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United States Senate

COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510-6350

November 20, 2000

The Honorable William S. Cohen
Secretary of Defense
Office of the Secretary
The Pentagon
Washington, D.C. 20301-1155

Dear Secretary Cohen:

Please utilize your discretion within the Department of Defense (DOD) to fund phase one and phase two contracts that have already been awarded under the Small Business Innovation Research (SBIR) Program. It has come to our attention that DOD is delaying the funding of contracts with small businesses that have been awarded phase one and phase two contracts under DOD's SBIR Program. While the existing authorization for the SBIR program expired on October 1, 2000, both the Senate and the House have passed identical bills to reauthorize the program through September 30, 2008, demonstrating that there is substantial support for the program in Congress. As Chairman and Ranking Member of the Senate Committee on Small Business (Committee), which has jurisdiction over the SBIR program, one of our top priorities is ensuring that the SBIR program is reauthorized prior to Congress adjourning. We are fully committed to making this happen.

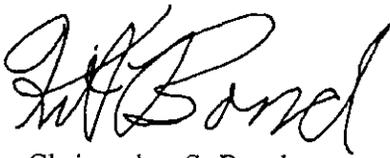
In the meantime, there is a very real possibility that small high-technology businesses that have won SBIR awards, and are relying on funding from the program will be placed in financial peril if DOD decides to delay action on SBIR awards. In fact, the Committee has received information that some small businesses are already preparing to lay off employees because funding has been delayed. We urge DOD to take all appropriate and reasonable steps to ensure that this does not occur.

As you are aware, DOD has already received funding for Fiscal Year 2001 research and development expenditures. Current law permits DOD to use the discretionary portion of such funding for small business research and development activities, such as those conducted under the SBIR program. An example of one statute that may permit the funding of such awards is subsection 644(i) of title 15 of the United States Code. This provision authorizes DOD, notwithstanding any other provision of law, to set-aside for small businesses procurements of research and development. The Competition in Contracting Act treats such set-aside procurements as having been conducted under "competitive procedures," which is the same treatment it applies to SBIR awards. Moreover, DOD appears to have the legal authority to fund awards that were approved while the authorization for the SBIR program was in effect. Accordingly, DOD should rely on all appropriate legal authority it has to continue funding SBIR awards while awaiting reauthorization of the program and we request that DOD acknowledge its

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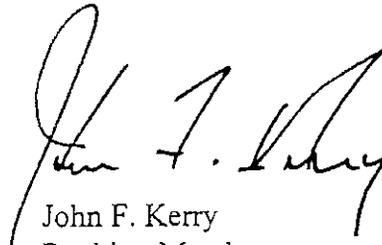
authority, use its discretion wisely and fund those awards that have already been approved. Given the importance of this issue, we further request that you provide a response to this letter by Thursday, November 30, 2000.

Thank you for your attention to this matter. If you have any questions, please contact us or David Bohley, Counsel for the Majority, at (202) 224-5175 or Kevin Wheeler, Legislative Assistant for the Minority, at (202) 224-



Christopher S. Bond
Chairman

Sincerely,



John F. Kerry
Ranking Member