

From: Rife, Jack M <Jack.M.Rife@wv.gov>
Sent: Wednesday, July 17, 2019 2:35 PM
To: Kevin DiGregorio <kevindig@suddenlink.net>
Subject: RE: [External] Public Comment on Rules for New SBIR/STTR Matching Fund

Hello Kevin,

Thank you for submitting the following comments and observations in response to the West Virginia Department of Commerce, Development Office's (WVDO), filing of 145 Code of State Rules 15 (SBIR/STTR matching funds program). We here at WVDO are likewise excited about the opportunities this program presents.




As background to the rule filing, the WVDO was mandated in HB 2550 to promulgate a legislative rule detailing how the agency will administer the SBIR/STTR matching funds program. When promulgating a legislative rule an agency can interpret the law while drafting the rule; however, if the legislature gives specific, direct guidance, then the agency must follow the provisions as set forth in the law. In short, the legislature makes the law and executive agencies enforce what the legislature passes. With respect to HB 2550, the 2019 Legislature gave WVDO express direction on how the matching funds program shall be administered and I drafted 145 CSR 15 to mirror the language contained in HB 2550. As such, I regret to inform you that WVDO cannot amend 145 CSR 15 to incorporate the comments you have provided because the Legislature did not give us that option. With respect to your comment regarding 145 CSR 15.6.1., the WVDO elected to create 3 windows for acceptance of SBIR/STTR matching funds applications to coincide with the predominant periods of issuance of grants by the various federal agencies and to make the process manageable for the review committee.

I have spoken with Debra Martin with SBDC here at the WVDO and we anticipate conducting stakeholder meetings in the near future to discuss roll-out of the SBIR/STTR matching funds program. I anticipate Ms. Martin will be contacting you in the near future to extend to you an opportunity to participate as we move forward. We anticipate having the program in place and ready to accept applications by January 1, 2020. If you have any further questions or need my assistance, please do not hesitate to contact me.

Best regards,

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From: Kevin DiGregorio <kevindig@suddenlink.net>
Sent: Monday, July 15, 2019 1:29 PM
To: Rife, Jack M <Jack.M.Rife@wv.gov>
Subject: [External] Public Comment on Rules for New SBIR/STTR Matching Fund

Hi Jack,

Thanks much for your work on the SBIR Matching Fund. This is an important activity for innovation and diversification in WV. I've been working with start-ups and small businesses for years now, including reviewing SBIR proposals and serving on Phase 0 Award Committees, and I have some thoughts or questions on a number of the rules. I realize some of these may come directly from code and thus can't be changed, but I think we need to think about these if we are able.

Here they are ...

5.1.2.A ... Must have final report, Phase II (PII) interest, and PII submission to get full match for Phase I (PI)... I think the full match should be based only on receipt of the PI award and should come at that point ... It should be \$\$\$ to aid the PI work and not also a "partial reward" for the PI work

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

5.1.2.B ... See above but for PII (must have submitted final PII report to get match) ... Again, the program should be to increase the probability of success of the PII work and not to reward it

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

5.1.4 ... Shall not receive concurrent funding ... Why not? ... If the company can get more \$\$\$ to enable success, what's wrong with that? ... I think we should be an enabler of success as much as possible and not a potential hindrance in any way

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

6.1 ... I think we should make the submission a rolling submission to accommodate any and all opportunities

AGENCY RESPONSE: The agency will not adopt this comment. The rule designates three open application periods for acceptance of applications for matching funds. These application periods closely track the periods when federal grants are awarded and provide a framework for the review committee to perform its review function.

7.1.2 ... Only one Phase 0 award per year per company ... I don't think we should limit this in the rules ... I understand trying to spread it around, but maybe have that as an award committee goal or even as a "suggested rule" if that's a thing ... But don't limit and hamstring the ability to give awards where they can be most useful, even if that means one company getting multiple awards

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

7.1.4 ... See 712 ... Maximum of 5 PO awards lifetime ... Again, why hamstring the committee (or whomever) with that?

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

7.2 ... Maximum \$100K with two remittances ... I know this could be due just to the total \$\$\$ available and if so, that's understandable, but if a company gets \$300K for a PII and \$200K would greatly help them achieve success, then why not? ... Also again, why two remittances? ... I say give them all of the funds on receipt of the award

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

7.2.1 ... This seems to conflict with 512A and 512B at first reading ... Will receive 50% on receipt of award and 50% after submittal of report etc ... I realize having "full" in the wording for 512A makes it not really in conflict, but it could be confusing (it was to me until I read it over again) ... Then again, if we get rid of the second remittance as I suggest above this becomes moot

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

7.2.3 ... Again, only one grant per year per company ... No need to hamstring award decisions in my mind

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

7.2.5 ... Again, max of 5 awards lifetime per company ... Same as above

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

7.3 ... Again, max \$100K per award ... Same as above

AGENCY RESPONSE: The agency will not adopt this comment. The referenced provision from the rule tracks the exact language in the statute.

Finally ... will there be a review committee or something like that to make the decisions on who gets the matching grants? If so, is that in the code or should it be in the rules?

Please let me know if you'd like to discuss or if I can be helpful in any way.

Thanks much.

Kevin

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