



November 4, 2013

Congressional Committees

Small Business Innovation Research: Data Rights Protections

The Small Business Innovation Research (SBIR) program targets small businesses for federal research or research and development funding to develop and commercialize innovative technologies. The SBIR program is managed by the Small Business Administration (SBA). Under the program, small businesses that have been granted awards by federal agencies participating in the SBIR program enter agreements with these agencies to perform the research work. Specifically, federal agencies with a budget of more than \$100 million for extramural research or research and development—which is generally conducted by nonfederal employees—must establish and operate an SBIR program.¹ The Small Business Act, in a 1992 amendment, required SBA to include in its SBIR policy directive a provision for small businesses to retain the rights to data they generate in the performance of an SBIR award for not less than 4 years. The law also prohibited federal agencies from approving any agreement that violates any provision of the law or directives, including the provisions, related to data rights. The National Defense Authorization Act (NDAA) in 2012 required SBA to amend its SBIR policy directive to address the NDAA's amendments to the Small Business Act, including those regarding data rights.² The NDAA also requires GAO to report to Congress on whether (1) federal agencies comply with the data rights protections for SBIR awardees, (2) the laws and policy directives are sufficient to protect the data rights of SBIR awardees, and (3) there is an effective process for tracking and resolving SBIR awardee grievances regarding data rights.

SBA is now in the process of amending the provisions of the SBIR policy directive that pertain to data rights. Because the update to the policy directive has a bearing on the issue of whether laws and policy directives are sufficient to protect SBIR awardees, GAO will study the data rights issues once SBA has completed this update, which SBA officials estimate will be in late 2013 or early 2014.

To determine the status of SBA's update to the policy directive, we reviewed laws and the current SBIR policy directive and interviewed SBA officials. We conducted this performance audit from August to October 2013, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹Eleven federal agencies currently participate in the SBIR program: the Departments of Agriculture; Commerce; Defense; Education; Energy; Health and Human Services; Homeland Security; and Transportation; the Environmental Protection Agency; the National Aeronautics and Space Administration; and the National Science Foundation.

²Pub. L. No. 112-81, Title LI, § 5151, 125 Stat. 1857 (2011).

We are not making any recommendations in this report.

We requested comments from SBA on a draft of this report, but none were provided.

We are sending copies of this report to the Administrator of the Small Business Administration, the appropriate congressional committees, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or ruscof@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report were Karla Springer, Assistant Director; Richard Johnson; Cynthia Norris; and Ilga Semeiks.

A handwritten signature in black ink that reads "Frank Rusco". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Frank Rusco
Director, Natural Resources and Environment

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