Program from phase II under the program into phase III under the program.~~

~~(d) REPEAL OF EXCLUSION OF CERTAIN ACTIVITIES.—[Amended section 9 of the Small Business Act.]~~

~~(e) PERCENTAGE OF REQUIRED EXPENDITURES FOR SBIR CONTRACTS.—(1) The Small Business Innovation Research Program shall apply to the Department of Defense (including the military departments) as if the percentage specified in section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) with respect to fiscal years after fiscal year 1982 were determined in accordance with the table set forth in paragraph (2) (rather than 1.25 percent).~~

~~(2)(A) The percentage under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for any fiscal year for the Department of Defense and each military department shall be determined in accordance with the following table:~~

For fiscal year:

The percentage is:

1993	-1.25
1994	-1.5
1995	-1.75
1996	-2.0
1997	-2.25
1998 and thereafter	-2.5.

(B) If the determination of the Secretary of Defense under subparagraph (C) is a negative determination (as set forth in that paragraph), then the percentage under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for the Department of Defense and each military department for fiscal years after fiscal year 1996 shall remain at the level applicable for fiscal year 1996 (notwithstanding the percentages specified in subparagraph (A) for fiscal years after fiscal year 1996).

(C) Not later than June 30, 1996, the Secretary of Defense during fiscal year 1996 shall determine whether there has been a demonstrable reduction in the quality of research performed under funding agreements awarded by the Department of Defense under the SBIR program since the beginning of fiscal year 1993 such that increasing the percentage under subparagraph (A) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs. If the determination of the Secretary is that there has been such a demonstrable reduction in the quality of research such that increasing the percentage under subparagraph (B) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs, the Secretary shall be considered for purposes of subparagraph (B) to have made a negative determination. The determination of the Secretary concerned under this paragraph shall be made after considering the assessment of the Comptroller General with respect to that department in the report transmitted under subparagraph (D).

(D) Not later than March 30, 1996, the Comptroller General shall transmit to the Congress and the Secretary of Defense a report setting forth the Comptroller General's assessment, with respect to the Department of Defense of whether there has been a demonstrable reduction in the quality of research performed under funding agreements awarded by the department under the SBIR program since the beginning of fiscal year 1993 such that increasing the percentage under subparagraph (A) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs.

(E) The results of each determination under subparagraph (C) shall be transmitted to the Congress not later than June 30, 1996.

(f) DEFINITIONS.—In this section:

(1) The term “Small Business Innovation Research Program” means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) through (k).

(2) The term “phase I”, with respect to the Small Business Innovation Research Program, means the first phase described in subsection (e)(4)(A) of section 9 of the Small Business Act.

~~(3) The term “phase II”, with respect to the Small Business Innovation Research Program, means the second phase described in subsection (e)(4)(B) of such section.~~

~~(4) The term “phase III”, with respect to the Small Business Innovation Research Program, means the third phase described in subsection (e)(4)(C) of such section.~~

~~(g) EFFECTIVE DATE.—Subject to subsection (h), this section, and the amendments made by this section, shall take effect on October 1, 1992, and shall apply with respect to fiscal years after fiscal year 1992.~~

~~(h) EFFECTIVENESS OF SECTION CONDITIONAL ON FAILURE TO ENACT OTHER LEGISLATION.—(1) In the event of the enactment of H.R. 4400 or S. 2941 [S. 2941 was enacted into law as Pub. L. 102–564 on Oct. 28, 1992], 102d Congress, on or before the date of the enactment of this Act [Oct. 23, 1992], then this section and the amendments made by this section shall not take effect.~~

~~(2)(A) In the event of the enactment of H.R. 4400 or S. 2941, 102d Congress, after the date of the enactment of this Act, then, effective immediately before the enactment of H.R. 4400 or S. 2941, 102d Congress—~~

~~(i) this section shall cease to be effective; and~~

~~(ii) the provisions of a small business law that are amended by this section shall be effective and read as such provisions of that law were in effect immediately before the enactment of this Act, except that to the extent that any amendment is made to such a provision of a small business law by any other provision of law referred to in subparagraph (B), such provision of a small business law shall be effective and shall read as amended by that other provision of law.~~

~~(B) For the purposes of subparagraph (A)(ii), a provision of law referred to in this subparagraph is the following:~~

~~(i) A provision of this Act other than a provision of this section.~~

~~(ii) A provision of any other Act if the provision takes effect during the period beginning on the date of the enactment of this Act and ending immediately before the enactment of H.R. 4400 or S. 2941, 102d Congress.~~

~~(C) In this paragraph, the term ‘small business law’ means—~~

~~(i) the Small Business Act (15 U.S.C. 631 et seq.); and~~

~~(ii) the Small Business Innovation Development Act of 1982 [Pub. L. 97–219] (15 U.S.C. 638 note).~~

Section 801(b) of the National Defense Authorization Act for Fiscal Year 2004

(P. L. 108–136; 10 USC 2302 note)

~~(b) DATA REVIEW.—The Secretary of Defense shall revise the data collection systems of the Department of Defense to ensure that such systems are capable of identifying each procurement that involves a consolidation of contract requirements within the department with a total value in excess of \$5,000,000.~~

~~(2) The Secretary shall ensure that appropriate officials of the Department of Defense periodically review the information collected pursuant to paragraph (1) in cooperation with the Small Business Administration—~~

~~(A) to determine the extent of the consolidation of contract requirements in the Department of Defense; and~~

~~(B) to assess the impact of the consolidation of contract requirements on the availability of opportunities for small business concerns to participate in Department of Defense procurements, both as prime contractors and as subcontractors.~~

~~(3) In this subsection:~~

~~(A) The term “consolidation of contract requirements” has the meaning given that term in section 2382(c)(1) of title 10, United States Code.~~

~~(B) The term “small business concern” means a business concern that is determined by the Administrator of the Small Business Administration to be a small business concern by application of the standards prescribed under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).~~
