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ALERT

SBIR/STTR Programs Extended for Three More Years, With Strings Attached

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WHAT: On September 30, 2022, President Biden signed the *SBIR and STTR Extension Act of 2022*, reauthorizing the SBIR/STTR programs to continue through fiscal year 2025. The SBIR/SSTR programs were set to expire on the day President Biden signed the Act, the result of lengthy negotiations over how to revamp the programs following recent high-profile SBIR fraud cases with ties to China. The changes to the programs, to include enhanced disclosure requirements and claw-back provisions, are illustrative of the federal government's renewed emphasis on ensuring China does not use the SBIR/STTR programs as an additional avenue to appropriate the United States' emerging technological advances.

WHAT DOES IT MEAN FOR INDUSTRY: The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs provide an avenue for small businesses to engage with the federal government to jointly address the country's unique science and technology needs. Small businesses compete for federal research funds in the form of federal contracts or grants to support their innovative projects, with the potential to commercialize their resulting products and services in the federal marketplace.

The SBIR/STTR programs are structured in three phases. In Phase I, the government evaluates the technical merit, feasibility, and commercial potential of the small business' R&D efforts to determine whether further funding should be provided. Phase I awards are typically in the $50,000 to $250,000 range and extend for either six months (for SBIR awards) or one year (for STTR awards). In Phase II, the government awards small businesses around $750,000 to invest two more years into R&D. If based on the R&D efforts there appears to be commercial value in the resulting products or services, the small

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Practice Areas

Government Contracts

Small Businesses

business may obtain further funding or production contracts directly from federal agencies in Phase III.

To participate in the SBIR/STTR programs, small businesses must be for-profit businesses located in the United States, be majority owned and controlled by U.S. citizens or permanent legal residents (or owned by another small business concern majority owned and controlled by U.S. citizens or permanent legal residents), and have no more than 500 employees (including any affiliates). For the STTR program, small businesses must partner with a nonprofit college or university located in the United States, a domestic nonprofit research organization, or a federally funded R&D center.

The recent reauthorization imposed a number of new reporting requirements on agencies to ensure proper management of the SBIR/STTR programs. It also made the following changes which directly impact small business participants:

- Created new requirement for the head of each federal agency administering SBIR/STTR programs to establish and implement a due diligence program to assess security risks presented by the small businesses and continually document and report their findings;
- Created additional disclosure requirements for small businesses with any ties to a "foreign country of concern";
- Imposed restrictions on awarding to small businesses with any ties to a "foreign country of concern";
- Defined a "foreign country of concern" as 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;
- Imposed repayment requirements for recipients who are later determined to present a risk to national security; and
- Doubled the minimum performance standards for small businesses which received more than 50 Phase I awards in the preceding five fiscal years and imposed restrictions on future awards if they fail to meet the higher standards.

The new due diligence requirements demonstrate the federal government's emphasis on protecting against foreign influence and interference in domestic science and technological advancements. The due diligence programs are required to assess the small business's cybersecurity practices, employee composition, patents, and any foreign ownership or financial ties to determine whether any "foreign country of concern" may be surreptitiously behind the small business venture. This is further explored in the new disclosure requirements for any small business with ties to a "foreign country of concern." What constitutes a relationship with a "foreign country of concern" is quite expansive, including having any owners who are a party to a foreign talent recruitment program, any foreign joint ventures or subsidiaries, any foreign contractual or financial obligations, any foreign technology licensing or intellectual property sales in the five-year period preceding submission of the proposal, and any foreign institutional investments.

These ties will disqualify the small business if they present concerns about conflicts of interests, pose a risk to national security, or were not timely disclosed to the head of the awarding agency. If it is later determined that the small business did not promptly notify the agency head of these potential issues, or if such issues arise during the performance of the award but were not promptly brought to the agency head's attention, the small business will be required to repay the award.

While the reauthorization is good news for small businesses in the science and technology sectors, it is important that small businesses interested in participating in the SBIR/STTR programs take a close look at any foreign ties their business may have and ensure compete and accurate disclosure of those ties, as required by the new rules. The federal government is continuing its hard stance on protecting against foreign interference, especially from the People's Republic of China, and companies would be ill-advised to get caught in the crosshairs.