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SBIR Program Due for Reauthorization

By Jill Schmalz (Saturday, October 20, 2007)

This is an important year in the effort to restore SBIR eligibility for majority venture capital-backed biotech companies. On Sept. 30, 2008, the Small Business Innovation Research (SBIR) grant program's authorization expires. This program was last reauthorized in 2000, so this is a unique opportunity for legislation to clarify that domestic, small businesses with fewer than 500 employees should be able to compete for SBIR grants regardless of their capital structure.

Since a Small Business Administration (SBA) administrative law judge made the narrowest interpretation possible of SBA regulations in 2003, many small businesses in capital intensive industries like biotechnology and medical devices have been excluded from competing for SBIR grants. Prior to this ruling, these grants provided a unique funding mechanism for very early stage projects that were too high risk to attract venture capital investment. In the absence of these grants, projects have been halted, research staff has been let go, and the development of new therapies has been delayed. The impact of this ruling has also been felt at the National Institutes of Health (NIH), which has seen two consecutive years of a double-digit decline in SBIR applications and the lowest number of grants going to new companies in a decade.

Despite the growing evidence that the 2003 rule change has disadvantaged biotechnology development and produced undesirable policy outcomes at the NIH, there is an engrained and vocal small group of businesses that oppose BIO's efforts to restore eligibility to small businesses with significant venture capital financing. These interests have widely benefited from the SBIR program because the reduced competition for grants has allowed these few companies to receive tens and hundreds of SBIR grants per company.

However, Speaker Nancy Pelosi (D-Calif.) recognized that greater competition will foster innovation and included the restoration of SBIR eligibility for small business with venture capital investment in her Innovation Agenda for the 110th Congress. Additionally, under the leadership of Chairwoman Nydia Velázquez (D-N.Y.), the House Small Business Committee recently approved the "Small Business Investment Expansion Act" (H.R. 3567).

This legislation, introduced by Representatives Jason Altmire (D-Pa.) and Sam Graves (R-Mo.), modernizes the definition of small businesses so that venture capital investment alone does not preclude a company from competing for small business assistance including SBIR grants. On Sept. 27, the House of Representatives passed H.R. 3567 by a vote of 325 to 72. BIO will work to ensure that whatever compromise may be negotiated between the House of Representatives and Senate on H.R. 3567 includes the provision modernizing the definition of a small business concern to allow for venture capital investment.

BIO is also working to include a restoration of eligibility in legislation that will reauthorize the SBIR program. In the House Committee on Science and Technology, which shares jurisdiction of the SBIR program with the House Small Business Committee, Chairman David Wu (D-Ore.) has held two hearings on the SBIR program. Dr. Gary McGarrity, executive vice president of scientific and clinical affairs at VIRxSYS, testified on behalf of BIO. In these hearings, both Chairman Wu and Ranking Member Phil Gingrey (R-Ga.) voiced support for BIO's position.

There is strong support from Senators on the Senate Small Business Committee, including longtime champion Senator Kit Bond (R-Mo.), to address this issue. Senator John Kerry (D-Mass.), chairman of the Senate Small Business Committee, has in the past expressed concern over restoring eligibility for small biotechnology companies. However, BIO is hopeful that a compromise that was reached and approved by this committee at the end of last year to set aside a portion of SBIR grants

for majority-venture backed small businesses, while not perfect, will carry forward into this year's legislation reauthorizing the SBIR program.

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