

# Small Business Notes

*In this issue:*

- **U.S. Small Business Administration (SBA) Posts Online Tutorial for Proposals for Small Business Innovation Research (SBIR) Grants**

The SBA has developed and posted on the website <https://www.sbir.gov/tutorials> a set of eighteen mini-courses designed to aid interested parties in learning about the operation of the SBIR grant program. The materials are available in video format, in mixed video and text multimedia format, and in print only format. Significantly, while standard topics like preparing a responsive proposal, grant accounting, and finding research partners are addressed there are three topics which have recently become more important for compliance by all federal grant holder: cybersecurity for small businesses, international traffic in arms regulations, and animal and human subjects protection.

The Minnesota High Technology Association is a designated state servicer for parties interested in seeking SBIR grants. See their website <https://mhta.org/>.
- **U.S. Small Business Administration (SBA) Office of Hearings and Appeals Affirms SBA Area Office Denial of 8(a) Disadvantaged Business Application Based on Gender Discrimination Not Directly Connected to Applicants Business Activity**

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The SBA 8(a) program provides access to federal procurement opportunities which are set-aside for or sole-sourced to businesses at least 51 percent owned and controlled by U.S. Citizens who are socially and economically disadvantaged.

The program regulations (13 C.F.R. 124.108) provided that members of certain groups are to be considered presumptively disadvantaged; for example, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans. Absent membership in such a presumptively disadvantaged group, an applicant for the program must establish eligibility by a preponderance of the evidence showing a negative impact on the applicant's entry into or advancement within the business world.
- **A Caution from a Recent Federal Trade Secrets Case: Proprietary Information May Not Be a Trade Secret Absent Reasonable Efforts to Protect It**

Continued...

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In the case at issue, *In Matter of 7 Skyline, LLC* [SBA No. BDPE-574 (2019)] the applicant sought to show disadvantaged status based on gender. The applicant provided statistics related to gender discrimination and education in the applicant's field of renewable energy. The Office of Hearings and Appeals rejected these statistics noting that "...merely reciting statistical data...sheds no light on whether (the applicant) experienced social disadvantage." The Office of Hearings and Appeals continued that the applicant must connect any allegedly discriminatory conduct to outcomes that negatively impact entry into, or advancement within, the business world.

In addition the Office of Hearings and Appeals noted that the applicant's citing an instance of sexual harassment one time while in college was not sufficiently "substantial and far reaching" to evidence social disadvantage, especially in light of the fact that the applicant graduate with honors, was admitted to graduate school, and held high level and successful positions in the industry.

## **A Caution from a Recent Federal Trade Secrets Case: Proprietary Information May Not Be a Trade Secret Absent Reasonable Efforts to Protect It**

On March 4, 2019, a judge for the United States District Court for the Northern District of Illinois, Eastern Division, released a memorandum opinion denying an injunction on the use of information claimed by the plaintiff to have been trade secret information misappropriated by the defendant (a business set up by a former employee of the plaintiff).

The court noted that both the federal Defend trade Secrets Act and the Illinois Trade Secrets Act required that the owner of information take "reasonable measures to keep such information secret."

**{Editor's Note: The Uniform Trade Secrets Act adopted by Minnesota as Minn. Stat. Chapter 325C likewise provides that a trade secret be "...the subject of efforts that are reasonable under the circumstances to maintain its secrecy."}**

The court's opinion stated that the plaintiff' had failed in a number of ways to protect its information:

- By failing to have a company policy on the protection of confidential information.
- By failing to use nondisclosure agreements for employees, customers, and vendors who could access the information.
- By failing to instruct or train employees on the obligation to keep certain types of information confidential.
- By failing to restrict access to a need-to know basis.
- By failing to segregate confidential files from non-confidential ones and failing to encrypt files and ensure that different employees had different passwords.
- By failing to have an exit plan for leaving employees to return or delete any confidential information they held prior to leaving.

The case is *Abrasic 90 Inc, DBA CGW Camel Grinding Wheels, U.S.A v. Weldcore Metals, Inc. et al* No. 18C05376.

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Past issues of Small Business Notes are available on the Department of Employment and Economic Development website at <https://mn.gov/deed/newscenter/publications/newsletters/small-biz-notes.jsp>

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