

One Hundred Seventeenth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,
the third day of January, two thousand and twenty two*

An Act

To reauthorize the SBIR and STTR programs and pilot 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 “SBIR and STTR Extension Act of 2022”.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADMINISTRATION; ADMINISTRATOR.—The terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively.

(2) FEDERAL AGENCY; PHASE I; PHASE II; PHASE III; SBIR; STTR.—The terms “Federal agency”, “Phase I”, “Phase II”, “Phase III”, “SBIR”, and “STTR” have the meanings given those terms, respectively, in section 9(e) of the Small Business Act (15 U.S.C. 638(e)).

SEC. 3. REAUTHORIZATION OF SBIR AND STTR PROGRAMS AND PILOT PROGRAMS.

Section 9 of the Small Business Act (15 U.S.C. 638) is amended by striking “2022” each place that term appears and inserting “2025”.

SEC. 4. FOREIGN RISK MANAGEMENT.

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

(1) in paragraph (13)(B), by striking “and” at the end;

(2) in paragraph (14), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

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

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

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

“(16) the term ‘foreign affiliation’ means a funded or unfunded academic, professional, or institutional appointment or position with a foreign government or government-owned

entity, whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary);

“(17) the term ‘foreign country of concern’ means the People’s Republic of China, the Democratic People’s Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State;

“(18) the term ‘malign foreign talent recruitment program’ has the meaning given such term in section 10638 of the Research and Development, Competition, and Innovation Act (division B of Public Law 117–167); and

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

(b) DUE DILIGENCE PROGRAM TO ASSESS SECURITY RISKS.—

(1) IN GENERAL.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended by adding at the end the following:

“(vv) DUE DILIGENCE PROGRAM TO ASSESS SECURITY RISKS.—

“(1) ESTABLISHMENT.—The head of each Federal agency required to establish an SBIR or STTR program, in coordination with the Administrator, shall establish and implement a due diligence program to assess security risks presented by small business concerns seeking a federally funded award.

“(2) RISKS.—Each program established under paragraph (1) shall—

“(A) assess, using a risk-based approach as appropriate, the cybersecurity practices, patent analysis, employee analysis, and foreign ownership of a small business concern seeking an award, including the financial ties and obligations (which shall include surety, equity, and debt obligations) of the small business concern and employees of the small business concern to a foreign country, foreign person, or foreign entity; and

“(B) assess awards and proposals or applications, as applicable, using a risk-based approach as appropriate, including through the use of open-source analysis and analytical tools, for the nondisclosures of information required under (g)(13).

“(3) ADMINISTRATIVE COSTS.—

“(A) IN GENERAL.—In addition to the amount allocated under subsection (mm)(1), each Federal agency required to establish an SBIR program may allocate not more than 2 percent of the funds allocated to the SBIR program of the Federal agency for the cost of establishing the due diligence program required under this subsection.

“(B) REPORTING.—

“(i) IN GENERAL.—Not later than December 31 of the year in which this subparagraph is enacted, and not later than December 31 of each year thereafter, the head of a Federal agency that exercises the authority under subparagraph (A) shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, and the Administrator, for the covered year—

“(I) the total funds allowed to be allocated for the cost of establishing the due diligence program required under this subsection;

“(II) the total amount of funds obligated or expended under subparagraph (A); and

“(III) the due diligence activities carried out or to be carried out using amounts allocated under subparagraph (A).

“(ii) ANNUAL REPORT INCLUSION.—The Administrator shall include the information submitted by head of a Federal agency under clause (i) in the next annual report submitted under subsection (b)(7) after the Administrator receives such information.

“(iii) COVERED YEAR.—In this subparagraph, the term ‘covered year’ means, with respect to the information required under clause (i), the year covered by the annual report submitted under subsection (b)(7) in which the Administrator is required to include such information by clause (ii).

“(C) TERMINATION DATE.—This paragraph shall terminate on September 30, 2025.”.

(2) IMPLEMENTATION.—

(A) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the head of a Federal agency required to establish an SBIR or STTR program shall implement a due diligence program under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1), at the Federal agency that, to the extent practicable, incorporates the applicable best practices disseminated under paragraph (3).

(B) PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”), shall not apply to the implementation of a due diligence program under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1).

(C) BRIEFING.—Not later than 30 days after the date of enactment of this Act, and on a recurring basis until implementation is complete, each Federal agency required to establish a due diligence program under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1), shall brief the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives on the implementation of the due diligence program.

(3) BEST PRACTICES.—Not later than 180 days after the date of enactment of this Act, the Administrator shall—

(A) in coordination with the Director of the Office of Science and Technology Policy and in consultation with the Committee on Foreign Investment in the United States, disseminate among Federal agencies required to establish an SBIR or STTR program best practices of those Federal agencies for due diligence programs required under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1); and

(B) in consultation with the Committee on Foreign Investment in the United States, provide to Federal agencies described in subparagraph (A) guidance on the business relationships required to be disclosed under paragraph (13)(G) of subsection (g) and paragraph (17)(G) of subsection (o) of section 9 of the Small Business Act (15 U.S.C. 638), as added by this Act.

(4) GAO STUDY.—Not later than 1 year after the date of enactment of this Act, and annually thereafter for 3 years, the Comptroller General of the United States shall conduct a study and submit to the Committee on Small Business and Entrepreneurship and the Committee on Armed Services of the Senate and the Committee on Small Business, the Committee on Armed Services, and the Committee on Science, Space, and Technology of the House of Representatives a report on the implementation and best practices of due diligence programs established under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1), across Federal agencies required to establish an SBIR or STTR program.

(5) RULE OF CONSTRUCTION.—Nothing in subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1), shall be construed to—

(A) apply to any Federal agency with a due diligence program that applies to the SBIR or STTR programs required under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1), in existence as of the date of enactment of this Act; or

(B) restrict any Federal agency from taking due diligence measures in addition to those required under such subsection (vv) at the Federal agency.

(c) DISCLOSURES REGARDING TIES TO PEOPLE’S REPUBLIC OF CHINA AND OTHER FOREIGN COUNTRIES.—

(1) SBIR.—Section 9(g) of the Small Business Act (15 U.S.C. 638(g)) is amended—

(A) in paragraph (11), by striking “and” at the end;

(B) in paragraph (12), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(13) require each small business concern submitting a proposal or application for a federally funded award to disclose in the proposal or application—

“(A) the identity of all owners and covered individuals of the small business concern who are a party to any foreign talent recruitment program of any foreign country of concern, including the People’s Republic of China;

“(B) the existence of any joint venture or subsidiary of the small business concern that is based in, funded by, or has a foreign affiliation with any foreign country of concern, including the People’s Republic of China;

“(C) any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity;

“(D) whether the small business concern is wholly owned in the People’s Republic of China or another foreign country of concern;

“(E) the percentage, if any, of venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of concern, including the People’s Republic of China;

“(F) any technology licensing or intellectual property sales to a foreign country of concern, including the People’s Republic of China, during the 5-year period preceding submission of the proposal; and

“(G) any foreign business entity, offshore entity, or entity outside the United States related to the small business concern;

“(14) after reviewing the disclosures of a small business concern under paragraph (13), and if determined appropriate by the head of such Federal agency, request such small business concern to provide true copies of any contractual or financial obligation or other agreement specific to a business arrangement, or joint-venture like arrangement with an enterprise owned by a foreign state or any foreign entity in effect during the 5-year period preceding submission of the proposal with respect to which such small business concern made such disclosures;”.

(2) STTR.—Section 9(o) of the Small Business Act (15 U.S.C. 638(o)) is amended—

(A) in paragraph (15), by striking “and” at the end;

(B) in paragraph (16), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(17) require each small business concern submitting a proposal or application for a federally funded award to disclose in the proposal or application—

“(A) the identity of all owners and covered individuals of the small business concern who are a party to any foreign talent recruitment program of any foreign country of concern, including the People’s Republic of China;

“(B) the existence of any joint venture or subsidiary of the small business concern that is based in, funded by, or has a foreign affiliation with any foreign country of concern, including the People’s Republic of China;

“(C) any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a foreign state or any foreign entity;

“(D) whether the small business concern is wholly owned in the People’s Republic of China or another foreign country;

“(E) the percentage, if any, of venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of concern, including the People’s Republic of China;

“(F) any technology licensing or intellectual property sales to a foreign country of concern, including the People’s Republic of China, during the 5-year period preceding submission of the proposal; and

“(G) any foreign business entity, offshore entity, or entity outside the United States related to the small business concern;

“(18) after reviewing the disclosures of a small business concern under paragraph (17), and if determined appropriate by the head of such Federal agency, request such small business concern to provide true copies of any contractual or financial obligation or other agreement specific to a business arrangement, or joint-venture like arrangement with an enterprise owned by a foreign state or any foreign entity in effect during the 5-year period preceding submission of the proposal with respect to which such small business concern made such disclosures;”.

(d) DENIAL OF AWARDS.—

(1) SBIR.—Section 9(g) of the Small Business Act (15 U.S.C. 638(g)), as amended by subsection (c)(1), is further amended by adding at the end the following:

“(15) not make an award under the SBIR program of the Federal agency to a small business concern if the head of the Federal agency determines that—

“(A) the small business concern submitting the proposal or application—

“(i) has an owner or covered individual that is party to a malign foreign talent recruitment program;

“(ii) has a business entity, parent company, or subsidiary located in the People’s Republic of China or another foreign country of concern; or

“(iii) has an owner or covered individual that has a foreign affiliation with a research institution located in the People’s Republic of China or another foreign country of concern; and

“(B) the relationships and commitments described in clauses (i) through (iii) of subparagraph (A)—

“(i) interfere with the capacity for activities supported by the Federal agency to be carried out;

“(ii) create duplication with activities supported by the Federal agency;

“(iii) present concerns about conflicts of interest;

“(iv) were not appropriately disclosed to the Federal agency;

“(v) violate Federal law or terms and conditions of the Federal agency; or

“(vi) pose a risk to national security;”.

(2) STTR.—Section 9(o) of the Small Business Act (15 U.S.C. 638(o)), as amended by subsection (c)(2), is further amended by adding at the end the following:

“(19) not make an award under the STTR program of the Federal agency to a small business concern if the head of the Federal agency determines that—

“(A) the small business concern submitting the proposal or application—

“(i) has an owner or covered individual that is party to a malign foreign talent recruitment program;

“(ii) has a business entity, parent company, or subsidiary located in the People’s Republic of China or another foreign country of concern; or

“(iii) has an owner or covered individual that has a foreign affiliation with a research institution located in the People’s Republic of China or another foreign country of concern; and
“(B) the relationships and commitments described in clauses (i) through (iii) of subparagraph (A)—
“(i) interfere with the capacity for activities supported by the Federal agency to be carried out;
“(ii) create duplication with activities supported by the Federal agency;
“(iii) present concerns about conflicts of interest;
“(iv) were not appropriately disclosed to the Federal agency;
“(v) violate Federal law or terms and conditions of the Federal agency; or
“(vi) pose a risk to national security;”.

SEC. 5. AGENCY RECOVERY AUTHORITY AND ONGOING REPORTING.

(a) SBIR.—Section 9(g) of the Small Business Act (15 U.S.C. 638(g)), as amended by section 4(d)(1), is further amended by adding at the end the following:

“(16) require a small business concern receiving an award under its SBIR program to repay all amounts received from the Federal agency under the award if—

“(A) the small business concern makes a material misstatement that the Federal agency determines poses a risk to national security; or

“(B) there is a change in ownership, change to entity structure, or other substantial change in circumstances of the small business concern that the Federal agency determines poses a risk to national security; and

“(17) require a small business concern receiving an award under its SBIR program to regularly report to the Federal agency and the Administration throughout the duration of the award on—

“(A) any change to a disclosure required under subparagraphs (A) through (G) of paragraph (13);

“(B) any material misstatement made under paragraph (16)(A); and

“(C) any change described in paragraph (16)(B).”.

(b) STTR.—Section 9(o) of the Small Business Act (15 U.S.C. 638(o)), as amended by section 4(d)(1), is further amended by adding at the end the following:

“(20) require a small business concern receiving an award under its STTR program to repay all amounts received from the Federal agency under the award if—

“(A) the small business concern makes a material misstatement that the Federal agency determines poses a risk to national security; or

“(B) there is a change in ownership, change to entity structure, or other substantial change in circumstances of the small business concern that the Federal agency determines poses a risk to national security; and

“(21) require a small business concern receiving an award under its STTR program to regularly report to the Federal agency and the Administration throughout the duration of the award on—

“(A) any change to a disclosure required under subparagraphs (A) through (G) of paragraph (17);

“(B) any material misstatement made under paragraph (20)(A); and

“(C) any change described in paragraph (20)(B).”.

(c) PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”), shall not apply to the implementation of paragraphs (16) and (17) of subsection (g) or paragraphs (20) and (21) of subsection (o) of section 9 of the Small Business Act (15 U.S.C. 638), as added by subsections (a) and (b).

SEC. 6. REPORT ON ADVERSARIAL MILITARY AND FOREIGN INFLUENCE IN THE SBIR AND STTR PROGRAMS.

(a) COVERED AGENCY DEFINED.—In this section, the term “covered agency” means—

- (1) the Department of Defense;
- (2) the Department of Energy;
- (3) the Department of Health and Human Services; or
- (4) the National Science Foundation.

(b) REQUIREMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), not later than 180 days after the date of enactment of this Act, the head of each covered agency shall submit a report assessing the adversarial military and foreign influences in the SBIR and STTR programs at the covered agency to—

(A) the Committee on Armed Services, the Committee on Small Business and Entrepreneurship, and the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Armed Services, the Committee on Small Business, and the Committee on Science, Space, and Technology of the House of Representatives.

(2) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The Secretary of Health and Human Services shall submit 2 reports under paragraph (1)—

(A) 1 assessing the adversarial military and foreign influences in the SBIR and STTR programs of the National Institutes of Health; and

(B) 1 assessing the adversarial military and foreign influences in the SBIR and STTR programs of the Department of Health and Human Services other than those of the National Institutes of Health.

(c) CONTENTS.—Each report submitted by a covered agency under subsection (b) shall include an analysis of—

- (1) the national security and research and integrity risks of the SBIR and STTR programs of the covered agency; and
- (2) the capability of such covered agency to identify and mitigate such risks.

(d) FORM.—Each report submitted under subsection (b) shall be in unclassified form, but may include a classified annex.

(e) INDEPENDENT ENTITY CONTRACTING.—The head of each covered agency, in coordination with the heads of other Federal agencies, as appropriate, may enter into a contract with an independent entity to prepare a report required under subsection (b).

SEC. 7. PROGRAM ON INNOVATION OPEN TOPICS.

(a) **IN GENERAL.**—Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is further amended—

(1) in subsection (b)(7)—

(A) in subparagraph (G), by striking “and” at the end; and

(B) by adding at the end the following:

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

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

“(i) open topics; and

“(ii) conventional topics;”; and

(2) by adding at the end the following:

“(ww) **PROGRAM ON INNOVATION OPEN TOPICS.**—

“(1) **ESTABLISHMENT.**—Not later than 180 days after the date of enactment of this subsection, the Secretary of Defense shall establish innovation open topic activities using the SBIR and STTR programs of the Department of Defense in order to—

“(A) increase the transition of commercial technology to the Department of Defense;

“(B) expand the small business nontraditional industrial base;

“(C) increase commercialization derived from investments of the Department of Defense; and

“(D) expand the ability for qualifying small business concerns to propose technology solutions to meet the needs of the Department of Defense.

“(2) **FREQUENCY.**—The Secretary of Defense shall conduct not less than 1 open topic announcement at each component of the Department of Defense per fiscal year.

“(3) **BRIEFING.**—Not later than 180 days after the date of enactment of this subsection, the Secretary of Defense shall provide a briefing on the establishment of the program required under paragraph (1) to—

“(A) the Committee on Armed Services and the Committee on Small Business and Entrepreneurship of the Senate; and

“(B) the Committee on Small Business, the Committee on Armed Services, and the Committee on Science, Space, and Technology of the House of Representatives.”.

(b) **GAO REPORT.**—Not later than 1 year after the date of enactment of this Act, and annually thereafter for 3 years, the Comptroller General of the United States shall submit to Congress and issue a publicly available report comparing open topics and conventional topics under the SBIR and STTR programs that includes, to the extent practicable—

(1) an assessment of the percentage of small business concerns that progress from Phase I to Phase II awards, then to Phase III awards;

(2) the number of awards under the SBIR and STTR programs made to first-time applicants and first-time awardees;

(3) the number of awards under the SBIR and STTR programs made to non-traditional small business concerns, including those owned by women, minorities, and veterans;

(4) a description of outreach and assistance efforts by the Department of Defense to encourage and prepare new and diverse small business concerns to participate in the program established under subsection (ww) of section 9 of the Small Business Act (15 U.S.C. 638), as added by subsection (a);

(5) the length of time to review and disburse awards under such subsection (ww), evaluated in a manner enabling normalized comparisons of such times taken by each Federal agency that is required to establish an SBIR or STTR program and offers open topics;

(6) the ratio, and an assessment, of the amount of funding allocated towards open topics as compared to conventional topics at each Federal agency that is required to establish an SBIR or STTR program and offers open topics; and

(7) a comparison of the types of technology and end users funded under open topics compared to the types of technology and end users funded under conventional topics.

SEC. 8. INCREASED MINIMUM PERFORMANCE STANDARDS FOR EXPERIENCED FIRMS.

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

(1) in subsection (b)(7), by adding at the end the following:

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

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

(2) in subsection (qq)—

(A) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(B) by inserting after paragraph (2) the following:

“(3) INCREASED MINIMUM PERFORMANCE STANDARDS FOR EXPERIENCED FIRMS.—

“(A) PROGRESS TO PHASE II SUCCESS.—

“(i) IN GENERAL.—With respect to a small business concern that received or receives more than 50 Phase I awards during a covered period, each minimum performance standard established under paragraph (1)(A)(ii) shall be doubled for such covered period.

“(ii) CONSEQUENCE OF FAILURE TO MEET STANDARD.—If the head of a Federal agency determines that a small business concern that received a Phase I award from the Federal agency is not meeting an applicable increased minimum performance standard

modified under clause (i), the small business concern may not receive more than 20 total Phase I awards and Phase II awards under subsection (cc) from each Federal agency during the 1-year period beginning on the date on which such determination is made.

“(iii) COVERED PERIOD DEFINED.—In this subparagraph, the term ‘covered period’ means a consecutive period of 5 fiscal years preceding the most recent fiscal year.

“(B) PROGRESS TO PHASE III SUCCESS.—

“(i) IN GENERAL.—Each minimum performance standard established under paragraph (2)(A)(ii) shall—

“(I) with respect to a small business concern that received or receives more than 50 Phase II awards during a covered period, require an average of \$250,000 of aggregate sales and investments per Phase II award received during such covered period; and

“(II) with respect to a small business concern that received or receives more than 100 Phase II awards during a covered period, require an average of \$450,000 of aggregate sales and investments per Phase II award received during such covered period.

“(ii) CONSEQUENCE OF FAILURE TO MEET STANDARD.—If the head of a Federal agency determines that a small business concern that received a Phase I award from the agency is not meeting an applicable increased minimum performance standard modified under clause (i), the small business concern may not receive more than 20 total Phase I awards and Phase II awards under subsection (cc) from each agency during the 1-year period beginning on the date on which such determination is made.

“(iii) DOCUMENTATION.—

“(I) IN GENERAL.—A small business concern that is subject to an increased minimum performance standard described in clause (i) shall submit to the Administrator supporting documentation evidencing that all covered sales of the small business concern were properly used to meet the increased minimum performance standard.

“(II) COVERED SALE DEFINED.—In this clause, the term ‘covered sale’ means a sale by a small business concern—

“(aa) that the small business concern claims to be attributable to an SBIR or STTR award;

“(bb) for which no amount of the payment was or is made using Federal funds;

“(cc) which the small business concern uses to meet an applicable increased minimum performance standard under clause (i); and

“(dd) that was or is received during the 5 fiscal years immediately preceding the fiscal year in which the small business concern uses

the sale to meet the increased minimum performance standard.

“(iv) COVERED PERIOD DEFINED.—In this subparagraph, the term ‘covered period’ means a consecutive period of 10 fiscal years preceding the most recent 2 fiscal years.

“(C) PATENTS FOR INCREASED MINIMUM PERFORMANCE STANDARDS.—A small business concern with respect to which an increased minimum performance standard under subparagraph (B) applies may not meet the increased minimum performance standard by obtaining patents.

“(D) EFFECTIVE DATE.—Subparagraphs (A) through (C) shall take effect on April 1, 2023.

“(E) WAIVER.—

“(i) IN GENERAL.—The Administrator may, upon the request of a senior official of a Federal agency, grant a waiver with respect to a topic for the SBIR or STTR program of the Federal agency if—

“(I) the topic is critical to the mission of the Federal agency or relates to national security; and

“(II) the official submits to the Administrator a request for the waiver in accordance with clause (iii).

“(ii) WAIVER EFFECTS.—If the Administration grants a waiver with respect to a topic for the SBIR or STTR program of a Federal agency, subparagraphs (A)(ii) and (B)(ii) shall not prohibit any covered small business concern from receiving an SBIR or STTR award under such topic.

“(iii) AGENCY REQUEST AND CONGRESSIONAL NOTIFICATION.—Not later than 15 days before the release of a solicitation including a topic for which a senior official of a Federal agency is requesting a waiver under clause (i), the senior official shall submit to the Administrator, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate a request for the waiver.

“(iv) ADMINISTRATOR DETERMINATION AND CONGRESSIONAL NOTIFICATION.—Not later than 15 days after receiving a request for a waiver under clause (i), the Administrator shall make a determination with respect to the request and notify the senior official at the Federal agency that made the request, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate of the determination.

“(v) DEFINITIONS.—In this subparagraph:

“(I) COVERED SMALL BUSINESS CONCERN.—The term ‘covered small business concern’ means a small business concern that is subject to the consequences under subparagraph (A)(ii) or (B)(ii) pursuant to a determination by the head of a Federal agency that such small business concern did

not meet an increased minimum performance standard that was applicable to such small business concern.

“(II) SENIOR OFFICIAL.—The term ‘senior official’ means an individual appointed to a position in a Federal agency that is classified above GS–15 pursuant section 5108 of title 5, United States Code, or any equivalent position, as determined by the Administrator.

“(F) REPORTING.—

“(i) IN GENERAL.—Not later than July 1, 2023, and annually thereafter, the Administrator shall submit to Congress a list of the small business concerns that did not meet—

“(I) an applicable minimum performance standard established under paragraph (1)(A)(ii) or (2)(A)(ii); or

“(II) an applicable increased minimum performance standard.

“(ii) WAIVERS.—Each list submitted under clause (i) shall identify each small business concern that received an SBIR or STTR award pursuant to a waiver granted under subparagraph (E) by the Administrator during the period covered by the list.

“(iii) CONFIDENTIALITY.—Each list submitted under clause (i) shall be confidential and exempt from disclosure under section 552(b)(3) of title 5, United States Code (commonly known as the ‘Freedom of Information Act’).

“(G) IMPLEMENTATION.—Not later than April 1, 2023, the Administration shall implement the increased minimum performance standards under this paragraph.

“(H) RULES OF CONSTRUCTION.—Nothing in this paragraph shall be construed—

“(i) to prohibit a small business concern from participating in a Phase I (or Phase II if under the authority of subsection (cc)) of an SBIR or STTR program under paragraph (1)(B) or (2)(B) solely on the basis of a determination by the head of a Federal agency that the small business concern is not meeting an increased minimum performance standard; or

“(ii) to prevent the head of a Federal agency from implementing more restrictive limitations on the number of federally funded Phase I awards and direct to Phase II awards under subsection (cc) that may be awarded to a small business concern than the limitations described in subparagraphs (A)(ii) and (B)(ii).

“(I) TERMINATION.—This paragraph shall terminate on September 30, 2025.”;

(C) in paragraph (5), as so redesignated, by striking “paragraph (3)(A)” and inserting “paragraph (4)(A)”; and

(D) by adding at the end the following:

“(6) INSPECTOR GENERAL AUDIT.—Not later than 1 year after the date on which the Administrator implements the increased minimum performance standards under paragraph (3), and periodically thereafter, the Inspector General of the Administration shall—

“(A) conduct an audit on whether the small business concerns subject to increased minimum performance standards under paragraph (3)(B) verified—

“(i) the sales by and investments in the small business concerns—

“(I) during the 5 fiscal years immediately preceding the fiscal year in which the small business concern used such sales and investments to meet an applicable increased performance standard; and

“(II) as a direct result of a Phase I award or Phase II award made under subsection (cc) during the covered period (as defined in paragraph (3)(B)(iv)), consistent with the definition of Phase III, as applicable;

“(ii) any third-party revenue the small business concerns list as investments or incomes to meet the increased minimum performance standard—

“(I) is a direct result of a Phase I award or Phase II award made under subsection (cc) during the covered period (as defined in paragraph (3)(B)(iv)); and

“(II) consistent with the requirements of the Administrator as in effect on September 30, 2022, or any successor requirements; and

“(iii) any dollar amounts such small business concerns list as investments or income to meet such increased minimum performance standard the providence of which is unclear and that is not directly attributable to a Phase I award or Phase II award made under subsection (cc) during the covered period (as defined in paragraph (3)(B)(iv)), consistent with the definition of Phase III, as applicable;

“(B) assess the self-certification requirements for the minimum performance standards established under paragraph (2)(A)(ii) and the increased minimum performance standards under paragraph (3)(B); and

“(C) submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives a report on the audit conducted under subparagraph (A) and the assessment conducted under subparagraph (B).

“(7) INCREASED MINIMUM PERFORMANCE STANDARD DEFINED.—In this subsection, the term ‘increased minimum performance standard’ means a minimum performance standard established under paragraph (1)(A)(ii) or (2)(A)(ii) as modified under subparagraph (A) or (B), respectively, of paragraph (3) with respect to a small business concern.”.

SEC. 9. PROHIBITION AGAINST WRITING SOLICITATION TOPICS.

(a) IN GENERAL.—Section 9 of the Small Business Act (15 U.S.C. 638), as amended by this Act, is further amended by adding at the end the following subsection:

“(xx) ADDITIONAL PROVISIONS RELATING TO SOLICITATION TOPICS.—

“(1) IN GENERAL.—A Federal agency required to establish an SBIR or STTR program shall implement a multi-level review

and approval process within the Federal agency for solicitation topics to ensure adequate competition and that no private individual or entity is shaping the requirements for eligibility for the solicitation topic after the selection of the solicitation topic, except that the Federal agency may amend the requirements to clarify the solicitation topic.

“(2) REFERRAL.—A Federal agency that does not comply with paragraph (1) shall be referred to the Inspector General of the Administration for further investigation.”.

SEC. 10. GAO STUDY ON MULTIPLE AWARD WINNERS.

Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives a report, which shall be made publicly available, on small business concerns that are awarded not less than 50 Phase II awards under the SBIR or STTR programs during the consecutive period of 10 fiscal years preceding the most recent 2 fiscal years, including, to the extent practicable, an analysis of—

- (1) the impact of the small business concerns on the SBIR and STTR programs;
- (2) the ratio of the number of Phase II awards received by the small business concerns to the total number of Phase II awards;
- (3) the ability of the small business concerns to commercialize and meet the tenets of the SBIR and STTR programs;
- (4) the impact on new entrants and seeding technology necessary to the Federal agency mission or commercial markets and, with respect to the Department of Defense, whether the types of technology the small business concerns are pursuing are primarily hardware, software, or system components for the warfighter;
- (5) an evaluation and study of varying levels of award caps and lifetime program earning caps;
- (6) an assessment of the increased minimum performance standards under paragraph (3) of section 9(qq) of the Small Business Act (15 U.S.C. 638(qq)), as added by section 8, on the behavior of those concerns and on the SBIR and STTR programs, and whether to continue such increased minimum performance standards; and
- (7) recommendations on whether alternative minimum performance standards under section 9(qq) of the Small Business Act (15 U.S.C. 638(qq)) should be considered, and the extent to which such alternative minimum performance standards preserve the competitive, merit-based foundation of the SBIR and STTR programs.

SEC. 11. GAO REPORT ON SUBCONTRACTING IN SBIR AND STTR PROGRAMS.

Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives a report evaluating, to the extent practicable, the following:

(1) The extent to which SBIR awardees and STTR awardees are in compliance with the Federal Funding Accountability and Transparency Act (31 U.S.C. 6101 note).

(2) The extent to which SBIR awardees and STTR awardees enter into subcontracting agreements with respect to an SBIR or STTR award.

(3) The total number and dollar amount of subcontracts entered into between an SBIR awardee or an STTR awardee and a concern that is not a small business concern (including such concerns that are defense contractors) with respect to an SBIR or STTR award.

(4) A description of the type and purpose of subcontracting agreements described in paragraph (2).

(5) An analysis of whether the use of subcontracts by an SBIR awardee or an STTR awardee is consistent with the purposes of section 9 of the Small Business Act (15 U.S.C. 638).

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*