

FUNDAMENTAL CONCERNS WITH THE INNOVATE ACT

The INNOVATE Act (S. 853), introduced by Senator Joni Ernst (R-IA) and Roger Williams (R-TX), significantly undermines the merit-based approach in SBIR and STTR that have been so successful in developing critical technologies for the warfighter, space exploration, and the healthcare professional. If enacted without critical modifications, SBIR funding would be nearly exclusively captured by established, well-funded, VC-backed companies that will exploit the SBIR program for taxpayer money to leverage VC investments.

KEY OBJECTIONABLE PROVISIONS INCLUDE, BUT ARE NOT LIMITED TO:

- \$75 million lifetime cap on small business concern including affiliates, spinouts, subsidiaries [Section 201, Pages 15-16).
- Waiver authority from \$75 million lifetime caps – fundamentally problematic for a number of reasons, including but not limited to – (1) overly bureaucratic process; (2) award-by-award basis for waiver (what small business would apply for award without knowing if waiver would apply; (3) who are the Undersecretary and the Director; (4) non-delegation provision in practice means that if there is no Undersecretary or Director then no one will be there to make the waiver; (5) waiver would only apply to national security – what about other agency priorities – health, life science, energy, technology etc?; (6) waiver doesn't apply to \$40 annual revenue limit that prohibits a business from actually submitting a Phase I (so waiver isn't really a waiver at all).
- Primary Investigator limited to not concurrently serving on more than 1 proposal to single Phase I or single Phase II solicitation [Section 201, Pages 16-17].
- Prohibit small businesses (including affiliates, spinouts, and subsidiaries) from applying for Phase I if > \$40 million annual receipts in most recent Fiscal Year [Section 201, Page 17]
- Small business (including affiliates, spinouts, and subsidiaries), regardless of size or breadth of competency, may not submit more than 10 proposals to a single Phase I solicitation or a single Phase II solicitation [Section 302, Page 37]
- Limit on small business (including affiliates, spinouts, and subsidiaries) to not submit more than 25 Phase I or Phase II proposal submissions in a single FY [Section 302, Pages 37-38]
- Small businesses (including affiliates, spinouts, and subsidiaries) with >25 lifetime Phase II awards cannot compete for direct to Phase II awards [Section 501, Page 56]
- Small businesses (including affiliates, spinouts, and subsidiaries) cannot receive more than 25 direct to Phase II awards from an agency [Section 501, Page 56]
- Three-year reauthorization [Section 505, Page 57 Line 17-20]
- Any foreign affiliation, licensing agreement, joint venture, contractual or financial obligation, investment agreement, research relationship (including co-authorship) or business relationship between the small business (including affiliates, spinouts, and subsidiaries) of the covered individuals, owners, or key personnel for the preceding 10 years renders that entity ineligible [Section 401, generally]
- Changing preferences from owned and controlled by women or disadvantaged individuals to emerging states and rural areas[Section 202]

SECTIONS REQUIRING SIGNIFICANT MODIFICATION:

- Phase 1A program [Section 201]
- Strategic Breakthrough Program [Section 102]