



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-209790

February 21, 1986

The Honorable Silvio O. Conte
House of Representatives

Dear Mr. Conte:

This is in response to a letter dated November 20, 1985, in which you joined with Chairman Parren J. Mitchell, and three other members of the House of Representatives, concerning the applicability of the definition of "research" or "research and development" (R&D) appearing in section 4 of Public Law 97-219, the Small Business Innovation Development Act of 1982, to certain Department of Defense (DOD) activities. More specifically, you refer to funds in DOD's "Operational System Development", category 6.6, and request our opinion as to whether activities funded under this category are within the statutory definition.

In your letter, you mention our report to the Congress, dated October 25, 1985, "Implementing the Small Business Innovation Development Act--The First 2 Years", GAO/RCED-86-13. In it we discussed a disagreement between the Small Business Administration (SBA) and DOD concerning DOD's failure to report Operational System Development as extramural R&D under the Act, while at the same time reporting the same activities as research to the National Science Foundation and in the Office of Management and Budget's summary of Federal research funds in the President's budget (Special Analysis K). We recommended that the Secretary of Defense definitively determine which activities funded under the Operational System Development Category of DOD's Research, Development, Testing and Evaluation (RDT&E) appropriations conform to the common definition of R&D found in the Small Business Innovation Development Act, the National Science Foundation's annual survey of Federal R&D funds, and the special analysis of Federal R&D funds in the President's budget. We also recommended that that determination then consistently be applied when reporting R&D funding data to the three recipients. Our discussion is found at pages 22-26, 29-31 of the report. You now ask for a GAO ruling on whether the activities funded under category 6.6 meet the definition of R&D.

In our opinion, for the reasons stated below, activities conducted under DOD's "Operational System Development," category 6.6, are within the definition of research and development included in the Small Business Innovation Development Act of 1982. Therefore, the Department of Defense should report the extramural portion of these activities to the SBA as extramural "research and development."

The Small Business Innovation Development Act of 1982, Pub. L. No. 97-219, 96 Stat. 217, which amended section 9 of the Small Business Act, 15 U.S.C. § 638 (1982), defines the term "research" or "research and development" as:

"any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements." Section 9(e)(5).

DOD obtains R&D funds under RDT&E appropriations. The appropriations are divided into six categories, including Operational System Development, which is described in the DOD Budget Guidance Manual as follows:

"Includes those projects still in full-scale engineering development but which have received approval for production * * * or production funds have been included in the DOD budget submission for the budget or subsequent fiscal year. All items in this area are major line item projects which appear as RDT&E Costs of Weapon System Elements in other programs.* * *"

Additionally "Engineering Development," category 6.4, is described as follows:

"Includes those projects in full scale engineering development for Service use but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects * * *."

In decision 62 Comp. Gen. 232 (1983), we held that the set-aside for the National Aeronautics and Space Administration's (NASA) Small Business Innovation Research Program (SBIR) under the Small Business Innovation Development Act should be applied only to programs within the NASA's R&D appropriation which fit into the statutory definition of research and development in the Act. In doing so, we considered the actual nature of the items being funded by that appropriation, some of which were, by their terms, for operational activities.

In the case of DOD, category 6.6, "Operational System Development" is described as "full scale engineering development," and is included in RDT&E appropriations. We have no reason to think that this characterization is inaccurate. The Act's definition of R&D includes the "design, development, and improvement of prototypes and new processes to meet specific requirements."

We note that the description of activities for "Operational System Development" and "Engineering Development" is similar, and yet DOD has only considered the latter to be R&D for SBIR purposes. The difference appears to be that under category 6.6, "Operational System Development," the development is related to weapons systems in production or nearing production. However, the statutory definition of R&D would apply to this circumstance as well as one in which the development is for an entirely new weapons system or component.

Subsequent to the receipt of your request for our opinion, our staff met with officials of the Directorate for R&D of the DOD Controller's Office. Our staff was told that both categories encompass development activities within the scope of the R&D definition in the Small Business Innovation Development Act. It was explained that DOD had objected to the inclusion of "Operational System Development" activities

within the scope of the Act because when production had already commenced, the development contract by necessity was awarded to the contractor producing the system or component. Thus, there were few opportunities for others, including small businesses, to do the development work. According to the DOD officials, in this circumstance the inclusion of category 6.6 amounts in the overall R&D totals would lead to increased SBIR awards in other R&D areas, possibly overburdening them. Notwithstanding this, the DOD officials now agree that the category 6.6 activities are R&D in nature.

As activities conducted under "Operational System Innovation Development", category 6.6, are within the definition of research and development found in the Small Business Development Act of 1982, the Department of Defense should include the extramural portion of category 6.6 activities as extramural research and development in its report to the Small Business Administration. However, the Committee on Small Business may wish to consider whether category 6.6 activities should be exempted from the Act because of the practical difficulties cited by the DOD representatives.

Unless you notify us otherwise, this opinion will be available for distribution after 30 days.

Sincerely yours,

Milton J. Rosler
for Comptroller General
of the United States