

(1) A for-profit business concern, as defined in § 121.105, that is at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; or,

(2) A for-profit business concern that is 100% owned by another for-profit business concern, as defined in § 121.105, that is itself at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States.

The SBA also proposes to revise the first sentence of § 121.702 by changing "To be eligible to compete for award \* \* \*" to "To be eligible for award \* \* \*". Under this proposed change, an applicant for an SBIR award would not need to meet the eligibility requirements when it submits its proposal. Rather, the applicant would have to be eligible at the time of the award. Section 121.702 is the only regulatory reference requiring that the applicant be eligible for an award. This proposed change would make § 121.702 consistent with § 121.704, which sets forth when the SBA determines the size status of a business concern, and with the "Policy Directive for the Small Business Innovation Research (SBIR) Program" (Directive) (67 FR 60072, dated September 24, 2002), both of which require that the concern be eligible when it receives the SBIR award.

This proposed rule broadens program eligibility, but at the same time it adheres to the purpose of the SBIR Program—it seeks to increase productivity in the U.S. by increasing innovations of U.S. owned small business concerns. This proposed rule addresses only the ownership component pertaining to SBIR eligibility, maintains the 500 employee size standard, and changes no part of the definition of "concern" in § 121.105 and in the Directive. That is, a concern must be, besides meeting the 500 employee size standard, organized for profit, have a place of business located in the United States, and operate primarily within the United States or make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

#### Request for Comments

The SBA seeks the public's comment on this proposed rule, and requests specific comments on at least the following:

(1) Whether a business concern owned by another business concern should be eligible for award of funding agreements in the SBA's SBIR Program;

(2) Whether ownership of the SBIR awardee should be limited to only one other concern, or whether the awardee could be owned by more than one business concern;

(3) If the SBIR awardee could be owned by more than one other concern, how SBIR Program managers could be assured that the ultimate ownership of the awardee is "at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States;"

(4) How many firms may become eligible for SBIR awards under this proposed rule, if the SBA adopts it as a final rule;

(5) Whether the increased number of eligible business enterprises would create additional competition that would adversely affect research and development (R&D) concerns that meet the current ownership requirement;

(6) Whether permitting an R&D concern owned and controlled by another for-profit business concern that is itself "at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States" is consistent with the Congressional intent that the SBIR Program benefit small U.S. business concerns.

#### Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Small business size standards determine what businesses are eligible for Federal small business programs. This proposed rule will not affect small business size standards, but may affect the number of awards to different small businesses pursuant to the SBIR Program. The SBA's Regulatory Impact Analysis follows.

#### Regulatory Impact Analysis

##### 1. Need for This Regulatory Action

The SBA believes it should revise its Small Business Size Regulations to allow small businesses wholly owned by other for-profit business concerns to participate in the SBIR Program, because doing so will render the SBIR size eligibility requirements more consistent with the intent of Congress in SBIDA. Under § 121.702(a), an R&D company eligible for SBIR funding can be of any legal form, and must meet two criteria: (1) it must be organized for profit; that is, it must meet the

definition of "business concern" in § 121.105; and (2) it must be 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. However, if that eligible concern has a wholly owned subsidiary, the rule precludes the subsidiary from being eligible for SBIR funding. This is true, even though the employees of the subsidiary are included in determining whether the eligible concern meets the 500 employee size standard. As discussed in the Preamble, the SBA believes this is an unnecessary restriction on potential SBIR participants.

Modifying the type of concern that could receive an SBIR award will raise the number and quality of technological innovations by small concerns, as Congress intended in SBIDA. Agency SBIR Program managers will be able to involve more small businesses in the SBIR Program, make awards that Congress and their agencies have funded but would likely go unawarded, and administer the program more consistently.

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of what it means to be a small business and define what small businesses are eligible for various Federal Government programs. The Small Business Act (15 U.S.C. 632(a)) delegates responsibility for establishing small business definitions to the SBA Administrator.

R&D concerns compete for SBIR awards based on technology, merit, feasibility and commercialization plans, not on cost. Newly eligible concerns might compete with one another for the SBIR awards that generally go unawarded, and with current program participants for all program awards as well. The proposed revision is consistent with the SBA's statutory mandate to assist small business. This proposed regulatory action will promote the Administrator's objectives. One of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit. Reviewing and modifying the SBA's Small Business Size Regulations, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.