

organized for profit, the subsidiary would not be eligible because not-for-profit entities are not eligible for the SBIR Program. Further, the legislative history of SBIDA states that small business concerns have trouble competing with not-for-profit entities. The proposed change to size eligibility for the SBIR Program will more accurately define the type of small concern that the SBA believes meets the intent of Congress in SBIDA.

(2) Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

The SBA cannot determine precisely how many concerns would become eligible as a result of this rule, if adopted, because it has no data on how many wholly owned subsidiaries there are in the United States. In fiscal year 2002, there were about 5,000 annual SBIR awards for approximately \$1.5 billion, less than 2% of which are multiple awards. The SBA believes that between 50 to 100 concerns will become eligible under this rule, as discussed above.

The SBA believes that the additional eligible concerns will not have a significant impact on existing small concerns. While there are approximately 5,000 annual SBIR awards, over 98% are awarded to concerns that receive no other awards during the year. That is, there are approximately 4,900 awards in any given year to approximately 4,900 individual concerns. The SBA estimates that there are on average three concerns competing for any given award. There would be, therefore, about 15,000 concerns seeking SBIR awards. The SBA does not believe that an additional 100 competitors, about 0.7%, will add significant competition for SBIR awards.

The SBA recognizes that newly eligible firms might be viewed as competition for those firms now receiving awards, because this rule could increase the number of concerns eligible for SBIR. However, newly eligible firms under this rule will not be larger in size than current participants. This rule will not increase the population of eligible firms by adding larger concerns; it will only add concerns with different ownership structures. Therefore, newly eligible concerns competing for SBIR awards will not have the benefits that generally accrue to larger concerns. While there will be a small increase in the number of concerns competing, they will not be more competitive due to their size.

The SBA also believes that many of the applicants who have been denied SBIR awards, or others that do not apply, are wholly owned subsidiaries of

current and past participants in the SBIR Program. If the proposed rule is implemented as final, wholly owned subsidiaries of concerns that have in the past or that now participate in the SBIR Program can receive SBIR awards, provided they are otherwise eligible. The SBA's experience is that some participating concerns subcontract, to the degree permitted by the Directive, some of their projects to their subsidiaries. The SBA does not object to this practice. The SBA believes these concerns would prefer to have their subsidiaries eligible to submit proposals and receive awards. Further, when the parent concern is eligible, the SBA does not consider its newly eligible subsidiary as adverse competition for SBIR Program awards. The SBA has specifically requested comments on this issue in the Supplementary Information above to assess how this proposed rule will effect competition in the SBIR Program.

Participating agencies have no limit to the number and amount of awards they may make in a given fiscal year. The agencies have goals and objectives, but they are not limited to those levels. This rule, if the SBA adopts it as a final rule, will open up opportunities for more small R&D concerns to participate in the SBIR Program.

(3) Projected Reporting or Recordkeeping, or Other Compliance Requirements of This Rule

This proposed eligibility requirement does not impose any additional reporting, recordkeeping or other compliance requirements on small entities for the SBA's programs. It also does not create additional costs on a business to determine whether or not it qualifies as a small business. A business need only examine existing business information to determine its eligibility, such as its Federal tax returns. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

(4) Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Rule

The SBA's Small Business Size Regulations may in some instances overlap other Federal rules that use the SBA's small business size standards to define a small business. However, this proposed rule is limited to a single program and does not conflict with other regulatory requirements, or any small business program, other than the SBIR Program's Policy Directive.

However, if this proposed change is adopted as final, the SBA will amend the Directive so that it is consistent with this rule.

(5) Alternatives To Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities

The SBA considered permitting concerns that are less than wholly owned by other concerns, or are owned by more than one other concern, to be eligible for SBIR awards. The SBA believes that in such cases it would be virtually impossible to assure that SBIR awardees are ultimately at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. To verify eligibility under those circumstances could require more reporting requirements for SBIR applicants. The SBA believes that the additional reporting requirements from applicants to prove their small business status would unnecessarily burden small concerns. The SBA is also concerned about how SBIR Program managers could be assured that the ultimate ownership of the awardee is an eligible small business for the SBIR Program under this alternative. However, the SBA specifically requests comment on whether this alternative is administratively feasible.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the Preamble, the SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 638, 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Revise § 121.702 to read as follows:

§ 121.702 What size standards are applicable to the SBIR program?

To be eligible for award of funding agreements in the SBA's Small Business Innovation Research (SBIR) program, a business concern must meet the following criteria:

(a) The concern must be either:

(1) At least 51 percent owned and controlled by one or more individuals who are citizens of the United States, or