

Budget with respect to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to require disclosure of information the disclosure of which is prohibited by law or by Executive Order, including Executive Order 12958 of April 17, 1995, as amended [50 U.S.C. 435 note].

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 638a. GAO study with respect to venture capital operating company, hedge fund, and private equity firm involvement

Not later than 3 years after December 31, 2011, and every 3 years thereafter, the Comptroller General of the United States shall—

- (1) conduct a study of the impact of requirements relating to venture capital operating company, hedge fund, and private equity firm involvement under section 638 of this title; and
- (2) submit to Congress a report regarding the study conducted under paragraph (1).

(Pub. L. 112-81, div. E, title LI, §5142, Dec. 31, 2011, 125 Stat. 1854.)

CODIFICATION

Section was enacted as part of the SBIR/STTR Reauthorization Act of 2011, and also as part of the National Defense Authorization Act for Fiscal Year 2012, and not as part of the Small Business Act which comprises this chapter.

§ 638b. Reducing vulnerability of SBIR and STTR programs to fraud, waste, and abuse

(a) Fraud, waste, and abuse prevention

(1) Amendments required for fraud, waste, and abuse prevention

Not later than 90 days after December 31, 2011, the Administrator shall amend the SBIR Policy Directive and the STTR Policy Directive to include measures to prevent fraud, waste, and abuse in the SBIR program and the STTR program.

(2) Content of amendments

The amendments required under paragraph (1) shall include—

- (A) definitions or descriptions of fraud, waste, and abuse;
- (B) guidelines for the monitoring and oversight of applicants to and recipients of awards under the SBIR program or the STTR program;
- (C) a requirement that each Federal agency that participates in the SBIR program or STTR program include information concerning the method established by the Inspector General of the Federal agency to report fraud, waste, and abuse (including any telephone hotline or Web-based platform)—
 - (i) on the Web site of the Federal agency; and
 - (ii) in any solicitation or notice of funding opportunity issued by the Federal agency for the SBIR program or the STTR program; and

(D) a requirement that each applicant for and small business concern that receives funding under the SBIR program or the STTR program shall certify whether the applicant or small business concern is in compliance with the laws relating to the SBIR program and the STTR program and the conduct guidelines established under the SBIR Policy Directive and the STTR Policy Directive.

(3) Consultation

The Administrator shall develop, in consultation with the Council of Inspectors General on Integrity and Efficiency, the procedures and requirements for the certification set forth under paragraph (2)(D) after providing notice of and an opportunity for public comment on such procedures and requirements.

(4) Certification

The certification developed under paragraph (3) may—

- (A) cover the lifecycle of an award to require certifications at the application, funding, reporting, and closeout phases of every SBIR and STTR award;
- (B) require the small business concern to certify compliance with the “principal investigator¹ primary employment” requirement, the “small business concern” definition requirement, and the “performance of work” requirements as set forth in the Directive applicable to the award;
- (C) require the small business concern to disclose whether it has applied for, plans to apply for, or received an SBIR or STTR award for identical or essentially equivalent work (as defined under the SBIR Policy Directive and the STTR Policy Directive), and require the concern to certify that the award that it is applying for or obtaining funding for is not identical or essentially equivalent to work it has performed, or will perform, in connection with any other SBIR or STTR award that the concern has applied for or received from any other agency except as fully disclosed to all funding agencies; and
- (D) require that the small business concern certify that it will or did perform the work on the award at its facilities with its employees, unless otherwise indicated.

(C) require the small business concern to disclose whether it has applied for, plans to apply for, or received an SBIR or STTR award for identical or essentially equivalent work (as defined under the SBIR Policy Directive and the STTR Policy Directive), and require the concern to certify that the award that it is applying for or obtaining funding for is not identical or essentially equivalent to work it has performed, or will perform, in connection with any other SBIR or STTR award that the concern has applied for or received from any other agency except as fully disclosed to all funding agencies; and

- (D) require that the small business concern certify that it will or did perform the work on the award at its facilities with its employees, unless otherwise indicated.

(5) Inspectors General

The Inspector General of each Federal agency that participates in the SBIR program or STTR program shall cooperate to prevent fraud, waste, and abuse in the SBIR program and the STTR program by—

- (A) establishing fraud detection indicators;
- (B) reviewing regulations and operating procedures of the Federal agency;
- (C) coordinating information sharing between Federal agencies, to the extent otherwise permitted under Federal law; and
- (D) improving the education and training of and outreach to—

- (i) administrators of the SBIR program and the STTR program of the Federal agency;

¹ So in original. Probably should be “investor”.

- (ii) applicants to the SBIR program or the STTR program; and
- (iii) recipients of awards under the SBIR program or the STTR program.

(b) Study and report

Not later than 1 year after December 31, 2011, to establish a baseline of changes made to the program to fight fraud, waste, and abuse, and every 4 years thereafter to evaluate the effectiveness of the agency strategies, the Comptroller General of the United States shall—

(1) conduct a study that evaluates—

(A) the implementation by each Federal agency that participates in the SBIR program or the STTR program of the amendments to the SBIR Policy Directive and the STTR Policy Directive made pursuant to subsection (a);

(B) the effectiveness of the management information system of each Federal agency that participates in the SBIR program or STTR program in identifying duplicative SBIR and STTR projects;

(C) the effectiveness of the risk management strategies of each Federal agency that participates in the SBIR program or STTR program in identifying areas of the SBIR program or the STTR program that are at high risk for fraud;

(D) technological tools that may be used to detect patterns of behavior that may indicate fraud by applicants to the SBIR program or the STTR program;

(E) the success of each Federal agency that participates in the SBIR program or STTR program in reducing fraud, waste, and abuse in the SBIR program or the STTR program of the Federal agency;

(F) the extent to which the Inspector General of each Federal agency that participates in the SBIR and STTR program effectively conducts investigations, audits, inspections, and outreach relating to the SBIR and STTR programs of the Federal agency; and

(G) the effectiveness of the Government and public databases described in section 638(k) of this title in reducing vulnerabilities of the SBIR program and the STTR program to fraud, waste, and abuse, particularly with respect to Federal agencies funding duplicative proposals and business concerns falsifying information in proposals; and

(2) submit to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the head of each Federal agency that participates in the SBIR program or STTR program a report on the results of the study conducted under paragraph (1).

(c) Inspector General reports

Not later than October 1 of each year, the Inspector General of each Federal agency that participates in the SBIR program or STTR program 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 describing—

(1) the number of cases referred to the Inspector General in the preceding year that related to fraud, waste, or abuse with respect to the SBIR program or STTR program;

(2) the actions taken in each case described in paragraph (1) if fraud, waste, or abuse was determined to have occurred;

(3) if no action was taken in a case described in paragraph (1) and fraud, waste, or abuse was determined to have occurred, the justification for action not being taken; and

(4) an accounting of the funds used to address fraud, waste, and abuse, including a description of personnel and resources funded and funds that were recovered or saved.

(Pub. L. 112-81, div. E, title LI, §5143, Dec. 31, 2011, 125 Stat. 1854.)

CODIFICATION

Section was enacted as part of the SBIR/STTR Reauthorization Act of 2011, and also as part of the National Defense Authorization Act for Fiscal Year 2012, and not as part of the Small Business Act which comprises this chapter.

DEFINITIONS

Pub. L. 112-81, div. E, title L, §5002, Dec. 31, 2011, 125 Stat. 1823, provided that: “In this division [enacting this section and section 638a of this title, amending sections 632 and 638 of this title, enacting provisions set out as notes under this section and sections 631 and 638 of this title, and amending provisions set out as a note under section 638 of this title]—

“(1) the terms ‘Administration’ and ‘Administrator’ mean the Small Business Administration and the Administrator thereof, respectively;

“(2) the terms ‘extramural budget’, ‘Federal agency’, ‘Small Business Innovation Research Program’, ‘SBIR’, ‘Small Business Technology Transfer Program’, and ‘STTR’ have the meanings given such terms in section 9 of the Small Business Act (15 U.S.C. 638); and

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

§ 639. Reporting requirements and agency cooperation

(a) Annual reports to President and Congressional officers and committees

The Administration shall, as soon as practicable each fiscal year make a comprehensive annual report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal year. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are let