

Small Business Administration

§ 121.802

who are citizens of, or permanent resident aliens in, the United States; and

(b) Not have more than 500 employees, including its affiliates.

EFFECTIVE DATE NOTE: At 69 FR 70185, Dec. 3, 2004, §121.702 was revised, effective Jan. 3, 2005. For the convenience of the user the revised text is set forth as follows:

§ 121.702 What size standards are applicable to the SBIR program?

To be eligible for award of funding agreements in the SBA's Small Business Innovation Research (SBIR) program, a business concern must meet the requirements of paragraphs (a) and (b) below:

(a) *Ownership and control.* (1) An SBIR awardee must (i) be a concern which is at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; or

(ii) Be a concern which is at least 51% owned and controlled by another business concern that is itself at least 51% owned and controlled by individuals who are citizens of, or permanent resident aliens in the United States; or

(iii) Be a joint venture in which each entity to the venture must meet the requirements set forth in either paragraphs (a)(1)(i) or (a)(1)(ii) of this section.

(2) If an Employee Stock Option Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner.

(3) If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner.

(b) *Size.* An SBIR awardee, together with its affiliates, not have more than 500 employees.

§ 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 status of a business concern?

The size status of a concern for the purpose of a funding agreement under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards or on the

date of the request for a size determination, if an award is pending.

[69 FR 29206, May 21, 2004]

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

(a) A firm must self-certify that it currently meets the eligibility requirements set forth in §121.702 of this title or will meet those eligibility requirements on the date of award of a funding agreement for a Phase I or Phase II SBIR award.

(b) 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 by other offerors or other credible information which would cause the funding agreement officer or SBA to question the size of the concern.

(c) Procedures for protesting an offeror's self-certification are set forth in §§121.1001 through 121.1009.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29206, May 21, 2004]

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 patent 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