II

117TH CONGRESS
1ST SESSION

S. 3109

To improve commercialization activities in the SBIR and STTR programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 28, 2021

Mr. COONS (for himself and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

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A BILL

To improve commercialization activities in the SBIR and STTR programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Research Advancing to Market Production for Innovators Act".

SEC. 2. IMPROVEMENTS TO COMMERCIALIZATION SELECTION.

(a) IN GENERAL.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended—

(1) in subsection (g)—

(A) in paragraph (4)(B)(i), by striking ‘‘1 year’’ and inserting ‘‘180 days’’;

(B) in paragraph (11), by striking ‘‘and’’ at the end;

(C) in paragraph (12), by striking the period at the end and inserting ‘‘; and’’; and

(D) by adding at the end the following:

‘‘(13) with respect to peer review carried out under the SBIR program, to the extent practicable, include in the peer review—

‘‘(A) the likelihood of commercialization in addition to scientific and technical merit and feasibility; and

‘‘(B) not less than 1 reviewer with commercialization expertise who is capable of assessing the likelihood of commercialization.’’;

(2) in subsection (o)—

(A) in paragraph (4)(B)(i), by striking ‘‘1 year’’ and inserting ‘‘180 days’’;

(B) in paragraph (15), by striking ‘‘and’’ at the end;

(C) in paragraph (16), by striking the period at the end and inserting ‘‘; and’’; and

(D) by adding at the end the following:

"(17) with respect to peer review carried out under the STTR program, to the extent practicable, include in the peer review—

"(A) the likelhood of commercialization in addition to scientific and technical merit and feasibility; and

"(B) not less than 1 reviewer with commercialization expertise who is capable of assessing the likelihood of commercialization.";

(3) in subsection (cc)—

(A) by striking "During fiscal years 2012 through 2022, the National Institutes of Health, the Department of Defense, and the Department of Education" and inserting the following:

"(1) IN GENERAL.—During fiscal years 2022 through 2027, each Federal agency with an SBIR or STTR program"; and

(B) by adding at the end the following:

"(2) LIMITATION.—The total value of awards provided by a Federal agency under this subsection in a fiscal year shall be—

"(A) except as provided in subparagraph (B), not more than 10 percent of the total funds allocated to the SBIR and STTR programs of the Federal agency during that fiscal year; and

"(B) with respect to the National Institutes of Health, not more than 15 percent of the total funds allocated to the SBIR and STTR programs of the National Institutes of Health during that fiscal year.

"(3) EXTENSION.—During fiscal years 2026 and 2027, each Federal agency with an SBIR or STTR program may continue phase flexibility as described in this subsection only if the reports required under subsection (tt)(1)(B) have been submitted to the appropriate committees.";

(4) in subsection (hh)(2)(A)(i), by inserting "application process and requirements" after "simplified and standardized"; and

(5) by adding at the end the following:

"(vv) TECHNOLOGY COMMERCIALIZATION OFFICIAL.—Each Federal agency participating in the SBIR or STTR program shall designate a Technology Commercialization Official in the Federal agency, who shall—

"(1) have sufficient commercialization experience;

“(2) provide assistance to SBIR and STTR program awardees in commercializing and transitioning technologies;

“(3) identify SBIR and STTR program technologies with sufficient technology and commercialization readiness to advance to Phase III awards or other non-SBIR or STTR program contracts;

“(4) coordinate with the Technology Commercialization Officials of other Federal agencies to identify additional markets and commercialization pathways for promising SBIR and STTR program technologies;

“(5) submit to the Administration an annual report on the number of technologies from the SBIR or STTR program that have advanced commercialization activities, including information required in the commercialization impact assessment under subsection (xx);

“(6) submit to the Administration an annual report on actions taken by the Federal agency, and the results of those actions, to simplify, standardize, and expedite the application process and requirements, procedures, and contracts as required under subsection (hh) and described in subsection (xx)(E); and

"(7) carry out such other duties as the Federal agency determines necessary.".

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Small Business Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives summarizing the metrics relating to and an evaluation of the authority provided under section 9(cc) of the Small Business Act, as amended by subsection (a), which shall include the size and location of the small business concerns receiving awards under the SBIR or STTR program.

SEC. 3. IMPROVEMENTS TO TECHNICAL AND BUSINESS ASSISTANCE; COMMERCIALIZATION IMPACT ASSESSMENT; PATENT ASSISTANCE.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by section 2, is amended—

(1) in subsection (q)—

(A) in paragraph (1), in the matter preceding subparagraph (A)—

(i) by striking "may enter into an agreement with 1 or more vendors selected under paragraph (2)(A)" and inserting "shall authorize recipients of awards under the SBIR or STTR program to select, if desired, commercialization activities provided under subparagraph (A), (B), or (C) of paragraph (2)''; and

(ii) by inserting '', cybersecurity assistance'' after ''intellectual property protections'';

(B) in paragraph (2), by adding at the end the following:

''(C) STAFF.—A small business concern may, by contract or otherwise, use funding provided under this section to hire new staff, augment staff, or direct staff to conduct or participate in training activities consistent with the goals listed in paragraph (1).'';

(C) in paragraph (3), by striking subparagraphs (A) and (B) and inserting the following:

''(A) PHASE I.—A Federal agency described in paragraph (1) shall authorize a recipient of a Phase I SBIR or STTR award to utilize not more than $6,500 per project, included as part of the award of the recipient or in addition to the amount of the award of the recipient as determined appropriate by the head of the Federal agency, for the services described in paragraph (1)—

"(i) provided through a vendor selected under paragraph (2)(A);

"(ii) provided through a vendor other than a vendor selected under paragraph (2)(A);

"(iii) achieved through the activities described in paragraph (2)(C); or

"(iv) provided or achieved through any combination of clauses (i), (ii), and (iii).

"(B) PHASE II.—A Federal agency described in paragraph (1) shall authorize a recipient of a Phase II SBIR or STTR award to utilize not more than $50,000 per project, included as part of the award of the recipient or in addition to the amount of the award of the recipient as determined appropriate by the head of the Federal agency, for the services described in paragraph (1)—

"(i) provided through a vendor selected under paragraph (2)(A);

“(ii) provided through a vendor other than a vendor selected under paragraph (2)(A);

“(iii) achieved through the activities described in paragraph (2)(C); or

“(iv) provided or achieved through any combination of clauses (i), (ii), and (iii).”; and

(D) by adding at the end the following:

“(5) TARGETED REVIEW.—A Federal agency may perform targeted reviews of technical and business assistance funding as described in subsection (mm)(1)(F).”; and

(2) by adding at the end the following:

“(ww) I-CORPS PARTICIPATION.—

“(1) IN GENERAL.—Each Federal agency that is required to conduct an SBIR or STTR program with an Innovation Corps (commonly known as ‘I-Corps’) program shall—

“(A) provide an option for participation in an I-Corps teams course by recipients of an award under the SBIR or STTR program; and

“(B) authorize the recipients described in subparagraph (A) to use an award provided under subsection (q) to provide additional technical assistance for participation in the I-Corps teams course.

"(2) COST OF PARTICIPATION.—The cost of participation by a recipient described in paragraph (1)(A) in an I-Corps course may be provided by—

"(A) an I-Corps team grant;

"(B) funds awarded to the recipient under subsection (q);

"(C) the participating teams or other sources as appropriate; or

"(D) any combination of sources described in subparagraphs (A), (B), and (C).

"(xx) COMMERCIALIZATION IMPACT ASSESSMENT.—

"(1) IN GENERAL.—The Administrator shall coordinate with each Federal agency with an SBIR or STTR program to develop an annual commercialization impact assessment report of the Federal agency, which shall measure, for the 5-year period preceding the report—

"(A) for Phase II contracts—

"(i) the total amount of sales of new products and services to the Federal Government or other commercial markets;

''(ii) the total outside investment from partnerships, joint ventures, or other private sector funding sources;

''(iii) the total number of technologies licensed to other companies;

''(iv) the total number of acquisitions of small business concerns participating in the SBIR program or the STTR program that are acquired by other entities;

''(v) the total number of new spin-out companies;

''(vi) the total outside investment from venture capital or angel investments;

''(vii) the total number of patent applications;

''(viii) the total number of patents acquired;

''(ix) the year of first Phase I award and the total number of employees at time of first Phase I award;

''(x) the total number of employees from the preceding completed year; and

''(xi) the percent of revenue, as of the date of the report, generated through SBIR or STTR program funding;

"(B) the total number and value of subsequent Phase II awards, as described in subsection (bb), awarded for each particular project or technology;

"(C) the total number and value of Phase III awards awarded subsequent to a Phase II award;

"(D) the total number and value of non-SBIR and STTR program Federal awards and contracts; and

"(E) actions taken by the Federal agency, and the results of those actions, relating to developing a simplified and standardized application process and requirements, procedures, and model contracts throughout the Federal agency for Phase I, Phase II, and Phase III SBIR program awards in subsection (hh).

"(2) PUBLICATION.—A commercialization impact assessment report described in paragraph (1) of a Federal agency shall be—

"(A) included in the annual report of the Federal agency required under this section; and

"(B) published on the website of the Administration.

"(yy) PATENT ASSISTANCE.—

"(1) DEFINITIONS.—In this subsection—

"(A) the term 'low bono services' means services provided at a reduced fee; and

"(B) the term 'USPTO' means the United States Patent and Trademark Office.

"(2) ASSISTANCE.—The Administrator shall enter into an interagency agreement with the USPTO to assist recipients of an award under the SBIR or STTR program (in this paragraph referred to as 'SBIR and STTR recipients') relating to intellectual property protection through—

"(A) track one processing, under which the USPTO may—

"(i) allocate—

"(I) not less than 5 percent or 500 track one requests, whichever is greater, per year to SBIR and STTR recipients on a first-come, first-served basis; and

"(II) not more than 2 track one requests to an individual SBIR and STTR recipient, to expedite final disposition on SBIR and STTR program patent applications; and "(ii) waive the track one fee requirement for SBIR and STTR recipients; and

"(B) through the USPTO Patent Pro Bono Program, providing SBIR and STTR recipients—

"(i) pro bono services if the recipient—

"(I) had a total gross income of more than $150,000 but less than $5,000,000 in the preceding calendar year, and expects a total gross income of more than $150,000 but less than $5,000,000 in the current calendar year;

"(II) is not under any obligation to assign the rights to the invention to another entity other than the Federal Government; and

"(III) has not previously received USPTO pro bono or low bono services; or

"(ii) low bono services if the recipient—

"(I) had a total gross income of more than $5,000,000 but less than

$10,000,000 in the preceding calendar year, and expects a total gross income of more than $5,000,000 but less than $10,000,000 in the current calendar year;

"(II) is not under any obligation to assign the rights to the invention to another entity other than the Federal Government; and

"(III) has not previously received USPTO pro bono or low bono services.

"(3) OUTREACH.—The Administrator shall coordinate with the USPTO to provide outreach regarding the pro se assistance program and scam prevention services of the USPTO.".

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