

Small Business Administration

§ 121.705

other convertible securities on an as converted to common basis.

[77 FR 76225, Dec. 27, 2012; 78 FR 11745, Feb. 20, 2013, as amended at 81 FR 34259, May 31, 2016; 81 FR 48579, July 25, 2016; 81 FR 71983, Oct. 19, 2016; 85 FR 66182, Oct. 16, 2020]

§ 121.703 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions based upon a specific funding agreement, and are binding upon the parties. Other SBA opinions provided to funding agreement officers or others, are only advisory, and are not binding or appealable.

§ 121.704 When does SBA determine the size and eligibility status of a business concern?

(a) The size and eligibility status of a concern for the purpose of a funding agreement award under the SBIR and STTR programs is determined at the time of award for both Phase I and Phase II SBIR and STTR awards, or on the date of the request for a size determination, if an award is pending.

(b) A concern that qualified as a small business at the time it receives an SBIR or STTR funding agreement is considered a small business throughout the life of that specific funding agreement. Where a concern grows to be other than small, the funding agreement agency may exercise the options on the award that is a contract, grant or cooperative agreement or issue a continuation on a grant or cooperative agreement and still count the award as an award to a small business under the SBIR or STTR program. However, the following exceptions apply:

(1) In the case of a merger or acquisition, the awardee must, within 30 days of the transaction becoming final (or the approved funding agreement novation if a novation is required), recertify its small business size status to the funding agreement agency or inform the funding agreement agency that it is other than small. If the awardee is other than small, the agency can no longer fund the options or issue a continuation pursuant to the funding agreement, from that point forward, with SBIR or STTR funds. Funding agreement novations for reasons other

than a merger or acquisition do not necessarily require re-certification. The funding agreement agency and the awardee must immediately revise all applicable Federal contract and grant databases to reflect the new size status from that point forward.

(2) For the purposes of SBIR and STTR funding agreements with durations of more than five years, a funding agreement officer must request that a business concern re-certify its small business size status no more than 120 days prior to the end of the fifth year of the funding agreement, and no more than 120 days prior to exercising any option or issuing any continuation. If the awardee certifies that it is other than small, the funding agreement agency can no longer fund the options or issue a continuation pursuant to the funding agreement with SBIR or STTR funds. The funding agreement agency and the awardee must immediately revise all applicable Federal contract and grant databases to reflect the new size status from that point forward.

(c) Re-certification does not change the terms and conditions of the funding agreement. The requirements in effect at the time of award remain in effect throughout the life of the funding agreement.

(d) A request for a size re-certification shall include the size standard in effect at the time of re-certification.

[77 FR 76226, Dec. 27, 2012]

§ 121.705 Must a business concern self-certify its size and eligibility status?

(a) A business concern must self-certify that it meets the eligibility requirements set forth in § 121.702 for a Phase I or Phase II SBIR or STTR funding agreement.

(b) A business concern that is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms and a joint venture where one or more parties to the joint venture is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms must be registered with SBA as of the date it submits its initial proposal (or other formal response) to a Phase I or Phase II SBIR

§ 121.801

announcement or solicitation. The concern must indicate in any SBIR proposal or application that it is registered with SBA as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(c) A small business concern that did not meet the requirements of paragraph (b) of this section at the time of its SBIR proposal or application must notify the funding agreement officer if, on the date of award, the concern is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(1) The concern is still eligible to receive the award if it becomes majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms after the time it submitted its initial proposal (or other formal response) to a Phase I or Phase II SBIR announcement or solicitation if the agency makes the award on or after the date that is 9 months from the end of the period for submitting applications under the SBIR solicitation.

(2) This small business, known as a covered small business concern, would have to certify that it meets the requirements of the SBIR program set forth in §§ 121.702(a)(1)(ii) or 121.702(a)(1)(iii), and 121.702(a)(2) and 121.702(c) at the time of award of the funding agreement.

(d) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest or other credible information which would cause the funding agreement officer or SBA to question the size or eligibility of the concern.

(e) Procedures for protesting an awardee's self-certification are set forth in §§ 121.1001 through 121.1009. In adjudicating a protest, SBA may address both the size status and eligibility of the SBIR or STTR awardee.

[77 FR 76227, Dec. 27, 2012]

SIZE ELIGIBILITY REQUIREMENTS FOR PAYING REDUCED PATENT FEES

§ 121.801 May patent fees be reduced if a concern is small?

These sections apply to size status for the purpose of paying reduced pat-

13 CFR Ch. I (1-1-23 Edition)

ent fees authorized by Pub. L. 97-247, 96 Stat. 317. The eligibility requirements for independent inventors and non-profit organizations for the purpose of paying reduced patent fees are set forth in regulations of the Patent and Trademark Office of the Department of Commerce, 37 CFR 1.9, 1.27, 1.28.

§ 121.802 What size standards are applicable to reduced patent fees programs?

A concern eligible for reduced patent fees is one:

(a) Whose number of employees, including affiliates, does not exceed 500 persons; and

(b) Which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this section.

§ 121.803 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions, based upon a specific patent application pursuant to the rules of the Patent and Trademark Office, Department of Commerce, and are binding upon the parties. Other SBA opinions provided to patent applicants or others are only advisory, and are not binding or appealable.

§ 121.804 When does SBA determine the size status of a business concern?

Size status is determined as of the date of the patent applicant's written verification of size.

§ 121.805 May a business concern self-certify its size status?

(a) A concern verifies its size status with its submission of its patent application.

(b) Any attempt to establish small size status improperly (fraudulently, through gross negligence, or otherwise) may result in remedial action by the Patent and Trademark Office.