

No. _____

**In the
Supreme Court of the United States**

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CANVS CORPORATION,
Petitioner,

v.

SECRETARY OF THE AIR FORCE,
Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Can the Armed Services Board of Contract Appeals, an administrative panel, deprive a corporation of valuable intellectual property without due process? Does due process require the ASBCA to consider all evidence submitted at trial before rendering an adverse judgement? Did the ASBCA's (i) refusal to reach a determination on the "bundle of rights" granted and (ii) the CAFC's refusal to consider damages evidence deprive CANVS of due process?

Congress created the Small Business Innovation Research (SBIR) program under the Small Business Act of July 30, 1953, to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns." (see: www.sba.gov) Petitioner, CANVS, participated in the SBIR program and developed highly proprietary hardware used to advance the night time warfighting capabilities of US service men and women. Petitioner received awards of recognition for its Color Night Vision Goggles. Petitioner engaged in a contractual agreement with the US government to allow the government to implement CANVS technology to the benefit of national defense, while ensuring that the proprietary aspects of CANVS's technology would be protected. The US Government not only failed to protect CANVS's technology but actually displayed the technology at an open forum. The government admitted its open display of the technology in breach of its contract, but denied liability alleging "no damages." Petitioner presented evidence to the ASBCA, including damages evidence. However, the ASBCA bifurcated the proceedings, excluded damages evidence and then ruled against Petitioner based upon a "lack of proof of damages."

RELATED PROCEEDINGS

United States Court of Appeals for the
Federal Circuit 19-1190

CANVS Corporation v. Secretary of the Air Force
No. 19-1190 (January 9, 2019)

Armed Services Board of Contract Appeals

In Re: CANVS Corporation Contract No. USZA22-
03-0027

ASBCA Appeals Nos. 57784 and 57987
(September 15, 2018)

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PETITION FOR WRIT OF CERTIORARI

Petitioner, CANVS Corporation, respectfully requests that the Court issue a writ of certiorari to review the judgement of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The Court of Appeals for the Federal Circuit affirmed judgement *per curiam* without opinion on January 9, 2019. That judgement is not reported. The Armed Services Board of Contract Appeals issued its Opinion on September 6, 2018. The Opinion was entered into the public record of the ASBCA Board proceedings as the final decision and judgement on September 15, 2018. That Decision is not reported.

JURISDICTION

This Court has jurisdiction over this Petition pursuant to 28 U.S.C. § 1254. This Petition is timely filed. The Court of Appeals for the Federal Circuit has exclusive jurisdiction over appeals from the Armed Services Board of Contract Appeals (ASBCA) pursuant to 41 U.S.C. § 7101. The ASBCA had jurisdiction to hear the contract appeal of CANVS under 41 U.S.C. § 7100 *et seq.*, and 28 U.S.C. § 1491. The ASBCA entered a Final Written Opinion denying relief under the contract appeal on September 6, 2018 and entered the Opinion and Order on September 15, 2018. On November 9, 2018, CANVS timely filed its Notice of Appeal to the CAFC.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Fifth Amendment:
"No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

In addition, relevant parts of US Code Title 41 Public Contracts § 1702. Chief Acquisition Officers and Senior Procurement Executives. and 15 U.S.C. § 1601 *et seq.*, and 48 C.F.R. Federal Acquisition regulations § 4252.227 Contract Management / Contract Administration and Audit Services, are reprinted in the accompanying Appendix.

INTRODUCTION

Small business and innovation are the cornerstones to freedom and prosperity in America. The government should promote and protect these ideals, not subvert and undermine them. Small businesses, especially in a highly competitive technology-driven field like the defense industry, rely upon innovation and trade secrets for their survival. When a veteran owned small business has its life blood drained away by improper public disclosure, the government should not use protracted proceedings and false procedural technicalities to deprive that company of its opportunity to present evidence of government wrongdoing.

In 2005, the government breached its contract with CANVS. CANVS lost Ten Million Dollars of funding and was crippled. CANVS requested redress from the Department of Defense, and implored the Inspector General of The United States

and Congress to assist. CANVS filed appropriate contract dispute notices and followed procedures, without any results. In 2011, having exhausted all avenues for remedy with the Department of Defense, CANVS was forced to file an appeal of its dispute with the Armed Services Board of Contract Appeals (ASBCA).

For more than a decade after the improper disclosure which crippled CANVS, CANVS continued to labor under the burden of delay and obfuscation by the government. CANVS had run out of resources to continue its pursuit of redress and sought relief from the Federal Courts in the form of a Petition for Habeas Corpus filed in 2018. The request was denied by the Court of Appeals for the Federal Circuit, stating "we cannot say that any delay in reaching a final decision is so egregious as to warrant mandamus." The Supreme Court needs to weigh in and establish that any denial of due process is egregious.

Small business should be entitled to rapid resolution of disputes and should not have to survive the attrition of a sufficiently egregious system. CANVS found the will to continue on and continued to play by the rules, as biased and unfair as they are. However, the ASBCA did not play by their own rules.

The ASBCA bifurcated its proceedings into two parts (1) liability (i.e did the Government breach the contract with CANVS) and (2) damages (i.e. what harm if any was caused). A liability hearing was held, with documentary evidence and live testimony. The breach by the Government was established in phase 1, but relief was denied without even

proceeding to phase 2. The Government had already deposed CANVS's primary damages witness, Mr. Chris Powell, before the liability trial. During the trial on liability, the Government entered a place holder document for damages, called the "Powell Summary, as Government Exhibit G318 " [See appendix, 148a - 154a]. The parties agreed that the Powell document would be accepted into evidence and that it needed no authentication. The ASBCA accepted the document into evidence. Thus the existence, but not the quantum of damages was established during the evidentiary hearing on liability and became an undisputed part of the record at the ASBCA.

The administrative law judge overseeing the ASBCA evidentiary hearing actively prevented CANVS from eliciting any additional damages testimony, because the first trial was only about liability. At the conclusion of the liability phase, the presiding administrative law judge stated that he had formed a preliminary opinion as to a lack of substantial damages. When challenged on the issue of pre-forming an opinion on damages prior to CANVS having an opportunity to present damages, (i.e. prejudice) the ALJ stated in a written opinion: "The scope of the trial encompassed solely entitlement and jurisdictional issues. The Board has not received any quantum evidence and perforce has formed no opinions on the detail of appellant's quantum methodology." [129a -130a] The ASBCA thus confirmed for a third time that the only issue before the ASBCA was liability, not damages.

After two years of post-trial briefing, the ASBCA determined that the Government had indeed made

an improper disclosure and breached the contract:
[107a - 108a]

There is no dispute that the APBI Poster contained technical data, including four photographs which originated from monthly report No. 8 (findings 112, 137). Appellant did not expressly consent or approve of the display of the APBI Poster (finding 125).

However, the ASBCA ignored the bifurcation and improperly decided that there was no reason to reach any decision on liability because damages were not established prior to the damages phase of the proceedings. The ASBCA denied relief based upon a lack of damages evidence, during the liability portion of the proceedings, without conducting any evidentiary hearing on damages: [108a]:

For purposes of this opinion, we determine that resolution of the parties' conflicting contentions regarding these issues [the "bundle of rights"] is unnecessary to decide the merits of these appeals. Assuming, *arguendo*, that the government did not technically comply with the 7018 clause when it displayed the APBI Poster at the SOF / APBI conference, appellant has not demonstrated, by a preponderance of the evidence, that it suffered some injury or damages and that any such alleged damages claimed were caused by the government's disclosure to support its breach claim.

CANVS had no burden of establishing damages and causation of such damages by any preponderance of evidence during the liability portion of a bifurcated trial. CANVS at most had to establish that damages were not purely illusory. The stipulated Powell Statement established the existence of non-illusory damages, as acknowledged by the ASBCA at trial and post-trial.

CANVS was deprived of its valuable intellectual property without due process. CANVS seeks the opportunity to continue the proceedings before the ASBCA in order to be afforded the fair and full opportunity to present quantitative damages evidence and to have that evidence fully and fairly considered by the ASBCA as is CANVS's constitutional right under the Fifth Amendment.

STATEMENT OF THE CASE

This is a breach of contract dispute. CANVS provided confidential materials to the US Government under the terms of an SBIR Phase I and Phase II contract which provided "Limited Rights" to the Government. The ASBCA found that the facts were undisputed that the Government, without notice to nor permission from CANVS, disclosed CANVS's properly marked confidential materials in public. [107a]:

Paragraph (a)(19) of the 7018 clause defined technical data, in part, as "recorded information, regardless of the form or method of the recording, of a scientific or technical nature." There is no dispute that the APBI Poster contained technical data, including four photographs which originated from

monthly report No. 8 (findings 112, 137). Appellant did not expressly consent or approve of the display of the APBI Poster (finding 125).

The Government introduced a document at trial designated as trial exhibit G138, the Powell Written Statement [148a-154a] which evidenced damages in the loss of a pre-public disclosure commitment from Patriot Performance Materials of \$5,000,000 to acquire rights to the subject matter of the SBIR project: [150a]

PPM took the due diligence process very seriously as we were in negotiations with CANVS to obtain exclusive rights to the CANVS Color Night Vision technology for an upfront payment of \$5,000,000 (in recognition of the work already done by CANVS entirely at CANVS expense during the development of the capability) and 10% of future sales.

The Government's document G138 also evidenced that the commitment was withdrawn after the Government's unauthorized public disclosure destroyed the value of CANVS: [153a]

In the end PPM made a business decision to not acquire the CANVS technology because of the exposure that the NVESD/SOCOM release created was insurmountable. In addition, our perception that the activity was intentional indicated a significant additional hurdle to launch of this technology. PPM did not have the

financial ability to initiate a multi-year, multi-million dollar lawsuit to defend the CANVS technology and to hold NVESD/SOCOM accountable for the breach of Data Rights.

CANVS's President Mr. Walkenstein entered testimony at trial in support of both of these issues. The Government did not dispute the disclosure of technical data marked as proprietary by CANVS and did not present any evidence to rebut the Powell written statement nor the Walkenstein testimony confirming the written statement that evidenced that damages were not speculative.

Thus CANVS established the elements necessary for a finding of entitlement, (i) the undisputed fact that marked information was disclosed without authorization (ii) the unrebutted fact that damages occurred (i.e. at least the loss of \$5,000,000 in capital) and (iii) causation, the loss of investment was the direct and proximate result of the Government's actions. See *Action Support Services Corp.*, ASBCA Nos. 46524, 46800, 00-1 BCA ¶ 30,701 at 151,682 (appellant, as proponent of its breach claim, must prove the nature and extent of government's breach, the damages suffered, and the causal link between the government's breach and claimed damages).

The question remaining for Trial was: did the Government have the right to make the public disclosure without the consent of CANVS? The answer to that remaining question is no, the Government had no right to disclose. However, the ASBCA refused to reach that issue, instead denying relief for lack of damages, despite the fact that the

ASBCA had never conducted the damages portion of the trial. [108a]:

For purposes of this opinion, we determine that resolution of the parties' conflicting contentions regarding these issues [the "bundle of rights"] is unnecessary to decide the merits of these appeals. Assuming, *arguendo*, that the government did not technically comply with the 7018 clause when it displayed the APBI Poster at the SOF / APBI conference, appellant has not demonstrated, by a preponderance of the evidence, that it suffered some injury or damages and that any such alleged damages claimed were caused by the government's disclosure to support its breach claim.

CANVS was denied a full and fair hearing.

CANVS developed all of the proprietary data with its own funding prior to the start of any SBIR contract. Thus none of the technical data was "generated under the contract." All of the technical data is found in the CANVS Phase I proposal, including a working prototype and a red tube diagram dated before the start of any SBIR project. The Technical data was properly marked in the proposal and in every document in the SBIR project and CANVS explicitly only granted "Limited Rights." Thus the Government had no right to disclose.

The ASBCA recognized that a determination of rights was required, but declined to make any determination and thus reached its Opinion without proper findings and contrary to the facts and law.

The ASBCA, having found that material designated as proprietary by CANVS was publically disclosed without consent, also recognized that a determination of the parties dispute regarding the "bundle of rights" granted to the Government (limited or unlimited) would form a basis for the issue of liability. [108a]:

Appellant argues that, by disclosing its technical data, the government did not comply with the 7018 clause. The parties have significant disagreement over the proper interpretation of the clause, including, but not limited to, what bundle of rights to the data the government received; whether the restrictive markings in monthly report No. 8 were non-conforming; and whether the data was first "generated" under the contract as that term is defined under the clause.

However, the ASBCA declined to make any findings on this dispute about the "bundle of rights" the "conforming markings" or the "first generated" issue, all fully briefed by CANVS.¹ Instead of determining these relevant and important issues in its Opinion, the ASBCA declined to make any determination of liability/entitlement and instead focused on an issue

¹ Although the ASBCA stated that it was not making these determinations, it made finding of fact #67 [see 34a] that determined markings were conforming, and findings of fact #68 - #71 [35a - 37a] which acknowledge that the disputed elements were developed by CANVS before CANVS received any SBIR finds.

not before the board in its limited trial part 1, i.e. quantum of damages: [108a]:

For purposes of this opinion, we determine that resolution of the parties' conflicting contentions regarding these issues [the "bundle of rights"] is unnecessary to decide the merits of these appeals. Assuming, *arguendo*, that the government did not technically comply with the 7018 clause when it displayed the APBI Poster at the SOF / APBI conference, appellant has not demonstrated, by a preponderance of the evidence, that it suffered some injury or damages and that any such alleged damages claimed were caused by the government's disclosure to support its breach claim.

The ASBCA deprived CANVS of due process in violation of the Fifth Amendment by reaching its erroneous opinion on damages based on an error of law and based upon ignoring unrebutted evidence in the record. CANVS met the standard for an ASBCA Trial in which Quantum of Damages are excluded, set by *Ship Analytics International, Inc.*, ASBCA No. 50914 and *Cosmo Construction Co. v. United States*, 451 F.2d 602, i.e to establish that: ". . . some damage was incurred to support a finding of liability." *Ship Analytics International, Inc.*, ASBCA No. 50914, 01-1 BCA ¶31,253 at 154,353, *citing Cosmo Construction Co. v. United States*, 451 F.2d 602, 605 (Ct. Cl. 1971). *Cosmo* sets the level of evidence at ". . . only sufficient to demonstrate that the issue of liability is **not purely academic**; that some damage has been incurred. . . ." 451 F.2d 602, 605 (Fed Cir. 1971).

The ASBCA instead created a higher standard of ". . . appellant has not demonstrated, by a preponderance of the evidence, that it suffered some injury or damages and that any such alleged damages claimed were caused by the government's disclosure to support its breach claim." Despite the application of an improper higher standard, CANVS's evidence satisfied that higher standard, and yet the ASBCA ignored the evidence submitted as to damages caused by the public disclosure.

In addition to setting an improper standard and ignoring evidence that was un-rebutted at trial, the ASBCA Judge and the Government's Trial Counsel, repeatedly misdirected petitioner and prevented Petitioner from entering additional evidence of damages, stating that further damages testimony was not needed for the liability trial, thus acknowledging that the threshold had already been met. (trial transcript)

MR. CHIANG (US Counsel): Objection, Mr. Powell is not here. This is really moving into the damages phase.

JUDGE PEACOCK: Yes, I'm tending to agree with Mr. Chiang now. Let me just say this, you put this document in the record, Mr. Chiang. Okay? And, you know, it's a Government document. But I want the testimony purely to relate to entitlement, not to potential offers or --

Mr. Walkenstein's testimony and the Government Document G138 [148a-154a] demonstrate that CANVS was to receive a \$5,000,000 investment of capital, however Mr. Powell cancelled the deal after the public disclosure

of CANVS' proprietary data by the Government. The loss of capital prevented CANVS from moving forward due to a lack of funds for production. The Government elicited no testimony to rebut the evidence submitted by CANVS which clearly established the existence, but not the full quantum, of damages. The fact that the Government's counsel entered the documents that established existence, but objected to any elaboration of quantum, demonstrates and establishes that Government counsel conceded the existence of damages at trial and was only objecting to quantum.

The ASBCA cannot limit the evidence submitted at trial, preclude greater examination into the details of the documents through testimony and then *sua sponte* post trial, reverse its own position and find that a "preponderance of evidence was not submitted." The un-rebutted testimony established that "some damage occurred" and that "the issue of liability is **not purely academic**" and thus satisfied the standard for a non-damages entitlement Trial at the ASBCA.

REASONS FOR GRANTING THE PETITION

CANVS is entitled to a full and fair hearing of its rights. CANVS is entitled to a determination of the "bundle of rights" and is entitled to presentation of damages evidence in a properly conducted damages hearing.

A. THE CONTRACT

As with any contract dispute, the place to start is with an understanding of the terms of the contract. As set forth above, the ASBCA found that the Government violated the terms of the contract and

the associated FARS. Based upon the contemporaneous actions of the government employees during the contract, they relied upon CANVS for confidentiality designations made by CANVS. The Government's disregard of these designations and resultant public disclosure was inexcusable. The Government not only understood the proprietary nature of the materials, they also understood the value of the materials. In early 2005, CANVS's Color Night Vision Goggles were twice recognized as an SBIR Success Story.

B. ASBCA OPINION

The ASBCA needed to determine the scope of rights delivered and retained under the SBIR Contract. Without such a determination, there is no contractual, statutory or Regulatory framework to determine breach and liability. However, the ASBCA did not reach a determination on the "bundle of rights" granted to the Government by the SBIR Contract and incorporated FARS. The ASBCA's Opinion instead improperly substitutes a misplaced, quasi analysis based on trade secret law, relying on 7th and 5th Cir. case law. [119a]:

Mobile Medical, 95 Fed. Cl. at 734 (citing *3Mv. Pribyl*, 259 F.3d 587, 595-96 (7th Cir. 2001)) (combination of publicly known characteristics and components that is unique and affords a competitive advantage is protectable); see also *Tewari De-Ox Systems, Inc. v. Mountain States/Rosen, L.L.C.*, 637 F.3d 604,613 (5th Cir. 2011) (combination of disclosed technologies could constitute a trade secret).

Both of these cases were based upon the existence of a "trade secret." Neither case involved a contract with specific provisions prohibiting disclosure of data regardless of its "trade secret" nature, and neither case was controlled by the FAR regulations which precludes disclosure of marked material without any requirement that the data be of a trade secret nature.

Trade secret law is a very narrow area of law that is not applicable to an SBIR contract. The rules and regulations surrounding SBIR contracting and funding were established to fund small business and allow the Government to benefit from new ideas, and to have small business make full and open disclosures with assurances of protected confidence, while protecting small business from Government exploitation and public exposure of its core technologies and data.

The ASBCA, having reached an incorrect conclusion on the issue of evidence regarding the existence of damages declined to decide the issue of rights granted, despite the fact that the ASBCA found:

- (i) that the Government knew that the poster contained proprietary information see finding of fact #119, [58a]
- (ii) that Mr. Walkenstein specifically identified and specified removal of the proprietary information, see finding of fact #120, and [58a]
- (iii) that the Government publicly displayed the poster including the identified proprietary information without "receiving the express

consent from appellant to display the APBI poster." see finding if fact #125. [61a]

The ASBCA then ignored CANVS's designation of "proprietary data" which is the sole requirement to avoid disclosure under both the contract and the FARS. If the Government believed that some markings may be incorrect, the designations by CANVS can only be challenged during the term of the contract and only through a formal process that provides notice to CANVS. The Government raised no objections during the term of the contract nor for the subsequent five years.

The ASBCA improperly allowed the Government to completely disregard these statutory requirements.

CANVS explicitly restricted the use of technical data to Limited Rights, as set forth in the terms of the contract, in the manner specified by the FARS. [108a]:

Assuming, *arguendo*, that the government did not technically comply with the 7018 clause when it displayed the APBI Poster at the SOF/APBI conference, appellant has not demonstrated, by a preponderance of the evidence, that it suffered some injury or damages and that any such alleged damages claimed were caused by the government's disclosure to support its breach claim.

This assumption is correct and thus dispositive of the issue of breach because there is no requirement of "trade secret" or "novelty" to the information that

cannot be publically disclosed when the scope of rights is "Limited Rights."

In an SBIR contract, the appropriate section for setting forth claims to confidentiality and restrictions on the Government's use of confidential information is Section K of the contract. The Government was restricted from any use of any of the CANVS technical data: "Restricted, no disclosure or use without a license from CANVS Corporation." The basis for the assertion of restriction was: "Developed exclusively at offeror's private expense." Thus the rights granted to the Government were clearly delimited as "Limited Rights" even though the term "restricted" was used by CANVS. The Government does not dispute the markings.

Claiming that technical data does not rise to the level of a trade secret or is based on known science, or could have been developed independently by others, is not an exception and does not allow public disclosure by the Government.

The Government unquestionably had only Limited Right and breached the restrictions on disclosure of CANVS Technical Data. Each page of the CANVS documentation was marked. The restriction was stated as: "Restricted, no disclosure or use without license from CANVS Corporation." and "This is a CANVS Corporation Confidential Document. It is not to be retransmitted without expressed written consent of CANVS Corporation."

C. RELEVANT FACTS

The NVESD Booth:

As testified to by Mr. Walkenstein, President of CANVS, he attended the SOF Show in Tampa and

took the photographs of the NVESD Booth and the accused poster at the trade show on June 8, 2005. In fact, the ASBCA in its Opinion acknowledges that the Government disclosed the marked technical data without authorization. There is no dispute that the violation occurred, there are only improper excuses for the violations.

There is no dispute that the Poster as photographed by Mr. Walkenstein was displayed, along with a CANVS Color Night Vision Goggle (CCNVG), at the NVESD booth at the FOS show in Tampa in June 2005. These facts have been corroborated by several witnesses, and accepted by the ASBCA: [107a - 108a]:

Paragraph (a)(19) of the 7018 clause defined technical data, in part, as "recorded information, regardless of the form or method of the recording, of a scientific or technical nature." There is no dispute that the APBI Poster contained technical data, including four photographs which originated from monthly report No. 8 (findings 112, 137). Appellant did not expressly consent or approve of the display of the APBI Poster (finding 125).

D. IMPROPER DISCLOSURES IN THE POSTER

As detailed in the Hearing testimony of Mr. Walkenstein, Mr. Gillespie, Mr. Hosek and others, as detailed in the Proposed Findings of Facts detailed in the ASBCA Opinion, and as concluded by the ASBCA as cited above, the publically disclosed

poster disclosed a number of items of Technical Data that were restricted from disclosure.

The fact that the publically exhibited information came from CANVS technical data is not in dispute, see ASBCA Opinion, quoted in several instances above.

The Government does not dispute that all of the information in the accused SOF Poster came from CANVS. The Government has never presented nor proposed any other source for any part of the Technical Data disclosed and publicized by the SOF Poster.

The Government's documents and witness confirm that the SOF Poster was made from CANVS data. The evidence also demonstrates that the Government employees at SOCOM and at NVESD knew that the materials being used included CANVS proprietary information and knew that the materials needed to be vetted by CANVS before any public disclosure.

CONCLUSION

CANVS has a right to a full and fair opportunity to have its rights adjudicated. The Government and the Armed Services Board of Contract Appeals denied CANVS's right to due process.

There is no legitimate factual dispute between the parties. CANVS fully developed the color night vision goggle and manufactured a working prototype which included tubes and different colored filters using its own funds, nothing of the disclosed technical data was created during the SBIR II Project. The confidential technical materials were presented with goggles in 2001 and the prior four

years of work by CANVS, as acknowledged in findings of fact #72 through #76 [37a - 40a] were all developed before any SBIR contract and include all of the technical data improperly publically disclosed by the Government at the SOF conference, including the use of red phosphor tubes, contrary to the supposition of SBIR.

The Technical Data was provided by CANVS in confidential proposals and briefings prior to the first SBIR Phase I contract. This Technical Data was thus developed exclusively with private funds and thus qualifies for Limited Rights protection.

This Technical Data also forms the basis for the functioning of the Goggles delivered under the SBIR II Contract. This Technical Data was repeated throughout the 15 Reports of the SBIR II contract and is also the Technical Data that was improperly publically disclosed in the SOF Poster in June 2005.

There is no dispute that CANVS created the Technical Data, marked its Reports, and that SOCOM and NVESD disclosed some of CANVS's marked Technical Data to the public at the SOF conference in Tampa in June 2005.

The Government does not deny that it disclosed CANVS Technical Data in a Conference open to non-Government personnel.

The Government cannot deny that the Powell Statement [148a - 154a] establishes the threshold for damages and that this matter should have proceeded to the damages trial.

For the reasons set forth above, this Petition should be granted and CANVS should be allowed to advocate for its right to due processes and for the

rights of all other similarly situated small businesses.

Respectfully Submitted

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