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Robert Schmidt
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SBTC Memo RE: Concerns with DOD Execution of Foreign Risk Due Diligence Program

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Executive Director

SBTC would like to express some concerns shared to us by our members about how the DOD's foreign risk Due Diligence program required under 15 USC 638 (vv) is being executed. A number of companies have told us that they have had their awards cancelled, paused or delayed for months, with little to no feedback from program offices as to why or when more information might be shared with them. When they have been told that their awards are cancelled or delayed due to the due diligence procedures, there has often been very little information offered as to what specifically caused the award to be flagged, and what the company can do to mitigate the problem.

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Further, even when the company is told of specific flags that have caused the award to be cancelled or held up, there is often no clear protocol for the company to communicate clarifications and mitigation measures for the said contract or future bids.

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Under Secretary Kathleen Hicks circulated a memo earlier this year establishing uniform procedures for all components to use when implementing their due diligence programs. One of the things the memo laid out was that a written explanation of why a small business was deemed ineligible will be provided to small businesses to help them understand what security risks were identified, and take steps to mitigate them. We appreciate Secretary Hicks' memo, but several DOD components have yet to implement the processes laid out in it. Despite waiting months, several firms have not received any such report, nor received any timetable for receiving it.

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We would like to point out that in the case of DOD, there are already well-established processes in place for vetting companies doing business with DOD which are continuously updated to keep up with evolving national security threats. Facilities are vetted by the Defense Counterintelligence and Security Agency (DCSA) through established protocols for investigation, feedback, corrective action timelines and post implementation audits. These procedures are well documented in DCSA guidance manuals which include the Facility Clearance Orientation Handbook, the self-inspection handbook for National Industrial Security Program (NISP) contractors, the National Industrial Security Program Operating Manual (NISPOM) and the DCSA Assessment and Authorization Process Manual. While the implementation guidance for 15 USC 638 states that vetting should be coordinated through DCSA for contracts above \$ 5 mm, most SBIR contracts rarely exceed this amount. As such the new foreign risk assessment requirements are being implemented by the agencies without leveraging prior



experience or current practices for major DOD contractors, for vetting government contractors for national security risk.

We understand that the foreign risk requirements are new and the processes are still being implemented, but the small businesses that participate in SBIR/STTR program need more clarity and feedback than they are receiving as their day to day business is being immediately and negatively impacted. At the very least there should be a clear timeline provided so the company knows how long they will have to wait before hearing back and taking corrective or mitigating action.

There is also a concern about a lack of a mechanism by which firms can clarify or correct errors made by the due diligence review board. Specifically, one of our companies has told us that they had a SBIR contract cancelled due to a company employee who had written a paper with a Chinese national 8 or 9 years ago. The employee has had no contact with the Chinese national after the paper was written 8 years ago. The Chinese national in question never worked for the company and the company employee had had no contact with the Chinese national after the paper was written. The company was not given any opportunity to respond or explain the situation.

Our members are concerned that, under the current process, which is in large part based on a software-based search of the internet for public information on the company, they could be excluded from SBIR by error or misinformation, with no recourse or method to correct the error. No matter how well a system works, errors are inevitable, and without a mechanism to identify and address errors, the system simply can't function effectively. The process should be fair and protect individual and company due process right to know what the allegations against them are and be able to correct mistakes or errors. Additionally, the agencies that have denied awards to companies without rationale should go back to companies and let them know what has been flagged and how to mitigate risk in the future

The Small Business Technology Council (www.SBTC.org) is the nation's largest association of small, technology-based companies in diverse fields. SBTC advocates on behalf of firms who participate in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.