

U.S. DEPARTMENT OF DEFENSE

**SMALL BUSINESS INNOVATION RESEARCH
DESK REFERENCE FOR CONTRACTING AND PAYMENT**

U.S. Department of Defense
SBIR Program Office
Washington, DC 20301

TABLE OF CONTENTS

Cover Letter	4
Quick Reference Topics	5
Accounting System Requirements for SBIR Contracts	6
SBIR Cost Proposal/Budget.....	8
Joint Ventures	12
SBIR Contract Negotiations	14
Firm Fixed-Price, Level-of-Effort Contract.....	16
Clauses in SBIR Contracts.....	19
SBIR Rights in Technical Data and Computer Software.....	38
Rights to Equipment Acquired Under an SBIR Project.....	41
Non-U.S. Consultants and Subcontractors.....	43
Contingent Fees	44
How to Get Paid on Time	45
Novation Agreement to Recognize a Successor in Interest to a Government Contract	48
Human Subject Research	49
Animal Subject Research.....	50
Research Involving Recombinant DNA	51
SBIR References	52
I. Introduction	53
II. Evaluation and Selection	57
III. Processing and Acquisition Package	60
IV. Fast Track	65
V. Contract Type	67
VI. Payment Schedules and Vouchers	71
VII. Negotiation	74
VIII. Special Contract Provisions	79
IX. Contract Administration	84
X. Technical Monitor Guidelines	88
XI. Debriefing Unsuccessful Offerors	91
XII. Phase I	94
XIII. Phase II	100
ANNEX A: SBIR Policy Directive	103
Purpose.....	103
Summary of Legislative Provisions	103
Definitions.....	105
Competitively Phased Structure of the Program.....	109
Program Solicitation Process	113
Eligibility and Application (Proposal) Requirements.....	115
SBIR Funding Process	117
Terms of Agreement Under SBIR Awards.....	120

Responsibilities of SBIR Participating Agencies and Departments	122
Annual Report to the Small Business Administration	126
Responsibilities of SBA	128
Federal and State Technology (FAST) Partnership Program and Outreach Program	132
Appendix I —Instructions for SBIR Program Solicitation Preparation	134
Appendix II —Tech-net Data Fields for Public Database	149
Title 13, Chapter I, Part 121 —Small Business Size Regulations	151
ANNEX B: STTR Policy Directive	153
Purpose.....	153
Summary of Legislative Provisions	153
Definitions.....	155
Competitively Phased Structure of the Program.....	159
Program Solicitation Process	163
Eligibility and Application (Proposal) Requirements.....	165
STTR Funding Process	166
Terms of Agreement Under STTR Awards	169
Responsibilities of STTR Participating Agencies and Departments	172
Annual Report to the Small Business Administration	176
Responsibilities of SBA	178
Appendix I —Instructions for STTR Program Solicitation Preparation	183
Appendix II —Tech-net Data Fields for Public Database and Questionnaire for Government Database	198

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TO: DoD Contracting, Technical, and Program Personnel Involved in the Small Business Innovation Research (SBIR) Program

This is the 8th edition of the DoD SBIR Desk Reference, which is designed to assist you in the efficient processing of SBIR proposals and contracts. This Desk Reference describes practices that have proven to be effective in streamlining the SBIR process while protecting the government's interest.

In addition to general guidance, this Desk Reference contains: (1) the names and phone numbers of personnel in each Component who are experienced in processing SBIRs and available to provide advice to less experienced personnel by telephone—see Annex C; (2) appropriate web addresses and links; and (3) sample payment vouchers and other sample forms.

This Desk Reference advances DoD-wide policy, set out in the 1995 SBIR Process Action Team report, to reduce the time between SBIR proposal receipt and award to 4 months in Phase I and 6 months in Phase II, and to reduce the gap in funding between phases I and II.

If you have any suggestions or comments regarding this Desk Reference, please send them via the SBIR/STTR Help Desk or phone 866-SBIRHLP (866-724-7457).

QUICK REFERENCE TOPICS

Accounting System Requirements for SBIR Contracts	6
SBIR Cost Proposal/Budget.....	8
Joint Ventures	12
SBIR Contract Negotiations	14
Firm Fixed-Price, Level-of-Effort Contract.....	16
Clauses in SBIR Contracts.....	19
SBIR Rights in Technical Data and Computer Software.....	38
Rights to Equipment Acquired Under an SBIR Project.....	41
Non-U.S. Consultants and Subcontractors.....	43
Contingent Fees	44
How to Get Paid on Time	45
Novation Agreement to Recognize a Successor in Interest to a Government Contract	48
Human Subject Research	49
Animal Subject Research.....	50
Research Involving Recombinant DNA	51

ACCOUNTING SYSTEM REQUIREMENTS FOR SBIR CONTRACTS

General Comments

The Defense Contract Audit Agency (DCAA) provides professional accounting and financial advice to Government procurement personnel at all points of the procurement process. SBIR contractors should expect to have direct contact with one or more field auditors from the DCAA branch office in their area and may receive an audit. Current audit guidance is available at: <http://www.dcaa.mil>. A Pamphlet, DCAAP 7641-90 entitled "Information for Contractors," is a valuable source of information on accounting systems requirements and is available through the DCAA website. (Press DCAA Publications, then "Information for Contractors.")

Accounting software packages designed specifically for Government contracting are available. Standard Form (SF) 1408, is used by DCAA auditors as a guide when reviewing the contractor's accounting system. Section II of SF 1408 provides a list of accounting system requirements, and the software selected should be capable of meeting all of these requirements. SF 1408 can also be found in DCAAP 7641-90 (see previous paragraph). It is located at the end of Chapter 2—Preaward Surveys.

The Federal Acquisition Regulation (FAR), Part 31, contains cost principles and procedures. FAR Part 30 describes Cost Accounting Standards Board rules and regulations. The Cost Accounting Standards are at the FAR Appendix. The Cost Accounting Standards do not apply to a small business, but cost principles and procedures (FAR Part 31) do apply.

The extent of the audit and complexity of the contractor's accounting system is influenced primarily by the dollar value and type of contract being awarded.

A firm-fixed-price contract requires a much less complex accounting system. Any review of the contractor's accounting system must determine the adequacy and suitability of the accounting system as required by the type of contract. Under a firm-fixed-price contract, an accounting system review by the DCAA may not be required. The contractor will be expected to provide information to the contracting officer sufficient to support all elements of cost being proposed. Fewer financial/cost reports are required during performance of a firm-fixed-price contract, resulting in a significant reduction in regulatory and administrative burden. The award of the relatively simple firm-fixed-price contract, allows more time for new contractors to develop an accounting system which is adequate for all types of contracts; however, it is important for contractors to develop an adequate accounting system for all contract types as soon as practicable. **The firm-fixed-price type contract is almost always used for a Phase I award.**

FAR 16.301.3(a) states that a cost-reimbursement contract may be used only when the contractor's accounting system is adequate for determining costs applicable to the contract. It also requires Government surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used. A cost-reimbursement contract will not usually be awarded until a determination can be made that the contractor's accounting system is adequate. This usually means a visit from a DCAA auditor. Vouchers for provisional payments under cost-reimbursement contracts are rather complicated and final payment may not be made

for a year or more after completion of the contract. Final indirect rates must be proposed and negotiated prior to final payment. **Within 120 days after settlement of the final indirect cost rates covering the year in which the contract is completed, the contractor must submit a completion voucher to reflect the settlement amount and rates (FAR 52.216-7(d)(5)).**

FAR 42.703-1 states that a single agency shall be responsible for establishing final indirect cost rates for each business unit and the rates shall be binding on all agencies and their contracting offices, unless specifically prohibited by statute. Also, this clause states that billing rates and final indirect cost rates shall be used in reimbursing indirect costs under cost-reimbursement contracts.

The threshold for obtaining cost or pricing data is \$550,000 (FAR 15.403-4(a)(1)). However, if price reasonableness may be determined without its submission, the contracting officer may consider a waiver under the exception at FAR 15.403.1(c)(4). The waiver, if granted, is required at the head of the contracting activity (HCA) level without delegation of authority.

A determination to waive submission of cost or pricing data is usually based upon, a comparative analysis of labor rates for similar labor categories, evaluation of the additional cost information obtained in the form of quotes, catalogue prices, and historical pricing data. Indirect rates are usually based upon historical data or, in the case of relatively new contractors, a reasonable projection of those rates. Upon selection for award, contractors are usually required to provide support for all proposed costs. The greater (more complete) the support, the greater the chances of a waiver of cost or pricing data.

Where to go for Assistance

An operable accounting system that is under general ledger control is of paramount importance when performing Government cost-reimbursement contracts. If assistance is needed in determining the cognizant DCAA office, contractors may call DCAA Headquarters at (703) 767-3274. If the DCAA auditor finds an accounting system unacceptable, the auditor will promptly notify the contractor of the deficiencies and may identify recommendations for correcting the deficiencies. However, DCAA will not develop the new system, as this is the contractor's responsibility. A new company may benefit by employing personnel or consultants who understand rules and regulations applicable to accounting for costs incurred on Government contracts in developing their contract cost accounting system.

"New contractors who are just starting, or plan to start, their first business venture can get much information through the Internal Revenue Service (IRS) Website. Publication 334—"Tax Guide For Small Business" and many other forms and publications are available. The site will also link you to most state tax sites. The IRS website is: <http://www.irs.ustreas.gov/>

SBIR COST PROPOSAL BUDGET

The format for submitting a Phase I cost proposal, and provision for electronic submission, is provided in the solicitation. All items shown may not apply to the proposed project. While support for cost items are not usually required on the original SBIR cost proposal, the contractor should have documentation to support all costs and be prepared to provide that information to the government when requested. An abbreviated sample Phase I cost proposal is provided below. Some item-by-item comments are provided following the sample; however, the cost breakdown guidance provided in the solicitation should be followed:

Cost Proposal

1. Offeror: Innovative Prodigies, Inc., 1 Genius Drive, Paradise, OK 00001
2. Title of effort: "Weightless Perpetual Motion Machine for all Environments."
3. TIN: 72-0000111; Cage Code: 09ABC
4. Topic number and title: MDA04-100—Surprises and Opportunities
5. Dollar Amount of Proposal: \$98,911
6. Direct Material Costs:
 - a. Smoke: \$10,000
 - b. Mirrors: \$6,000
 - c. Total Direct Material \$16,000**
7. Direct Labor Costs:

a. Principal Investigator:	600hrs @ \$42.00	\$25,200
b. Senior Engineer:	300hrs @ \$36.00	\$10,800
c. Total Direct Labor Costs:		\$36,000
8. Labor Overhead:
 - a. 79% of Direct Labor Costs: \$28,440
9. Subcontracts:

a. Phineas T. Barnum III:	200hrs @ \$60.00	\$12,000
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10. Total Costs: \$92,440

11. Profit: \$6,471
12. Total firm-fixed price: \$98,911
13. Type of contract proposed: Firm-fixed-price
14. No Government Agency has reviewed our accounts, no Government Property will be required, and no Government contract financing is required.

The following are comments relating to items in the sample cost proposal.

1. If the effort will be performed at a location other than the address of the firm, enter that address as a separate item.
2. The title of the proposed effort need not be the same as the solicitation topic.
3. If you do not yet have a TIN or Cage Code, so state.
4. Enter the topic number and title as listed in the solicitation.
5. Enter the total dollar amount being proposed.
6. List all direct material costs here. For information on direct versus indirect cost items, see "Material/Equipment Costs" below. If a material overhead rate is being proposed, show as a separate cost item.
7. The technical proposal should support the need for all labor costs being proposed.
8. Valuable guidance for complete proposal preparation and determining proper overhead and G&A rates can be found in Chapter 3 of DCAA Pamphlet, DCAAP 7641-90 entitled "Information for Contractors." This publication is available from DCAA at: <http://www.dcaa.mil>. New contractors with no previous cost experience should project expected costs to arrive at proposed rates. **A "normal" or "average" rate for small businesses performing similar work will not usually be acceptable as support for a proposed rate.**

Note 1: Total overhead expenses in relation to your total labor costs produces a labor overhead rate which is then applied to the specific contract. In SBIR contracts, there may be a labor overhead rate, and a general and administrative (G&A) expense rate; however, one overhead rate including all indirect cost elements may be used if used consistently.

Note 2: Total G&A expenses in relation to your total costs produces a G&A rate which is then applied to the specific contract. Specific costs applied to overhead and G&A may vary according to the contractor's accounting system.

9. **Subcontract costs will usually need to be justified in the same way as prime contract costs, including hours, labor categories, material, etc.** The firm should provide justification for these costs sufficient to show that the costs are reasonable. If using the

on-line cost proposal form, include this detail in the "Explanatory Material" section of the form. The technical proposal should identify the need for all consultant and subcontract costs. The proposing firm must perform a minimum of two-thirds of the research and/or analytical effort for Phase I and a minimum of one-half of the research and/or analytical effort for Phase II. Under the Small Business Technology Transfer (STTR) program, a minimum of 40 percent of the research and/or analytical effort must be performed by the proposing firm and a minimum of 30 percent must be performed by a research institution.

10. Show the total of all direct and indirect costs.
11. DoD Contracting Officers will usually use the Weighted Guidelines Method, as discussed at DFARS SubPart 215.404.71 to determine a reasonable allowable profit amount.
12. Show the total price, including profit, being proposed. The Phase I award is usually limited to \$100,000 and the Phase II is usually limited to \$750,000; however, components within DoD may further limit the amount in their section of the solicitation.
13. A firm-fixed-price contract is the most simplified type of contract and is usually, but not always, the most beneficial to the contractor.
14. Government contract financing will not usually be required or allowed. The contract should allow for periodic payments as portions of the work are completed.

Material/Equipment Costs

To determine whether material costs will be allowable as a direct cost, or an indirect cost, consider the following:

1. Identify all items and describe their use. Group items into a category. For example:
 - a. Items or assemblies of equipment, including standard or general purpose items or components that will be interconnected and interdependent so as to become a new functional entity to accomplish special testing in performing the contract.
 - b. Items that will be consumed or expended in performing the contract. This would include assemblies, components, parts, raw and processed materials, and small tools and supplies that will be consumed in normal use in performing the contract.
 - c. Items that will be used for production, maintenance, research, development or testing, but do not fit into the categories described above. This would include items that cannot be limited to the specific contract, could be used for other work and the need appears to be to add to or augment the contractor's facilities
2. Items listed in the group described at 1.a., will probably be classified as "special test equipment" and a reasonable cost for these items would be allowed as a direct charge to the contract. A "reasonable cost" may be based on a catalog price, quotes, or perhaps cost history.

3. Items listed in the group at 1.b., will probably be classified as "material" and a reasonable cost for these items would be allowed as a direct charge to the contract.
4. Items listed in the group described at 1.c., will probably be classified as "facilities" and the cost of these items will probably NOT be allowed as a direct charge to the contract. They would probably be allowed as an overhead expense. However, when items are disqualified as special test equipment because with relatively minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special test equipment, **the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration would probably be allowed as a direct charge.**
5. **Criteria for allowability is at 7-205.2 of that manual.** FAR 31.205-36 addresses "capital" leases and "operating" leases. Capital leases are leases for equipment to be used as plant equipment (facilities) and the cost of the lease would be depreciated; not allowable as a direct charge. Operating leases are defined at 7-205-1 of DCAA manual 7640-1(contract audit manual) as any lease that is not a Capital lease. Operating leases may be allowable as a direct charge.

Patent attorney services, application filing fees, and prosecution expenses will normally be allowable expenses under SBIR contracts. Paragraph 5.8 of the DoD Solicitation states that "Small business firms normally may retain the principal worldwide patent rights to any invention developed with government support. **The government receives a royalty-free license for its use, ...** " FAR 31.205-30 lists patent costs allowable to the extent that they are incurred as requirements of a Government contract, one of which is "other costs in connection with the filing and prosecution of a United States patent application where title or **royalty-free license is to be conveyed to the Government.**"

For a Phase II, additional guidelines will usually be provided by the contracting agency.

JOINT VENTURES

- **Joint ventures and limited partnerships are eligible for SBIR awards provided the entity created qualifies as a small business.** A joint venture is a separate business entity. Rates may apply to the joint venture created rather than flow down from the separate companies.
- **FAR 4.102(d) states that a contract with joint venturers may involve any combination of individuals, partnerships, or corporations.** The contract shall be signed by each participant in the joint venture. When a corporation is participating, the contracting officer shall verify that the corporation is authorized to participate in the joint venture.
- **Subparagraph 3.(r) of the Small Business Administration SBIR Policy Directive defines a Joint Venture as** 'an association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.'
- **When two companies plan to perform approximately equal portions of an SBIR contract, they have at times proposed as a "Joint Venture" even though a joint venture business entity does not exist.** In order to simplify the process and get the work under contract, innovative procedures may be considered. For example, one company could perform as the prime contractor and the other company could be a subcontractor. This would simplify the process by eliminating the need to create a new business entity for the purpose of performing an SBIR contract. It may also prevent potential problems during and after Phase II as discussed below. In order to accomplish this procedure, at least two things must be addressed:
 1. **Paragraph 1.3 of the DoD SBIR Solicitation requires that a minimum of two-thirds of the research and/or analytical work in each Phase I SBIR project be carried out by the proposing firm.** If the "subcontractor" will perform approximately one-half of the work, a deviation to that requirement must be approved in writing by the contracting officer. This "deviation" is also discussed in paragraph 1.3 of the Solicitation.
 2. **In the normal contractor/subcontractor relationship, the prime contractor will have a proposal from the subcontractor which proposes subcontract costs, including G&A and profit.** The prime contractor may then propose G&A and profit based on total costs, including the subcontract cost. This would result in G&A and profit being applied twice for the work being performed by the subcontractor. Under the "joint venture" type of arrangement described herein, the prime contractor should probably exclude the subcontract cost from the G&A and

profit base in their cost proposal. This would bring the proposed cost more in line with that of a joint venture business entity.

- **There are other potential problems that contractors should consider before agreeing to perform an SBIR contract under a Joint Venture arrangement.**
 1. **Only those firms that were awarded Phase I contracts will be considered for Phase II awards.** (See paragraph 1.2 of the DoD Solicitation). Companies receiving a Phase I "Joint Venture" contract award may subsequently wish to change that joint venture relationship for various reasons. They should be aware that they may not be eligible for Phase II unless the Joint Venture business entity is maintained.
 2. **Rights in technical data, including software, developed under the terms of SBIR contracts generally remain with the contractor for five years after completion of the project.** It may be more desirable for one member company, rather than a "Joint Venture," to acquire those data rights.
 3. **The principal investigator must be with the small business firm at the time of the award and during the conduct of the proposed effort.** If the principal investigator is employed full-time by one of the member companies of the "Joint Venture," that may preclude full-time employment with the Joint Venture.

SBIR CONTRACT NEGOTIATIONS

- **A significant part of negotiations will be the cost proposal.** For that reason, the following information sheet should be used in conjunction with the Cost Proposal/Budget information package.
- **Negotiations should be a team effort between the contractor and the Government.** The purpose of negotiations is to arrive at a reasonable price and agreement on other terms and conditions. A "reasonable price" should be the best estimate of the actual allowable costs that will be incurred during the performance of the contract, plus a reasonable profit. FAR 15.404-1(b)(2) provides a list of acceptable price analysis techniques.
- **If the contractor has developed proper documentation to justify all cost elements during the proposal phase, little additional preparation should be required.** In the SBIR program complete documentation is not usually submitted with the original proposal; therefore, the contracting officer will often require additional information prior to negotiations. This usually takes the form of quotes or catalog prices for material, support for labor, overhead and G&A rates, and subcontractor costs.
- **During negotiations, the contractor should make the contracting officer aware of any changes in the proposed cost.** For awards requiring a certificate of current cost or pricing data, the contractor must also certify that those data are accurate and complete as of the date negotiations were completed. For example, if the contractor has proposed \$100,000 for material costs and subsequent quotes or catalog prices indicate that the cost for material will be less (or more) than originally proposed, that information must be provided during negotiations.
- **The contractor and the contracting officer do not need to agree on an exact amount for each cost element.** Agreement must be reached on a total price for a firm-fixed-price contract, and the total cost and a fixed fee for a cost-plus-fixed-fee contract. All cost elements are usually discussed, but an overall or bottom-line agreement as to what is fair and reasonable is what must be accomplished.
- **A schedule of payments should be developed and agreed upon during negotiations.** At the close of negotiations, the contractor should understand how, when, and under what circumstance payments will be made under the contract.
- **It is almost always easier to resolve questions during negotiation than after the contract is signed.** If unanticipated and/or undesirable clauses or other terms and conditions are included in a proposed contract, the contractor should discuss them with the contracting officer prior to signing the contract.
- **If resolution of questions and/or differences encountered during negotiations become difficult, the contractor should never give the contracting officer the impression that negotiations have reached an impasse.** If the contracting officer feels

that an agreement cannot be reached, the award selection may be withdrawn. Both the Government and the contractor should continue to negotiate in good faith until full agreement is reached.

FIRM FIXED-PRICE, LEVEL-OF-EFFORT CONTRACT

1. **The Firm Fixed Price, Level-of-Effort contract should be suitable for both Phase I and Phase II SBIR awards.** However, the contract type is finally determined by the Government contracting officer during negotiations. Some specific advantages of using this type of contract are:
 - a. **Accounting system reviews would be simplified.** Accounting system reviews are required only to determine the adequacy and suitability for the contractor's accounting system and practices for accumulating costs under the type of government contract being awarded;
 - b. **Fewer financial/cost reports would be required;**
 - c. **The vouchering procedure would be simplified.** Vouchers for provisional payments under cost-reimbursement contracts are very complicated, and submission of incorrect or incomplete vouchers often result in delays in payments. The completion of final voucher (for cost-reimbursement contracts) requires even more data, including an original and four copies of a contractor's release of claims and assignment of refunds, rebates, credits, and other amounts. This would not be required for fixed-price contracts;
 - d. **Final payment could be made soon after satisfactory completion of the effort.** Final payment for a cost-reimbursement contract may not be made for approximately two years after completion of the contract because an audit of indirect rates must be completed before submission of the final voucher; and
 - e. **The Allowable Cost and Payment Clause at FAR 52.216-7 would not be required.** This clause is included in cost-reimbursement contracts and requires the contractor to submit an adequate final indirect cost rate proposal (together with supporting data) to the contracting officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. This incurred cost proposal is discussed in chapter 6 of the Defense Contract Audit Manual DCAAM 7640.1, published by the Defense Contract Audit Agency (DCAA) and available at: <http://www.dcaa.mil/>. An auditor from DCAA will usually set up an "entrance conference" and if the submission is inadequate, the audit will be delayed pending receipt of the necessary documents. This is almost always an extreme burden for small SBIR contractors, and should not be necessary to protect the government's interest in most SBIR contracts.

The above procedure would result in substantial savings for both the Government and the contractor. Money saved by reducing administrative burden would be applied to development of the technology.

2. **FAR 16.104 provides factors that should be considered in selecting and negotiating the contract type.** Note that sub-paragraph (h) of that regulation states: "**Before**

agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical when the contract type requires price revision while performance is in progress, or when a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis." FAR 16.301-3(a)(1) provides that "A cost-reimbursement contract may be used only when— (1) The contractor's accounting system is adequate for determining costs applicable to the contract"

3. FAR 16.207 provides a description, application, and limitations for firm fixed price, level-of-effort term contracts. This regulation is fairly short and quoted below:

"16.207 Firm-fixed-price, level-of-effort term contracts.

'16.207-1 Description.

A firm-fixed-price, level-of-effort term contract requires (a) the contractor to provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms and (b) the Government to pay the contractor a fixed dollar amount.

'16.207-2 Application.

A firm-fixed-price, level-of-effort term contract is suitable for investigation or study in a specific research and development area. The product of the contract is usually a report showing the results achieved through application of the required level of effort. However, payment is based on the effort expended rather than on the results achieved.

"16.207-3 Limitations.

This contract type may be used only when—

- a. The work required cannot otherwise be clearly defined;
- b. The required level of effort is identified and agreed upon in advance;
- c. There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort; and
- d. The contract price is \$100,000 or less, unless approved by the chief of the contracting office."

4. Approval by the chief of the contracting office should not be a problem. This type contract is justified for most Phase II SBIR awards because:

- a. **The work for an SBIR contract cannot be clearly defined.** The proposed technology is not always completed; however, this does not mean that the contract has not been completed. Paragraph 4.(b)(1) of the SBA SBIR Policy Directive states "...Phase II awards may not necessarily complete the total research and

development that may be required to satisfy commercial or federal needs beyond the SBIR Program." Paragraph 1.2 of the DoD Solicitation (2nd subparagraph) states that a "Phase II is the principal research or research and development effort and is expected to produce a well-defined deliverable prototype." A level-of-effort type contract would require the contractor to provide a specific number of hours of 'best effort' toward accomplishing the proposed work. That is all the Government will usually get under an SBIR contract, regardless of the type of contract. Note also that FAR 16.301-2 states: "Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract."

- b. **DFARS 216-104-70(b)(3) states "If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm-fixed-price level-of-effort contract, except see 235.006."** DFARS 235.006 should not restrict the contract type under the SBIR program. This addresses "development of program efforts" or "Research and development for non-major systems, if the contract is over \$25 million." If the Government agrees with the proposed level-of-effort (hours), that number of hours would be included in the contract. It would also be reasonable that the intended results could not be achieved with less than the proposed number of hours. A final report and prototype is almost always required to receive full payment.
5. **Throughout the SBIR Program, simplification, reduction of administrative and regulatory burden, standardization, and prompt payments to contractors is stressed.** FAR 1.102-2(c)(2) states. "To achieve efficient operations, the system must shift its focus from 'risk avoidance' to one of 'risk management.' The cost to the taxpayer of attempting to eliminate all risk is prohibitive." This last reference refers to all contracting, not just SBIR contracting. In the SBIR program we should do much more. It is not reasonable to assume that a Government Technical Monitor cannot "manage the risk" of an SBIR contractor using a Firm-Fixed-Price, Level-of-Effort type contract.

CLAUSES IN SBIR CONTRACTS

Note: FAR 52.107 requires that the clause at 52.252-2 be included in contracts that incorporate clauses by reference. The clause at 52.252-2 provides that, upon request, clauses shall be provided in full text. The clause also requires that the full text of a clause may be accessed electronically, and the electronic address should be provided in the contract.

The following: (a) lists the contract clause number and title; (b) effective date of clause when last reviewed (c) explains briefly what the clause contains; (d) lists the paragraph in the FAR or DFARS which requires the clause; (e) provides information as to when the clause is required; and (f) states whether the clause must flow-down to prime subcontracts:

FAR CLAUSES

52.202-1 DEFINITIONS—JAN 12 (Defines terms such as head of agency, commercial items, components, and contracting officer). The contracting officer may include additional definitions, provided they are consistent with the clause and the FAR. FAR 2.201. Required in contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.203-3 GRATUITIES—APR 84 (Provides terms for termination when the contractor offers or gives a gratuity to an employee of the government) FAR 3.202. Required in contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.203-5 COVENANT AGAINST CONTINGENT FEES—APR 84 (Requires that the contractor warrant that no person or agency has been employed or retained to solicit or obtain the contract for a contingent fee except for a bona fide agency or employee—through improper influence is key factor). FAR 3.404. Required in contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT—SEP 06 (Provides that the contractor shall not enter into any agreement with a subcontractor to restrict sales by the subcontractor directly to the government of any item or process made or furnished by the subcontractor under this contract). FAR 3.503-2. Required in contracts exceeding the simplified acquisition threshold of \$150,000. A flow-down requirement, for subcontracts that exceed \$150,000, is included in the clause.

52.203-7 ANTI-KICKBACK PROCEDURES—OCT 10 (Requires the contractor to have procedures for detecting acts or attempts to provide or accept any kickback). FAR 3.502-3. Required in contracts exceeding the simplified acquisition threshold of \$150,000. A flow-down requirement for subcontracts, which exceed \$150,000, is included in the clause.

52.203-8 CANCELLATION, RECESSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY—JAN 97 (Allows the Government, upon receiving information of illegal or improper activities, to rescind the contract and recover the amount

expended under the contract). FAR 3.104-9(a). Required in contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER

ACTIVITY—JAN 97 (Allows the government to reduce the fee or profit for violations) FAR 3.104-9(b). Required in contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS—OCT 10

(Prohibits a recipient of a contract from, among other things, using appropriated funds to pay any person for influencing, or attempting to influence, employees of any agency in connection with the award of a contract). FAR 3.808(b). Required in all contracts over \$150,000. No flow-down requirement is included in the clause.

52.204-2 SECURITY REQUIREMENTS—AUG 96 (Requires the contractor to comply with security agreement and manual). FAR 4.404(a). Required if the contract may require access to classified information. In accordance with subparagraph (c) of the clause, the contract may be subject to an equitable adjustment. A flow-down requirement, for subcontracts that involve access to classified information, is included in the clause.

52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER - MAY 11

(Encourages the contractor to submit paper documents printed/copied double-sided on recycled paper, or a lesser standard only when such paper is not obtainable at a reasonable price). FAR 4.303. Required in contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.204-7 CENTRAL CONTRACTOR REGISTRATION—AUG 12 (Provides information regarding Central Contractor Registration, Data Universal Numbering System, validation of Taxpayer Identification Number with the IRS, and the requirements for keeping all data current). FAR 4.1104. Required in all contracts except as provided in FAR 4.1102(a). A flow down requirement is not included in the clause.

52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS—AUG 12

(Requires prime contractors to report executive compensation for certain executives, and to report first-tier subcontract awards on all contracts, including SBIR contracts). FAR 4.1403. Applies to contracts expected to be \$25,000 or more. There is no flowdown requirement in the clause.

52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS—APR 10

(Requires the contractor to certify whether he has or has not been debarred or suspended, or committed a fraud or criminal offense, within the previous 3 year period). FAR 9.104-7(a). Required in solicitations/contracts expected to exceed the simplified acquisition threshold. There is no flowdown requirement in this provision.

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT—DEC 10

(Restricts subcontracting with contractors who have been debarred, suspended or have been proposed for debarment). FAR 9.409. Required in

contracts over \$30,000. There is no flowdown requirement in the clause; however, the prime contractor is required by the clause to require each subcontractor, whose subcontract will exceed \$30,000, to disclose whether any debarment, suspension or proposed debarment exists. Subcontracts for commercially available off-the-shelf items (COTS) are exempt from this requirement.

52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS—FEB 12

(Requires the contractor to certify that the information in the FAPIIS system concerning any criminal, civil or administrative proceedings is accurate and complete for the prior 5 year period). FAR 9.104-7(b). Required in solicitations/contracts expected to exceed \$500,000. There is no flowdown requirement in this provision.

52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS—FEB 12.

(Requires the contractor to update his company information on any criminal, civil or administrative proceedings in the FAPIIS system on a semi-annual basis throughout the life of the contract via the Central Contractor Registration database.) FAR 9-104-7(c). Required (1) in contracts expected to exceed \$500,000 and (2) for contractors having current active Federal contracts and grants with a total value over \$10,000,000. There is no flowdown requirement in the clause.

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS—SEP 90

(Refers to a rated order for national defense use, as discussed at FAR subpart 11.6). Requires the contractor to follow requirements of the Defense Priorities and Allocation System Regulation (15CFR 700). Rating is usually entered in Block 1 of SF 26, which is the cover page of the contract. FAR 11.604(b). Required in all rated contracts. No flow-down requirement is included in the clause.

52.215-2 AUDIT AND RECORDS—NEGOTIATION—OCT 10 (Requires that the contractor maintain, and allows contracting officer or representatives to examine, accounting procedures). FAR 15.209(b). Required in negotiated contracts exceeding the simplified acquisition threshold of \$150,000. A flow-down requirement is included in the clause.

52.215-8 ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT—OCT 97

(Provides an order of precedence to be followed, e.g., The schedule, Representations, Clauses, exhibits, and specifications). FAR 15.209(h). Required when the uniform contract format is used at FAR Table 15-1 is used. No flow-down requirement is included in the clause.

52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—AUG

11 (Provides for a reduction in price if cost or fee was increased because cost or pricing data furnished were not complete, accurate and current as certified in the certificate of current cost or pricing data). FAR 15.408(b). Required when contracting by negotiation and certified cost or pricing data are required. The clause at 52.215-12 SUBCONTRACTOR COST OR PRICING DATA requires similar data from subcontractors.

52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--

MODIFICATIONS AUG 11 (Provides for a reduction in price essentially as outlined in the clause at FAR 52.215-10 above). FAR 15.408(c). Required when it is contemplated that cost or

pricing data will be required for the pricing of contract modifications and the clause at FAR 52.215-10 has not been included. The clause at 52.215-13, SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS requires similar data from subcontractors.

52.215-12 SUBCONTRACTOR COST OR PRICING DATA—OCT 97 (Requires subcontractor to submit cost or pricing data). FAR 15.408(d). Required when FAR clause 52.215-10 is included. The clause applies to subcontracts.

52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS—OCT 97 (Requires the subcontractor to submit cost or pricing data). FAR 15.408(e). Required when FAR clause 52.215-11 is included. The clause applies to subcontracts.

52.215-14 INTEGRITY OF UNIT PRICE—OCT 10 (Requires that any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost). FAR 15.408(f)(1). Required in most contracts exceeding the simplified acquisition threshold of \$150,000 (an exception is for service contracts where supplies are not required). A flow-down requirement is included in the clause.

52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS—OCT 04 (Requires the contractor to notify the contracting officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets). FAR 15.408(g). Required when certified cost or pricing data are required. A flow-down requirement is included in the clause.

52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY—OCT 97 (States that facilities capital cost of money is not an allowable cost). FAR 15-408(i). Required in cost-reimbursement contracts when the contractor does not propose facilities capital cost of money as an allowable cost. A flow-down requirement is not included in the clause.

52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS—JUL 05 (Requires the contractor to notify the contracting officer when it is determined that a PRB plan will be terminated) FAR 15-408(j). Required when certified cost or pricing data are required. A flow-down requirement is included in the clause.

52.215-19 NOTIFICATION OF OWNERSHIP CHANGES—OCT 97 (Requires the contractor to notify the ACO within 30 days after it becomes aware that a change in ownership has occurred causing changes to asset valuations or any other costs). FAR 15-408(k). Required when certified cost or pricing data are required. A flow-down requirement is included in the clause.

52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES – OCT 09 (Required on contracts which exceed the threshold for obtaining cost or pricing data (FAR 15.403-4). Requires contractors to identify the percentage of work that will be subcontracted, with the purpose of minimizing excessive pass-through charges by contractors from subcontractors that add no or negligible value to the performance of the contract). FAR 15.408(n)(2). This requirement would apply to most SBIR Phase II contracts, and potentially to many Phase III

contracts, based on the cost or pricing data threshold. There is a flowdown requirement to subcontractors in the clause.

52.216-7 ALLOWABLE COST AND PAYMENT—JUN 11 (Allows the contractor to voucher as work progresses, usually not more often than every two weeks. When the contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid may be paid. See subparagraph (b(ii) of this clause. Requires the contractor to submit, each year, proposed final indirect cost rates with supporting cost data. Also requires the contractor to submit a completion voucher within 120 days after settlement of the final indirect cost rates, covering the year in which the contract is completed, to reflect the settled amounts and rates). FAR 16.307(a)(1). Required for cost-reimbursement and time and materials contracts. A flow-down requirement is not included in the clause.

52.216-8 FIXED FEE—JUN 11 (Allows payment of fee as specified in the schedule—usually based on the percentage of work completed or percentage of hours expended. After payment of 85 percent of the fixed fee, up to 15 percent of the total fixed fee may be withheld. However, the contracting officer may release up to 90 percent of the fee withholds based on the contractor's past performance related to the submission and settlement of final indirect cost rate proposals. FAR 16.307(b). Required in cost-plus-fixed-fee contracts. No flow-down requirement is included in the clause.

NOTE: The clauses at 52-216-11 and 12 shown below would not appear in a contract unless the contractor proposed to perform a contract with no fee or to share a portion of the cost in a cost-reimbursement contract.

52.216-11 COST CONTRACT--NO FEE.—APR 84 (Provides that the government pay no fee. After payment of 80 percent of the total estimated cost, the contracting officer may withhold further payment not to exceed one percent of the total estimated cost up to \$100,000, whichever is less). FAR 16.307(e)(1). Required when the contract allows for no fee and is not a cost-sharing contract. No flow-down requirement is included in the clause.

52.216-12 COST-SHARING CONTRACT-NO FEE. APR 84 (Provides that the government pay no fee and the contractor be reimbursed only for an agreed-upon portion of allowable costs. Allows withholding as shown at 52.216-11 above, except the withholding shall not exceed one percent of the government's share of the total estimated cost up to \$100,000). FAR 16.307(f)(1). Required in cost-sharing contracts. No flow-down requirement is included in the clause.

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS.—MAY 04 (Provides an agreement by the contractor to carry out certain policies to provide the maximum practicable opportunity for participation in subcontracts by small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women). FAR 19.708(a). Required in contracts that exceed the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION—JUN 07 (Requires the contractor to re-represent its business size status on long term contracts over 5 years or following completion of any novations or mergers. Any change in size does not

change the terms and conditions of the contract. Clause is designed to improve the accuracy of small business size status reporting at the prime contract level). FAR 19.308(d). Clause is required in contracts exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas. No flow down requirement is included in the clause.

52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES—FEB 97 (Requires the contractor to notify the Government when an actual or potential labor dispute threatens delay of performance of the contract). FAR 22.103-5(a). Required in contracts as designated by the head of the contracting activity. A flow-down requirement is included in the clause.

52.222-2 PAYMENT FOR OVERTIME PREMIUMS—JUL 90 (Outlines conditions under which overtime is authorized). FAR 22.103-5(b). Required in most cost-reimbursement contracts over \$150,000. No flow-down requirement is included in the clause.

52.222-3 CONVICT LABOR—JUN 03 (Provides agreement that a contractor will not employ any person undergoing sentence of imprisonment except as provided by subparagraph (b) of the clause. Exceptions include persons on parole or probation). FAR 22.202. Required in contracts above the micro-purchase threshold of \$2,500, when performed in the US, District of Columbia, etc., unless subject to Walsh-Healey, or contracts for purchase from federal or state prisons. No flow-down requirement is included in the clause.

52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION—JUL 05 (States that no contractor or subcontractor shall require or permit laborers or mechanics to work in excess of 40 hours per week without compensation at a rate not less than 1 1/2 times the basic rate for hours in excess of 40 hours). FAR 22.305. Required in contracts above \$150,000 (with certain exceptions) when the contract may require or involve the employment of laborers or mechanics. A flow-down requirement is included in the clause.

52.222.21 PROHIBITION OF SEGREGATED FACILITIES—FEB 99 (Provides an agreement that the contractor not maintain or provide for its employees any segregated facilities). FAR 22.810(a)(1). Requires when the Clause at FAR 52.2222.26 is included. A flow-down requirement is included in the Clause.

52.222-26 EQUAL OPPORTUNITY—MAR 07 (Requires the contractor to take various actions regarding discrimination and affirmative action). FAR 22.810(e). Required in all contracts unless exempt under one of the exemptions listed at FAR 22.807. A flow-down requirement is included in the clause.

52.222-35 EQUAL OPPORTUNITY FOR VETERANS—SEP 10 (Requires the contractor to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veteran's status). FAR 22.1310(a)(1). Required for contracts of \$100,000. A flow-down requirement is included in the clause.

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES—OCT 10 (Provides an agreement that the contractor take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based

upon their physical or mental handicap). FAR 22.1408. Required in contracts that exceed \$15,000. A flow-down requirement is included in the clause.

52.222-37 EMPLOYMENT REPORTS ON VETERANS—SEP 10 (Provides that the contractor submit reports at least annually, as required by the Secretary of Labor, on the numbers of special disabled veterans and veterans of the Vietnam era in the workplace and similar information on new employees). (FAR 22.1310(b). Required in contracts of \$100,000. A flow-down requirement is included in the clause.

52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT—DEC 10 (Requires prime contractors and subcontractors to post a notice that delineates employee rights under the National Labor Relations Act, including rights to collective bargaining and protection for employees concerning their freedom to self organize). FAR 22.16. Applies to all contracts, except acquisitions under the simplified acquisition threshold or for work performed exclusively outside the United States. There is a flowdown requirement in the clause to subcontracts over \$10,000.

52.222-50 COMBATING TRAFFICKING IN PERSONS—FEB 09 (Prohibits contractors, subcontractors and their employees from engaging in severe forms of trafficking in persons during the performance of the contract, to include the procurement of commercial sex acts and usage of forced labor. Requires contractors to notify employees of the prohibited activities and the actions that may be taken against them for violations. Also, the penalty of contract termination is available to contracting officers if contractors fail to comply with the requirements of the clause). FAR 22.1703. Applies to all Federal contracts. Paragraph (f) of the clause stipulates that this requirement flow down to all subcontracts

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION – JUL 12 (Requires contractors to verify that certain of their employees are eligible to work in the U.S. by utilizing the E-Verify system administered by the Department of Homeland Security, U.S. Citizenship and Immigration Services. Contractors must enroll in the program and agree to the E-Verify Memorandum of Understanding required of program participants). FAR 22.18. Required in contracts over \$100,000 that are performed in the U.S. and have a duration of at least 120 days. Contracts for commercial off the shelf items are exempt. There is a flowdown required to subcontractors in the clause.

52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA—JAN 97 (Requires the contractor to list and identify any hazardous material to be delivered under the contract—these concerns would likely be addressed during negotiations following a proposal review by the Agency Environmental Office). FAR 23.303. Required in contracts requiring delivery of hazardous materials. No flow-down requirement is included in the clause.

52.223-6 DRUG-FREE WORKPLACE—MAY 01 (Provides that the contractor publish a statement that unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and establish an ongoing drug-free awareness program). FAR 23.505. Required in contracts of any value if expected to be awarded to an individual. If

awarded to other than an individual, required in contracts expected to exceed the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.223-18 CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING—AUG 11 (Encourages the contractor to establish policies to ban text messaging while driving vehicles in the performance of official Government business). FAR 23.11. Required in all solicitations and contracts. A flowdown requirement is included in the clause.

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES—MAR 05 (Restricts acquisition of supplies or services from certain countries unless advance written approval is obtained from the contracting officer). FAR 25.1103(a). Required in contracts over \$2,500. A flow-down requirement is included in the clause. Note: See Class Deviation 2003-O0003 below, which is effective until implemented in the FAR or otherwise rescinded.

52.227-1 AUTHORIZATION AND CONSENT—ALTERNATE I—JUL 95 (States that the Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the contract or any subcontract at any tier). FAR 27.201-2(a). Required in all contracts except when using simplified acquisition procedures. Alternate I—APR 84 applies to all R&D contracts. A flow-down requirement is included in the clause. Note: See FAR 27.201-1(a) regarding a suit for infringement of the patent.

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT—DEC 07 (Provides that the contractor report to the contracting officer, each notice or claim of patent or copyright infringement based on the performance of the contract of which the contractor has knowledge, and furnish, when requested, all evidence in its possession pertaining to such claim). FAR 27.202-2. Required in supply, service, or R&D contracts exceeding the simplified acquisition threshold of \$150,000. A flow-down requirement is included in the clause.

52.227-10 FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER—APR 84 (Provides that the contractor transmit to the contracting officer any proposed patent application, describing subject matter that is classified, for determination as to whether the application should be placed under an order of secrecy). FAR 27.207-2. Required in all classified contracts and in all contracts where the nature of the work reasonably might expect to result in a patent application containing classified subject matter. A flow-down requirement is included in the clause.

52.227-11 PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SHORT FORM)—JUN 97 (Allows the contractor to retain the entire right, title and interest to each subject invention. The government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice the subject invention). FAR 27.303(a). Required in R&D contracts. Short form applies when contracting with small business concerns. A flow-down requirement is included in the clause; however, the clause should be suitably modified as outlined in subparagraph (g) of the clause.

52.228-7 INSURANCE—LIABILITY TO THIRD PERSONS—MAR 96 (Requires the contractor to provide and maintain workers' compensation and other insurance). Required in accordance with agency regulations. For example, DoD FAR supplement, paragraph 228.311-1 requires this FAR clause in all DoD cost-reimbursement contracts. No flow-down requirement is included in the clause.

52.229-3 FEDERAL, STATE, AND LOCAL TAXES—APR 03 (Provides circumstances under which the contract price may be increased or decreased as a result of taxes imposed). FAR 29.401-3. Required in fixed price contracts exceeding the simplified acquisition threshold of \$150,000 that will be performed in the United States. No flow-down requirement is included in the clause.

52.232-2 PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS—APR 84 (Requires the government to pay for work performed upon submission of vouchers as stipulated in the contract). FAR 32.111(a)(2). Required in all fixed price research and development contracts. Note: The contract should contain specific instructions relating to any interim payments allowed or a progress payments clause in addition to this clause. No flow-down requirement is included in the clause.

52.232-8 DISCOUNT FOR PROMPT PAYMENT—FEB 02 (Provides that discounts may be offered or, as an alternative, offerors may include prompt payment discounts on individual invoices). FAR 32.111(c)(1). Required in fixed price supply or service contracts. No flow-down requirement is included in the clause.

52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS—APR 84 (Provides that, if more than one clause or schedule term authorizes temporary withholding or payments, the total of the amounts withheld at any one time shall not exceed the greatest amount under any one clause or schedule term at that time). FAR 32.111(c)(2). Required when the contract includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed. No flow-down requirement is included in the clause.

52.232-16 PROGRESS PAYMENTS—APR 12 (Provides for progress payments to the contractor as work progresses). FAR 32.502-4(a). Required in fixed price contracts when progress payments based on costs incurred are authorized. NOTE: Most agencies provide for other methods for interim payments due to the administrative burden of administering progress payments for a small SBIR contract. No flow-down requirement is included in the clause.x

52.232-17 INTEREST—OCT 10 (Requires that payments that may become payable by the contractor to the government shall bear simple interest from date due unless paid within 30 days. Applies to debts that may arise in connection with the contract). FAR 32.617(a). Required in most contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.232-20 LIMITATION OF COST—APR 84 (Requires the contractor to notify the contracting officer when expected costs will exceed 75 percent of the estimated cost in the schedule or when the total cost of performance will be either greater or substantially less than

previously estimated). FAR 32.705-2(a). Required in fully funded cost-reimbursement contracts. No flow-down requirement is included in the clause.

52.232-22 LIMITATION OF FUNDS—APR 84 (Requires the contractor to notify the contracting officer when, within the next 60 days, costs incurred are expected to exceed 75 percent of the total allotted amount). FAR 32.705-2(c). Required in incrementally funded cost-reimbursement contracts. No flow-down requirement is included in the clause.

52.232-23 ASSIGNMENT OF CLAIMS—JAN 86 (Allows contractor to assign its rights to be paid amounts due as a result of performance to a bank or other financing institution). FAR 32.806(a)(1). Required in contracts that exceed the micro-purchase threshold of \$2,500, unless prohibited under agency regulations. Per DFARS 232.806(a)(2), Alternate I—APR 84 will be used to provide for a "no set-off commitment" unless otherwise authorized under DFARS 232.803 (d). No flow-down requirement is included in the clause.

52.232-25 PROMPT PAYMENT—OCT 08 (Establishes the due date for the government to make invoice payments as the 30th calendar day after the designated billing office has received a proper invoice or the 30th day after government acceptance. On a final invoice, where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the date of contract settlement. Interest may be due on late invoice payments. (See FAR 32.907 regarding interest penalty.) FAR 32.908(c). Required, except when the clause at 52.212-4 Contract Terms and Conditions—Commercial Items, appears, or when payment terms and the late payment penalties are established by other governmental authority, e.g., tariffs. No flow-down requirement is included in the clause.

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION—OCT 03 (Provides that the Government shall make payment to the contractor using the Electronic Fund Transfer information contained in the Central Contractor Registration (CCR) database. Some exceptions may apply per subparagraph (a)(2) of the Clause. The clause also requires the contractor to provide updated information to the CCR databases. Incorrect information in the CCR database may cause suspension of payment.) FAR 30.1110(a)(1).

52.233-1 DISPUTES—JUL 02 (Outlines procedures for resolving disputes). FAR 33.215. Required in all contracts. No flow-down requirement is included in the clause.

52.233-3 PROTEST AFTER AWARD—AUG 96 (Allows the contracting officer to issue a stop-work order upon receipt of a notice of protest—Alternate 1 is included for cost-reimbursement contracts). FAR 33-106(b). Required in all contracts. No flow-down requirement is included in the clause.

52.242-1 NOTICE OF INTENT TO DISALLOW COSTS—APR 84 (Allows the contracting officer to issue a written notice of intent to disallow specified costs). FAR 42.802. Required in cost-reimbursement contracts. No flow-down requirement is included in the clause.

52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS—JAN 97 (Requires the contractor to certify any proposal to establish or modify billing rates or to establish final indirect cost rates and provides a format for the certification). FAR 42.703-2(f). Required in contracts

that provide for interim reimbursement of indirect costs, establishment of final indirect cost rates or contract financing including progress payments. No flow-down requirement is included in the clause.

52.242-13 BANKRUPTCY—JUL 95 (Requires the contractor to furnish, by certified mail, written notification to the contracting officer of any proceedings relating to bankruptcy). FAR 42.903. Required in contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.242-15 STOP-WORK ORDER—AUG 89 (Allows the contracting officer, by written order to stop all work on the contract). FAR 42.1305(b). May be included in negotiated contracts for R&D or supplies and services. Alternate I is used for cost-reimbursement contracts. No flow-down requirement is included in the clause.

52.243-1 CHANGES—FIXED PRICE—AUG 87 (Allows the contracting officer, by written order, to make changes within the general scope of the contract. May require an equitable adjustment in the contract price or other terms). FAR 43.205(a)(1)and(6). Required in fixed-price contracts for supplies. The contracting officer may include the clause, with the alternate V, in R&D contracts. No flow-down requirement is included in the clause.

52.243-2 CHANGES—COST-REIMBURSEMENT—AUG 87—ALTERNATE V—APR 84 (Allows the contracting officer, by written order, to make changes within the general scope of the contract. May require an equitable adjustment in the contract cost, fixed-fee or other terms). FAR 43.205(b)(1)and(6). Required in cost-reimbursement contracts for supplies. The contracting officer may include the clause, with the alternate V, in R&D contracts. No flow-down requirement is included in the clause.

52.243-6 CHANGE ORDER ACCOUNTING—APR 84 (Allows the contracting officer to require change order accounting whenever changes to the contract exceed \$100,000). FAR 43.205(f). May be included in contracts if changes are anticipated. No flow-down requirement is included in the clause.

52.244-2 SUBCONTRACTS—ALTERNATE I—JUN 07 (Requires the contractor to notify the contracting officer, and obtain the contracting officer's written consent, in advance of entering into certain subcontracts). FAR 44.204(a)(1). Required in cost-reimbursement contracts—Alternate I is required in contracts with DoD, the Coast Guard and NASA. No flow-down requirement is included in the clause.

52.244-5 COMPETITION IN SUBCONTRACTING—DEC 96 (Requires the contractor to select subcontractors on a competitive basis to the maximum practical extent). FAR 44.204(c). Required in negotiated contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.245-1 GOVERNMENT PROPERTY—APR 12 (Requires the contractor to maintain a program for the use, maintenance, repair, protection and preservation of government furnished property. Outlines procedures for the acquisition, delivery, use, administration and disposition of other government property during contract performance). FAR 45.107(a). Clause is required in all cost reimbursement, time and material, and labor hour contracts. Also required in fixed price

contracts when the Government will provide government property to the contractor to facilitate contract performance. No flow down requirement is included in the clause.

52.245-9 USE AND CHARGES—APR 12 (Describes conditions under which government furnished property may be used in the performance of government contracts, and whether rental fees are appropriate when granting such use). FAR 45.107(c). Required in contracts when FAR 52.245-1 Government Property, is included. No flow down requirement is included in the clause.

52.246-9 INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM)—APR 84 (Authorizes the government to inspect and evaluate work being performed). FAR 46.309. Required in research and development contracts when the primary objective is not the delivery of end items other than designs, drawings, or reports. No flow-down requirement is included in the clause.

52.246.15 CERTIFICATE OF CONFORMANCE—APR 84 (Authorizes and requires the contractor to ship with a Certificate of Conformance, items that would otherwise require inspection). FAR 46.315. May be used instead of inspection at source at the discretion of the contracting officer in accordance with FAR 46.504. The effect would likely be to speed up payments by eliminating one step in the payment approval process. No flow-down requirement is included in the clause.

52.246.16 RESPONSIBILITY FOR SUPPLIES—APR 84 (Provides that title to supplies shall pass to the government upon formal acceptance). FAR 46.316. Required in fixed-price research and development contracts that exceed the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.246-23 LIMITATION OF LIABILITY—FEB 97 (Limits liability of the contractor to defects or deficiency of supplies or lack of good faith of contractor's managerial personnel). FAR 46.805(a)(1). Required in contracts that exceed the simplified acquisition of \$150,000 and require delivery of end items that are not of high value. No flow-down requirement is included in the clause.

52.247-1 COMMERCIAL BILL OF LADING NOTATIONS—JAN 06 (Requires the contractor to annotate commercial shipping documents when supplies are shipped on a commercial bill of lading and the contractor will be reimbursed transportation costs as a direct allowable cost). FAR 47.104-4. Required in cost-reimbursement and f.o.b. origin contracts. No flow-down requirement is included in the clause.

52.247-34 F.O.B. DESTINATION—NOV 91 (Requires supplies to be delivered f.o.b. destination). FAR 47.303-6(c). Required when supplies are required to be delivered f.o.b. destination. No flow-down requirement is included in the clause.

52.247-63 PREFERENCE FOR US-FLAG AIR CARRIERS—JUN 03 (Provides that the contractor agrees to use U.S.-flag air carriers for international air transportation to the extent available). FAR 47.405. Required in contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to contracts awarded using

the simplified acquisition procedures in Part 13 or contracts for commercial items. A flow-down requirement is included in the clause.

52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SHORT FORM)—APR 84 (Allows the government to terminate the contract, by delivering to the contractor a notice of termination, when in the government's best interest). FAR 49.502(a)(1). Required in fixed price contracts of \$150,000 or less. No flow-down requirement is included in the clause.

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)—APR 12 (Allows the government to terminate the contract, by delivering to the contractor a notice of termination, when in the government's best interest). FAR 49.502(b). Required in fixed-price contracts over \$150,000. No flow-down requirement is included in the clause.

52.249-6 TERMINATION (COST-REIMBURSEMENT)—MAY 04 (Allows the government to terminate the contract, by delivery to the contractor a notice of termination, when in the government's best interest or if the contractor is in default). FAR 49.503(a)(1). Required in cost-reimbursement contracts. No flow-down requirement is included in the clause.

52.249-9 DEFAULT (FIXED PRICE RESEARCH AND DEVELOPMENT)—APR 84 (Allows the government, by written notice of default, to terminate for failure to perform in accordance with the contract). FAR 49.504(b). Required in fixed-price research and development contracts exceeding the simplified acquisition threshold of \$150,000. No flow-down requirement is included in the clause.

52.249-14 EXCUSABLE DELAYS—APR 84 (Provides that the contractor shall not be in default because of failure to perform for certain reasons beyond the control of the contractor). FAR 49.505(d). Required in cost-reimbursement contracts. No flow-down requirement is included in the clause.

52.251-1 GOVERNMENT SUPPLY SOURCES—APR 12 (Provides that the contracting officer may issue the contractor an authorization to use government supply sources). FAR 51.107. Required when the contractor may be authorized to acquire supplies or services from a government supply source. No flow-down requirement is included in the clause.

52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES—JAN 91 (Allows the contracting officer to authorize the contractor to use interagency vehicles). FAR 51.205). Shall be included in cost-reimbursement contracts when the contracting officer may authorize the contractor to use interagency fleet management system vehicles and related services. No flow-down requirement is included in the clause.

52.252.2 CLAUSES INCORPORATED BY REFERENCE—FEB 98 (Provides address to access clauses incorporated by reference electronically and also requires the Contracting Officer will make their full text available if so requested). FAR 52.107(b). Required when clauses are incorporated into the contract by reference. No flow-down requirement is included in the clause.

52.253-1 COMPUTER-GENERATED FORMS—JAN 91 (Allows data to be submitted on a computer generated version of the prescribed form). FAR 53.111. Required in contracts that require submission of data on standard or optional forms. No flow-down requirement is included in the clause.

DFARS Clauses

252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS – SEP 11 (Requires that DoD officials that have participated personally and substantially in a DoD acquisition exceeding \$10 million, or that have held certain key acquisition positions, must obtain a written opinion from the appropriate DoD ethics counselor before accepting compensation from a DoD contractor within 2 years after leaving DoD service). DFARS 203.171. Required in all contracts. There is no flowdown requirement in the clause.

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES—DEC 08 (Provides that contractors shall not knowingly allow persons convicted after Sep 29,1988, of fraud or any other felony arising out of a DoD contract to serve in various capacities). DFARS 203.570-5. Required in all contracts exceeding the simplified acquisition threshold of \$150,000, except for commercial items. A flow-down requirement is included at paragraph (g) of the clause.

252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS – JAN 09 (Requires contractors to inform employees in writing of their whistleblower rights and protections, as delineated in DFARS Subpart 203.9) DFARS 203.9. Required in all contracts. There is no flowdown requirement in the clause.

252.204-7000 DISCLOSURE OF INFORMATION—DEC 91 (Requires the contractor to request approval for release of information pertaining to the contract). DFARS 204.404-70(a). Required in contracts when the contractor will have access to or generate unclassified information which may be sensitive or inappropriate for release to the public. A flow-down requirement is included in the clause.

252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT—APR 92 (Provides that the contractor's procedures for protecting against unauthorized disclosure of information shall not require DoD employees to relinquish control of their work products, whether classified or not, to the contractor). DFARS 204.404-70(b)). Required in all contracts. No flow-down requirement is included in the clause.

252.204-7004 ALTERNATE A, CENTRAL CONTRACTOR REGISTRATION—SEP 07 (Provides various changes to definitions contained at paragraph (a) of the clause at FAR 52.204-7 and requires validation of the contractor's Taxpayer Identification Number (TIN) as part of the CCR process). DFARS 204.1104. Required when clause at FAR 52.204-7 is included in the contract. No flowdown requirement is included in the clause.

252.204-7008 EXPORT-CONTROLLED ITEMS—APR 10 (Reminds contractors to comply with U.S. export-control laws and regulations when export-controlled items, information or technology are involved in contract performance, including requiring the contractor to register

with the Department of State if conditions so warrant). DFARS 204.73. Required in all DoD contracts. A flowdown requirement is included in the clause.

252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS—DEC 91 (Requires the contractor to provide cooperative agreement holders, upon their request, with a list of appropriate employees or offices responsible for entering into subcontracts under defense contracts. "Cooperative Agreement Holder" means a state or local government, a private, nonprofit organization, etc., which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities). DFARS 205.470-2. Required in contracts over \$500,000. No flow-down requirement is included in the clause.

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY—DEC 06 (Provides restrictions and procedures for entering into subcontracts with a terrorist country). DFARS 209.409. Required in contracts with a value of \$150,000 or more. No flow-down requirement is included in the clause.

252.211-7003 ITEM IDENTIFICATION AND VALUATION—JUN 11 (This identification, marking and valuation requirement applies to (1) items delivered to DoD with a unit acquisition cost of \$5,000 or more, (2) items delivered to DoD with a unit acquisition cost less than \$5,000, when identified by the requiring activity as serially managed or mission essential, or (3) any DoD serially managed subassembly or component. Contracts should be structured to provide for such deliverables at the line, subline or exhibit line item level.) DFARS 211.274-6(a). A flowdown requirement to subcontractors is included in the clause.

252.211-7007 REPORTING OF GOVERNMENT FURNISHED PROPERTY - AUG 12. (Replaces the reporting requirements of DD Form 1662 for contractors having Government property in their possession. The clause requires contractors to electronically submit, to the DoD Item Unique Identification (IUID) Registry, the data applicable to Government property in their possession.) DFARS 211.274-6(b). Applies to DoD contractors with GFP in their possession. Clause is used in conjunction with FAR clause 52.245-1, Government Property. There is no flowdown requirement to subcontractors in the clause.

252.215.7000 PRICING ADJUSTMENTS—DEC 91 (Defines "pricing adjustments" as meaning the aggregate increases and/or decreases in cost plus applicable profits). DFARS 215.408(1). Required when FAR clause 52.215-11 or 52.215-13 is used. No flow-down requirement is included in the clause; however, as FAR clauses 52.215-24 and 52.215-25 apply to subcontracts, inclusion in subcontracts may be appropriate.

252.215-7002 COST ESTIMATING SYSTEM REQUIREMENTS—OCT 98 (Defines "Estimating System" as the contractor's policies, procedures, and practices for generating estimates of costs and other data). DFARS 215.408(2). Required in contracts awarded on the basis of cost or pricing data. No flow-down requirement is included in the clause.

252.223-7001 HAZARD WARNING LABELS—DEC 91 (Requires the contractor to label the unit container of any hazardous material to be delivered). DFARS 223.303. Required in contracts

which require submission of hazardous material data sheets—see FAR 23.302(c). No flow-down requirement is included in the clause.

252.223-7004 DRUG-FREE WORK FORCE—SEP 88 (Requires the contractor to institute and maintain a program for achieving the objective for a drug-free work force). DFARS 223.570-4. Required in contracts that involve access to classified information or when the contracting officer determines that the clause is necessary for other specific reasons. No flow-down requirement is included in the clause.

252.223-7008 PROHIBITION OF HEXAVALENT CHROMIUM—MAY 11. (Directs that the contractor shall not provide any deliverable under the contract that contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogeneous material). DFARS 223.73. Clause is required in contracts delivering items with coatings and sealants. A flowdown requirement to subcontractors is included in the clause.

252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES—JUN 12 (Requires delivery of certain items that have been produced in the United States and its possessions, or Puerto Rico). DFARS 225.7002-3(a). Required in contracts which exceed the simplified acquisition threshold of \$150,000, unless an exception is known to apply. No flow-down requirement is included in the clause.

252.225-7031 SECONDARY ARAB BOYCOTT OF ISRAEL—JUN 05 (Provides a certification that the contractor, if a foreign person, company or entity, does not comply with the Secondary Arab Boycott of Israel). DFARS 225.1103(2). Required in all contracts. No flow-down requirement is included in the clause.

252.227-7013 RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS—FEB 12 (Outlines rights in data and marking requirements for data developed). DFARS 227.7103-6(a). Required in non-SBIR contracts when the contractor will be required to deliver technical data to the government. A flow-down requirement is included in the clause.

252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION—FEB 12 (Outlines requirements, including marking, government rights in noncommercial computer software, and documentation developed under the contract). DFARS 227.7203-6(a)(1). Required when the contractor will be required to deliver computer software or computer software documentation. No flow-down requirement is included in the clause.

252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION—JAN 11 (Outlines the government's rights to information contained in a proposal). DFARS 227.7103-6(e)(1) and 227-7104(e)(1). Required in contracts that include the clause at DFARS 252.227-7013 or DFARS 252.227-7018. A flow-down requirement is included in the clause.

252.227-7018 RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE—SMALL BUSINESS INNOVATIVE RESEARCH (SBIR) PROGRAM—MAR 11 (Outlines rights in data and computer software and marking requirements for data developed. Under the clause, the government obtains a royalty-free license to use technical data

marked with an SBIR data rights legend only for government purposes during the period commencing with the contract award and ending five years after completion). DFARS 227.7104(a). Required when technical data or computer software will be generated during performance of contracts under the SBIR program. Note: In accordance with subparagraph 4.(c)(iii)(2) of the SBA Policy Directive, this clause also applies to Phase III awards. This subparagraph states: "A Phase III award is, by its nature, an SBIR award, has SBIR status, and must be accorded SBIR data rights."

252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE—SEP 11 (Outlines procedures for justification, government right to challenge, contractor's right to appeal and final disposition of any appeal regarding validation of restrictive markings). DFARS 227.7104(e)(3) and 227-7203-6(c). Required in contracts that include the clause at DFARS 252-227-7014 or 252-227-7018. A flow-down requirement is included in the clause.

252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE- APR 88 (Allows the Government to order, in addition to data specified in the contract, other technical data or computer software generated in the performance of the contract. Contractor to be compensated for converting the data into the prescribed form, reproduction costs, and delivery costs). DFARS 227.7103-8(b). May be included when a firm requirement for a particular data item(s) has not been established prior to contract award, but there is a potential need for the data. No flow-down requirement is included in the clause.

252.227-7030 TECHNICAL DATA—WITHHOLDING OF PAYMENT—MAR 00 (Allows the contracting officer to withhold payment of up to ten percent of the contract price until technical data is delivered as specified in the contract) DFARS 227-7103-6(e)(2) and 227.7104(e)(4). Required in contracts that include the clause at DFARS 252.227-7013 or DFARS 252.227-7018. No flow-down requirement is included in the clause.

252.227-7034 PATENTS—SUBCONTRACTS—APR 84 (Requires the contractor to include the clause at FAR 52.227-12 Patent Rights—Retention by the contractor (Long Form), suitably modified, in R&D subcontracts with other than a small business firm or nonprofit organization). DFARS 227.304-4. Required in contracts containing the clause at FAR 52.227-11, Patent Rights—Retention by the contractor (Short Form). No flow-down requirement is included in the clause.

252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA—SEP 11 (Sets forth rights and procedures pertaining to the validation of restrictive markings. The contracting officer may challenge restrictive markings if there are reasonable grounds to question their validity, but the challenge must be made within three years). DFARS 227.7102-3(c), 227.7103--6(e)(4), 227.7104(e)(6) and 227.7203-6(f). Required in contracts that include the clause at DFARS 252.227-7013, 252-227-7014, or 252.227-7018. A flow-down requirement is included in the clause.

252.227-7039 PATENTS—REPORTING OF SUBJECT INVENTIONS—APR 90 (Requires certain reports regarding subject inventions). DFARS 227.303(a). Required in contracts which contain the clause at FAR 52.227-11. No flow-down requirement is included in the clause.

252.231-7000 SUPPLEMENTAL COST PRINCIPLES—DEC 91 (Provides that allowability of costs shall be determined in accordance with Part 231 of the Defense FAR Supplement as well as Part 31 of the FAR). DFARS 231.100-70. Required in all contracts except those using simplified acquisition procedures. No flow-down requirement is included in the clause.

252.232-7003—ELECTRONIC SUBMISSION OF PAYMENT REQUESTS—JUN 12 (Requires the Contractor to submit payment requests using an electronic form. Internet addresses for information on various formats are contained in the clause). DFARS 232.7004. Required in all contracts, with some exceptions. Exceptions are not likely to apply to SBIR. No flow-down requirement is included in the clause.

252.232-7006 WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS - JUN 12. (Provides instructions to the vendor for accessing and utilizing DoD's electronic Wide Area WorkFlow system when submitting payment requests and receiving reports to DoD). DFARS 232.7004(b). Required in contracts which contain the clause at 252.232-7003. The clause does not include a flowdown requirement.

252.232-7007 LIMITATION OF GOVERNMENT'S OBLIGATION—MAY 06 (Provides a funding schedule and information regarding performance and funding reports until the contract is fully funded). DFARS 232.705-70. Required in incrementally funded fixed price contracts. No flow-down requirement is included in the clause.

252.232-7010 LEVIES ON PAYMENTS TO CONTRACTORS—DEC 06 (Requires the contractor to promptly notify the contracting officer if an IRS levy on payments may result in an inability to perform a contract). DFARS 232.7101. Required in all contracts other than micropurchases. There is no flow-down requirement.

252.235-7004 PROTECTION OF HUMAN SUBJECTS – JUL 09 (Requires the contractor to comply with the requirements of 32 CFR Part 219, DoD Directive 3216.02 and 10 U.S.C. 980 in the ethical treatment human subjects involved in research projects). DFARS 235.072(e). Required in R&D contracts which include research involving human subjects. There is a flow-down requirement to subcontractors in the clause.

252.235-7010 ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER—MAY 95 (Requires the contractor to acknowledge the government's support in the publication of any material based on or developed under the contract). DFARS 235.071(c). Required in R&D contracts. No flow-down requirement is included in the clause.

252.235-7011 FINAL SCIENTIFIC AND TECHNICAL REPORT—NOV 04 (Requires the contractor to submit two copies of the approved scientific and technical report to DTIC). DFARS 235.071(d). Required in contracts for research and development. No flow-down requirement is included in the clause.

252.243-7001 PRICING OF CONTRACT MODIFICATIONS—DEC 91 (Provides that when costs are a factor in any price adjustment under the contract, the contract cost principles in FAR Part 31 and DFARS Part 231 apply. DFARS 243.205-71. Required in fixed price contracts. No flow-down requirement is included in the clause.

252.243-7002 REQUEST FOR EQUITABLE ADJUSTMENT—MAR 98 (Provides procedures for any request for equitable adjustment for a change in Contract Terms). DFARS 243.205-72. Required in contracts that exceed the simplified acquisition threshold. No flow-down requirement is included in the clause.

252.245-7001 TAGGING, LABELING AND MARKING OF GOVERNMENT FURNISHED PROPERTY—FEB 11. (Requires the contractor to tag, label or mark Government-furnished property items identified in the contract as subject to serialized item management). DFARS 245.102(4)(i). Required in contracts that contain FAR clause 52.245-1, Government Property. There is no flowdown requirement in the clause.

252.245-7002 REPORTING LOSS OF GOVERNMENT PROPERTY—FEB 11. (Requires the contractor to report loss of Government property to the Defense Contract Management Agency eTools software application). DFARS 245.102(5). Required in contracts that contain FAR clause 52.245-1, Government Property. There is no flowdown requirement in this clause.

252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT—MAR 08 (Requires the contractor to furnish 2 copies of a material inspection and receiving report as required by Appendix F of the DFARS). DFARS 246.370. Required when there are separate and distinct deliverables, even if the deliverables are not separately priced. No flow-down requirement is included in the clause.

252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES—JAN 07 (Requires the contractor to notify the contracting officer of any nonconformance or deficiency that could impact the safety of items acquired by or serviced for the Government). DFARS 246.371(a). Required in contracts for systems and subsystems, assemblies and subassemblies integral to a system. A flowdown requirement to subcontractors providing the same type items is applicable.

252.246-7006 WARRANTY TRACKING OF SERIALIZED ITEMS - JUN 11. (This warranty tracking clause is used when it is anticipated that the resulting contract will include a warranty provision for serialized supply items for the DoD inventory). DFARS 246.710(5)(i). Required in contracts that contain DFARS clause 252.211-7003, Item Identification and Valuation. There is no flowdown requirement to subcontractors in this clause.

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA—MAY 02 (Requires, with a few exceptions, contractors to transport supplies exclusively on U.S.—flag vessels). DFARS 247.573(b)(1). Required in all contracts. Use the clause with its Alternate III in contracts below the simplified acquisition threshold of \$150,000. A flow-down requirement is included in the clause.

252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA -MAR 00 (Requires that the contractor notify the contracting officer and agree to comply with the clause at 252.247-7023 upon learning that supplies will be transported by sea). DFARS 247.573(c). Required in contracts in which the contractor has indicated prior to award that they do not anticipate transporting supplies by sea. A flow-down requirement is included in the clause.

252.251-7000 ORDERING FROM GOVERNMENT SUPPLY SOURCES—NOV 04

(Provides instructions for placing orders under Federal Supply Schedules). DFARS 251.107.

Required in contracts which include the clause at FAR 52.251-1. No flow-down requirement is included in the clause.

SBIR RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

The Clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7018—Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program—will be included in all DoD SBIR Phase I, Phase II, and Phase III contracts. In accordance with subparagraph 8 (b)(4) of the Small Business Administration (SBA) SBIR Policy Directive, this inclusion is non-negotiable. Such data rights shall not be the subject of negotiation pertaining to the award of an SBIR Phase III award, or diminished or removed during award administration. An agency shall not, in any way, make issuance of an SBIR Phase III award conditional on data rights. This clause contains guidance, which includes, among other things, definitions, marking requirements, maintenance of records sufficient to justify the validity of any restrictive markings, and applicability to subcontractors. The clause is very complex. **A Patent Attorney should be contacted to help resolve significant problems.** For convenience in reading, and to help answer recurring questions about SBIR data rights, some information has been pulled from applicable DFARS Clauses and provided below:

- The Government shall have "SBIR data rights" in all technical data or computer software generated under an SBIR contract during the period commencing with the contract award and ending upon the date five years after completion of the project from which such data were generated. **The Government may not release or disclose SBIR data to any person, other than its support services contractors, except—** (a) As expressly permitted by the Contractor; (b) For evaluational purposes; or (c) A release, disclosure, or use that is necessary for emergency repair or overhaul of items operated by the Government. Even in those circumstances where SBIR data rights are released to someone outside the government (e.g. support services contractors, emergency/evaluational purposes, etc), the receiver of the data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data and must sign a use and non-disclosure agreement. **Instructions for marking SBIR data rights** are at subparagraph (f) (4) of the clause at DFARS 252.227-7018.
- The Government shall have "**limited rights**" in technical data that were not generated under the SBIR contract that pertain to items, components or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in subparagraph (f) (2) of the clause at DFARS 252 227-7018. "**Limited rights**" means the rights to use, modify, reproduce, release, perform, display or disclose technical data, in whole or in part, within the Government. The Government may not, **without the written permission of the party asserting limited rights**, release or disclose the technical data outside the Government, use the technical data for manufacture, or permit technical data to be used by another party, **except that the Government may reproduce, release or disclose** such data or permit the use of or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is-- (i) Necessary for emergency repair and overhaul; or (ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes; (iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and (iv) The

contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

- The Government shall have restricted rights in **noncommercial computer software** required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract. Marking instructions for computer software delivered or otherwise furnished to the Government with **restricted rights** are at subparagraph (f) (3) of the clause at DFARS 252.227-7018.
- **Removal of unjustified and nonconforming markings.**
 - a. **UNJUSTIFIED MARKINGS.** The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished under the contract are contained in the Validation of Restrictive Markings on **Technical Data** and the Validation of Asserted Restrictions—**Computer Software** clauses of the contract (DFARS 252.227-7037 and DFARS 252.227-7019). Notwithstanding any provision of the contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.
 - b. **NONCONFORMING MARKINGS.** A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the proper format. If the Contracting Officer informs the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore the marking or correct the marking at the Contractor's expense.
- **Contractor procedures and records.** Throughout performance of the SBIR contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software **with other than unlimited rights**, shall— (a) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of the clause; and (2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under the contract. (Per subparagraph (g) of DFARS Clause 252.227-7018).
- **Whenever any noncommercial** technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use the clause at DFARS 252.227-7018 in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration except to identify the parties. The Contractor shall use the Technical Data—**Commercial Items** clause (DFARS 252.227-7015) of this contract to obtain technical data pertaining to **commercial items**, components, or processes. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier

subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software. (Per subparagraph (k) (2) of the clause at DFARS 252.227-7018).

- **"Technical data"** means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information. (Per subparagraph (a) (19) of clause at DFARS 252.227-7018).
- **Commercial computer software**, as defined at subparagraph (a)(1) of the clause at DFARS 252.227-7018, means software developed or regularly used for nongovernmental purposes which—
 - a. Has been sold, leased, or licensed to the public;
 - b. Has been offered for sale, lease, or license to the public;
 - c. Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of the contract; or
 - d. Satisfies the above and would require only minor modification to meet the requirements of the clause at DFARS 252.227-7018.
- **"Noncommercial computer software"** means software that does not qualify as commercial computer software, per subparagraph (a)(16) of the clause at DFARS 252.227-7018.

RIGHTS TO EQUIPMENT ACQUIRED UNDER AN SBIR PROJECT

- **Under the SBIR Program, the contractor may be given continued use of Government equipment acquired during performance of the Phase II contract.** As stated at subparagraph 1. (c) of the SBA Policy Directive, one purpose of the Small Business Act is to "strengthen the role of innovative small business concerns in Federally-funded research and development." To enhance small business participation, several provisions were provided in the Act. Two of these provisions are identified by subparagraph in the Policy Directive and quoted below:

Subparagraph 8. (c)—"Title Transfer of Agency-Provided Property. Under the Act, the Government may transfer title to equipment provided by the SBIR agency to the awardee where such transfer would be most cost effective than recovery of the property."

Subparagraph 8. (d)—"Continued Use of Government Equipment. The Act directs that an agency allow an SBIR awardee participating in the third phase of the SBIR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the SBIR Program."

- A suggested format for a bailment agreement is provided.
- **A prototype fabricated by the contractor with SBIR funds during Phase II is the most common example of Government equipment (property) that will be useful to the small business concern when seeking non-SBIR sources of capital for commercial application of the SBIR funded research.** The contractor should normally be allowed use of the prototype during participation in phase III.
- **The prototype becomes Government property immediately upon completion of the fabrication. However, the property is retained by (transferred to) the contractor for special testing of the technology being developed during Phase II.** Two FAR references which address this are:
 - a. FAR 45.307-2 (a) states: "When special test equipment or components are known, the solicitation (and the contract) shall separately identify each item to be furnished by the Government or acquired or **fabricated by** the contractor for the Government." Note that Special test equipment includes that which is fabricated during performance of the contract. The prototype will usually be classified as "special test equipment" as defined at FAR 45.101
 - b. FAR 45.505 (e) states: "Special tooling and special test equipment fabricated from materials that are the property of the Government **shall be recorded as Government-owned immediately upon fabrication.**" The Special Test Equipment (prototype) immediately becomes Government property and is immediately furnished or transferred to the contractor for special testing purposes.

The guidance in the SBA Policy directive at 8.(d), shown above, indicates that the contractor should normally be allowed to use that prototype for Phase III endeavors.

- **One of three clauses will likely appear in an SBIR contract, depending upon the contract type and the value of the Government property being furnished.** In each clause the contractor is required to maintain property records and follow disposal instructions as determined by the contracting officer. A plant clearance officer will often administer disposition of Government property as a representative of the contracting officer. The clauses are:
 1. FAR 52.245-2 Government Property (Fixed-Price Contracts), should appear if the contract is fixed-price, unless the "short-form" property clause at FAR 52.245-4 is used.
 2. FAR 52.245-4 Government-Furnished Property (Short Form) **may be used when the acquisition cost of all Government-furnished property to be involved in the contract is \$100,000 or less.** This short form clause requires less complex property reporting than the standard clauses at FAR 52.245-2 and 52.245-5.
 3. FAR 52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) should appear if the contract is cost-reimbursement, unless the "short-form" property clause at FAR 52.245-4 is used.
- **Transfer of Government property to the awardee** where such transfer would be more cost effective than recovery of the property by the government, as described in the SBA Policy Directive at subparagraph 8. (c) shown above, is applicable to non-SBIR contracts as well. This is a determination that can be made by the plant clearance officer under any contract, but it is highlighted in the SBIR legislation. Also, the time involved in allowing for continued use of the property during Phase III may make it more probable that the determination will be made and the awardee allowed to retain the property. However, until such determination is made, the property belongs to the Government, proper records must be maintained, and delivery to the Government may be required in accordance with the property clause in the contract.

NON-U.S. CONSULTANTS, SUBCONTRACTORS OR MANUFACTURERS

For both Phase I and Phase II, all research or research and development work must be performed by the small business concern in the United States. However, based on a rare and unique circumstance, agencies may approve a portion of the work to be performed or obtained outside the United States. This direction is at subparagraph 6. (a) of the SBA SBIR Policy Directive as well as at Subparagraph 1.3 of the DoD SBIR Solicitation. In addition, subparagraph 8 (g) of the Draft Policy Directive states: "Congress intends that the awardee of a funding agreement under the SBIR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible in keeping with the overall purposes of that program. Each SBIR agency must provide to each awardee a notice of this requirement." The DoD Solicitation includes this notice at subparagraph 5.11 p.

If foreign nationals are scheduled to work on the contract, all aspects of their participation must be legal. The contracting officer should be notified and approval requested for all foreign nationals that are expected to work on a Government contract, whether as a sub-contractor, consultant, or employee. The notice should contain personal data as required by the person reviewing the request, which may include: full name; date and place of birth, type and copy of VISA or a copy of a "green card" (front and back) when applicable. Some requirements, regulations, and circumstances that may be considered prior to concurrence by the contracting officer are:

- a. The foreign national must NOT be an illegal alien and must be an immigrant alien or a foreign national visiting the United States on an approved VISA.
- b. The transfer of sensitive or critical unclassified technology to a foreign national without an approved export license is a violation of the Arms Export Control Act and the Export Administration Act.
- c. Foreign nationals who have applied for and received a "green card" are considered permanent residents. Because of their "green card" status, permanent residents may have access to critical unclassified information on a need-to-know basis. Usually the INS/FBI interpretation of the export laws provide that, because "green card" holders have expressed a desire to become a U.S. Citizen and taken the first step to showing their loyalty to the United States, their required access to unclassified export controlled technology may be permitted.
- d. Other matters that will be considered are the Military Critical Technology List and the International Traffic in Arms Regulation. Consideration will also be given as to whether the foreign national has been authorized by the INS to work in the United States under his or her approved VISA. Some VISAs disallow working.

CONTINGENT FEES

A contingent fee means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract. (FAR 3.401.) Contractor's arrangements to pay contingent fees for soliciting or obtaining Government contracts have been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. "Improper influence" is the key factor. In 10 U.S.C. 2306(b) and 41 U.S.C. 254(a), Congress permitted certain exceptions.

FAR 3.402—Statutory Requirements, are quoted below:

"Contractors' arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise or improper influence. In 10 U.S.C. 2306(b) and 41 U.S.C. 254(a), Congress affirmed this public policy but permitted certain exceptions. These statutes:

- a. Require in every negotiated contract a warranty by the contractor against contingent fees.
- b. Permit, as an exception to the warranty, contingent fee arrangements between contractors and bona fide employees or bona fide agencies; and
- c. Provide that, for breach or violation of the warranty by the contractor, the Government may annul the contract without liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee."

The clause at FAR 52.203-5 will be included in contracts exceeding the simplified acquisition threshold. By agreeing to this clause, the contractor warrants that no person or agency has been employed or retained to solicit or obtain the contract upon an agreement or understanding for a contingent fee, **except a bona fide employee or agency.** A **Bona fide Agency** is defined as an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

A bona fide employee means a person, employed by a contractor and subject to the contractors supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts **through improper influence.**

HOW TO GET PAID ON TIME

1. **The DoD SBIR/STTR Program Manager and the Director, Contract Pay, Defense Finance and Accounting Service (DFAS) have agreed, by joint memorandum, on procedures to expedite the payment process for SBIR Contractors.** DFAS has also issued a subsequent policy memo outlining additional procedures.
2. **Instructions for Invoicing and Vouchering are usually included in Section G of the contract.** The instructions will include the location where vouchers shall be sent. If the contract requires the contractor to send vouchers to the sponsoring DoD organization for approval, the DoD organization would forward vouchers, after approval, to the appropriate DFAS for payment. The appropriate DFAS will usually appear at block 12 on page one of the contract. The joint memorandum provides that the vouchers may be sent by **fax**. It is important for contractors to follow specific instructions contained in Section G of the contract. If there are any questions, they should call the contracting officer. Any errors or omissions noted by DFAS will (as discussed in the joint memorandum) also be processed by fax. This procedure should reduce the time required to process payments.
3. **Additional information on submission of vouchers is available from the Defense Contract Audit Agency Pamphlet 7641.90.** The pamphlet is available on the Defense Acquisition Deskbook (DAD) under Reference Library, Defense Contract Audit Agency (DCAA) Documents at <http://www.deskbook.osd.mil/>.

Note: DFAS is under federal mandate, with some exceptions, to replace paper invoices and vouchers with electronic invoices and vouchers. A Web Invoicing System (WInS) User Manual can be printed by going to: <https://ecweb.dfas.mil> where you can register. After accessing the web, you may press "help" and go to "User Manuals," shown on the left margin, and print out the user manual required. Most common for SBIR would be "Web Invoicing System (WInS) User Manual, Volume 2, MOCAS Public Voucher."

4. **The type of contract will usually impact how, when, and under what circumstances the contractor will receive payments.** The contract should be reviewed for payment schedules and procedures prior to signature. The contractor should understand how and under what circumstance each payment will be made. The following information is provided to help contractors better understand the payment process:
 - **If the contract type is Fixed-Price, the clause at FAR 52.232-2 will be included in the contract.** This clause provides that contractors should be paid promptly as portions of work are completed. In order to provide for payment for a portion of the work, that portion of the work and price must be separately stated in the contract. If this is not done, the contractor will not be able to receive payment for portions of the work. The only other method of receiving interim payments on a fixed-price contract would be through progress payments, which can be authorized by the clause at FAR 52.232-16. Progress payment procedures are more complicated than partial payments and the contractor's accounting system and controls must be adequate for proper administration of progress payments.

- **If the contract type is Cost-Plus-Fixed-Fee, a Cost-Reimbursement type of contract, the clause at FAR 52-216-7 will be included in the contract.** This clause allows for submission of vouchers approximately twice each month for actual costs incurred. The clause also allows a small business to voucher for recorded costs for items or services purchased directly for the contract, even though they have not yet paid for those items or services.
- **If the contract is incrementally funded (not fully funded at time of award) the contract will require the contractor to notify the contracting officer when additional funds will be required to continue performance.**
 1. **If a fixed-price contract is incrementally funded, the clause at DFARS 252.232-7007 Limitation of Government's Obligation will be included in the contract.** This clause requires the contractor to notify the contracting officer in writing at least ninety days prior to the date when, in the contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract. The notification will state the estimated date when that point will be reached and an estimate of additional funding needed to continue performance. This clause also provides that if such additional funds are not to be allotted, the contracting officer will terminate any items for which additional funds have not been allotted. However, the contract may be modified, by mutual agreement of the parties, to change the funding schedule and, if necessary, the period of performance.
 2. **If a cost-reimbursement contract is incrementally funded, the clause at FAR 52.232-22 Limitation of Funds will be included in the contract.** This clause requires the contractor to notify the contracting officer in writing when costs expected to be incurred within the next sixty (60) days (may be varied from 30 to 90 days) will exceed 75 percent (may be 75 to 85 percent) of the total amount allotted. This notice should state the estimated amount of the additional funds required to continue performance. This clause also provides that if additional funds are not to be allotted by the end of the period specified in the schedule or another agreed-upon date, upon the contractor's written request, the contracting officer will terminate the contract.
- 5. **The clause at FAR 52-232.25 Prompt Payment is included in most SBIR contracts.** The following information applies to prompt payment procedures:
 - The clause at FAR 52-232.25, among other things, provides that **the due date for making an invoice payment** by the designated payment office shall be the 30th day after the designated billing office has received a proper invoice from the contractor and/or the 30th day after Government acceptance. **If the designated billing office fails to annotate the invoice with the actual date of receipt at the**

time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

- **FAR 32.906(a) and (b) states that, with certain exceptions, the Government not make invoice payment earlier than 7 days prior to the due date specified in the contract.** However, the joint memorandum for expediting payments to SBIR contractors provided at paragraph 1. above, is an exception to this rule.
- The Defense Federal Acquisition Supplement (DFARS) states, at subparagraph 232.905(2), that "designated payment offices are **encouraged to pay small disadvantaged business (SDB) concerns** as quickly as possible after invoices are received and before normal payment due dates established in the contract."

6. There are a number of things that contractors may do to help decrease the period of time between the submission of an invoice and receipt of payment:

- Inform all Government people involved in the processing and payment of vouchers of the procedures to expedite the payment process for SBIR Contractors. This could include furnishing them a copy of the joint memorandum discussed at 1. above.
- Submit invoices directly to the designated *billing* office. Call the point of contact at that office to insure that acceptance has been accomplished and that the invoice has been sent to the designated *payment* office.
- Contact the designated *payment* office to obtain status of invoices. FAR 32.903(a)(4) states that contractors shall be informed of points of contact within their cognizant payment offices to enable them to obtain status of invoices. Inquire as to whether they will process the voucher upon receipt per the joint memorandum to expedite payment.

NOVATION AGREEMENT TO RECOGNIZE A SUCCESSOR IN INTEREST TO A GOVERNMENT CONTRACT

1. **There are times when, for various reasons, an SBIR contractor will be unable to continue or complete an SBIR contract.** If a contractor wishes the Government to recognize a successor in interest to a Government contract it may be requested in accordance with FAR Subpart 42.12. This Subpart prescribes the policies and procedures for—
 - a. Recognition of a successor in interest to Government contracts when contractor assets are transferred;
 - b. Recognition of a change in a contractor's name; and
 - c. Execution of novation agreements and change-of-name agreements by the responsible contracting officer.
2. **FAR Subpart 42.1204** provides that the Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract, among other things, arises out of the transfer of the entire portion of the asset involved in performing the contract. As outlined in FAR Subpart 42.12, evidence must be provided of the transferee's capability to perform any contract/contracts being transferred. FAR Subpart 42.1204 also provides a format for agreements, which may be adapted to fit specific cases.
3. **It is important to note that section 4(b) of the SBA Policy Directive**, states that only SBIR awardees in the Phase I are eligible to participate in Phases II and III. However, it also states that this includes those awardees identified via a 'novated' or 'successor in interest' or similarly-revised funding agreement. This section of the Policy Directive also states "Agencies may require the original awardee to relinquish its rights and interests in an SBIR project in favor of another applicant as a condition for that applicant's eligibility to participate in the SBIR Program for that project."

HUMAN SUBJECT RESEARCH

All research involving human subjects, to include use of human biological specimens and human data, shall comply with federal and agency regulations for human subject protection (see following links). Please note that the offeror is responsible for understanding and adhering to all applicable regulations and policies pertaining to human subject research even if not listed below.

DoD

- <http://www.dtic.mil/biosys/> (follow link to "human use")
- 32 Code of Federal Regulations Part 219, The Common Rule
- DoD Directive 3216.02, Protection of Human Subjects and Adherence to Ethical Standards in DoD-Supported Research
- 10 USC 980, Limitation on Use of Humans as Experimental Subjects

Air Force

- <http://www.fas.org/irp/doddir/usaf/afi40-402.pdf>

DTRA

- DTRA's implementation of the oversight process relies on "federal assurance" of Institutional Review Boards (IRBs) conducted by other DoD activities or DHHS. The PI must submit the federal assurance and IRB results to the DTRA Human Research Oversight Board (HROB) before receiving an award.

DARPA

- <http://www.darpa.mil/sbir/>

Department of the Navy Human Research Protection Program (DON HRPP)

- <http://navymedicine.med.navy.mil/humanresearch/>
- http://www.onr.navy.mil/sci_tech/34/34c/

ANIMAL SUBJECT RESEARCH

All research, development, testing, experimentations, education or training involving animal subjects must comply with applicable federal and agency regulations (see below links). Please note that the offeror is responsible for understanding and adhering to all applicable regulations and policies pertaining to animal subject research even if not listed below.

DoD

- <http://www.dtic.mil/biosys/> (follow link to "animal use")
- DoD Directive 3216.1, Use of Laboratory Animals in DoD Programs
- Army Regulation 40-33/Navy Instruction 3900.38/Air Force Instruction 40-401/DARPA Instruction 18/USUHS Instruction 3203, The Care and Use of Laboratory Animals in DoD Programs

Navy

- http://www.onr.navy.mil/sci_tech/ahd_usage.asp

Air Force

- <http://www.cs.amedd.army.mil/ciro/Regs/Army%20Regulations/AR%2040-33.pdf>

DARPA

- <http://www.darpa.mil/sbir/>

Army

- <https://mrmc-www.army.mil/animalappendix.asp>

RESEARCH INVOLVING RECOMBINANT DNA

All research, development, testing, experimentations, education or training involving recombinant DNA must comply with applicable federal and agency regulations (see the following links). Please note that the offeror is responsible for understanding and adhering to all applicable regulations and policies pertaining to animal subject research even if not listed below.

National Institutes of Health

- <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-02-052.html>

Navy

- http://www.onr.navy.mil/sci_tech/ahd_usage.asp

SBIR REFERENCES

These links open PDF files. If these documents do not open correctly, right click the link and save it to your desktop.

Note: In order to view the following documents you must have Adobe Acrobat Reader.

- Allocation of Rights [PDF] in Intellectual Property and Rights to Carry Out Follow-on Research, Development, or Commercialization
- Associate Directors of Small Business [PDF] assigned at Defense Contract Management Districts (DCMD)
- DoD SBIR Cost Proposal Breakdown Items Guidance [PDF]
- DoD Fast Track Guidance [PDF]
- List of Eligible Federally Funded Research and Development Centers (FFRDCs) [PDF]
- DoD's Key Technology Areas [PDF]

I. INTRODUCTION

1. Small Business Innovation Research (SBIR) Desk Reference

1. The purpose of this Desk Reference is to provide information and assistance that will facilitate the efficient processing of SBIR contracts and implementation of policies and recommendations contained in SBIR legislation and the SBA Policy Directive. The statutory purpose, as addressed in the SBA SBIR Policy Directive, is to strengthen the role of innovative small business concerns (SBCs) in Federally-funded research or research and development (R/R&D). Specific program purposes are to:
 - a. Stimulate technological innovation;
 - b. Use small business to meet Federal R/R&D needs;
 - c. Foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51 percent owned and controlled by women, in technological innovation; and;
 - d. Increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth.
2. Much valuable information on SBIR and STTR Programs is available through the DoD SBIR/STTR website. Questions may be directed to the DoD SBIR/STTR Help Desk by telephone 866-SBIRHLP (866-724-7457) or by e-mail at: sbirhelp@brtrc.com
3. The most current and reliable Defense Acquisition related information may be found in the Acquisition Knowledge Sharing System (AKSS) maintained by the Defense Acquisition University at: <http://akss.dau.mil>.

2. The SBIR Program

1. In 1982, Public Law 97-219 established a five-year, government-wide, Small Business Innovation Research Program. This program has been extended several times, most recently by Public Law 111-251, which continues the program through January 31, 2011.
2. The SBIR program is a phased process, uniform throughout the federal government, of soliciting proposals and awarding contracts for research and development (R&D) to meet agency needs or missions. Each federal agency that has an R&D budget in excess of \$100,000,000 must expend not less than 2.5 percent of that budget specifically for the SBIR program.

3. Phase I awards are to conduct feasibility-related experimental or theoretical R/R&D related to described agency requirements. These requirements, as defined by agency topics contained in a solicitation, may be general or narrow in scope, depending on the needs of the agency. The object of this phase is to determine the scientific and technical merit and feasibility of the proposed effort and the quality of performance of the SBC with relatively small agency investment before consideration of further Federal support in Phase II. Generally, a Phase I award may not exceed \$150,000 and the period of performance is normally for a period of 6 months. However, an awarding agency may exceed award values and periods of performance where appropriate for a particular project.
 4. Phase II awards are to continue or extend the R&D effort beyond Phase I. Only SBIR awardees in Phase I are eligible to participate in Phases II and III. This includes those awardees identified via a "novated" or "successor in interest" or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number (For Novation Agreement to Recognize a Successor in Interest to a Government Contract, see Quick Reference Topic on that subject.). Agencies may require the original awardee to relinquish its rights and interests in the SBIR project in favor of another applicant as a condition of that applicant's eligibility to participate in the SBIR Program for that project. The SBIR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential. Commercial potential includes the potential to transition the technology to private sector applications, Government applications, or Government contractor applications. Generally, a Phase II award may not exceed \$1,000,000 and the period of performance is normally for a period of 2 years. However, an awarding agency may exceed award values and periods of performance where appropriate for a particular project.
3. The Small Business Administration SBIR Policy Directive fulfills SBA's statutory obligation to provide guidance to the participating Federal agencies for the general operation of the SBIR Program. The Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106-554, provides the following amendments:
 1. Continues the SBIR Program through September 30, 2008;
 2. Clarifies data rights pertaining to SBIR Phase I, Phase II, and Federally-funded Phase III awards;
 3. Establishes databases - one for the public and one for Government use—to collect and maintain in a common format information that is necessary to assist SBCs and assess the SBIR Program;
 4. Requires agencies with an SBIR budget of over \$50,000,000 for fiscal year 1999 to enter into an agreement with the National Academy of Sciences for the National Research Council to conduct a review of each agency's SBIR Program;

5. Requires SBIR agencies to report to SBA on the calculation of the agency's extramural budget within 4 months of enactment of each agency's annual Appropriations Act;
 6. Establishes the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of SBCs; and
 7. Extends the Rural Outreach Program through September 30, 2005.
4. SBIR contracting officers and technical monitors are key players in the administration of the DoD SBIR Program.
1. SBIR contracting should minimize the regulatory burden in the conduct of the program. As stated at subparagraph 2.(c) of the SBA Policy Directive: **"The statutory requirements establish a uniform, simplified process for the operation of the SBIR Program while allowing the SBIR agencies flexibility in the operation of their individual SBIR Program. This policy directive fulfills the Congressional intent to minimize regulatory burden in the conduct of this program."** A major goal of SBIR contracting officers and technical monitors should be to keep the process as simple as practicable.
 2. "Streamlining," "simplification," and "minimizing regulatory burden" are not concepts at variance with good contracting. SBIR contracting officers and technical monitors must protect the government's interests. Excellent guidance for accomplishing this is at FAR 1.102-2(b) which states:
 - " (b) Minimize administrative operating costs.**
 - 1. In order to ensure that maximum efficiency is obtained, rules, regulations, and policies should be promulgated only when their benefits clearly exceed the costs of their development, implementation, administration, and enforcement. This applies to internal administrative processes, including reviews, and to rules and procedures applied to the contractor community.**
 - 2. The System must provide uniformity where it contributes to efficiency or where fairness or predictability is essential. The System should also, however, encourage innovation and local adaptation where uniformity is not essential.**

Do not automatically follow traditional acquisition procedures without examining how they may or may not apply to the SBIR program. Look at what could be or what ought to be. Does the contemplated action or procedure warrant the additional administrative burden and the inconvenience and hardship imposed on the SBIR contractor? Would the action really improve the chances of getting a better product? Will it decrease, rather than increase, small business participation? Is there an easier way to accomplish this? For the program to work, innovation is required in contract administration as well as in technology. Streamlining and

simplification in contracting are challenges that, if met, will improve the program. Be innovative. Seize the opportunity!

II. EVALUATION AND SELECTION

- A. SBIR contracting officers and technical monitors will be involved in the evaluation and selection of proposals to varying degrees. Travel and leave periods should be scheduled so as not to interfere with evaluations.
- B. The contracting officer is designated as the Source Selection Authority (SSA), unless the agency head appoints another individual for a particular acquisition or group of acquisitions (FAR 15.303(a)). Responsibilities of the SSA are provided at FAR 15.303(b). For example, in accordance with FAR 15.303(b)(1), the SSA shall "establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers"; and FAR 15.303(b)(3) requires that the SSA "Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements." It is important that the SSA follow the regulations to avoid protests being filed with and sustained by the General Accounting Office (GAO). The Office of the General Counsel has prepared "Bid Protests at GAO: A Descriptive Guide" to aid those interested in GAO's bid protest process. In the Background Section, 4th paragraph, of that Guide, it states: "In deciding bid protests, GAO considers whether federal agencies have complied with statutes and regulations controlling government procurements."
- C. Evaluations should be based solely on the factors specified in the solicitation. FAR 15.303 (b)(4) requires the source selection authority to ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation, and FAR 15.304(d) provides that all factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation. These factors are included in the Department of Defense SBIR Program Solicitation. Paragraph 4.1 of the DoD Solicitation includes the statement "Final decisions will be made by the DoD Component based upon these criteria and consideration of other factors as listed below." It should be noted that "and consideration of other factors" does not allow for consideration of factors not otherwise stated properly in the solicitation. During debriefing of unsuccessful offerors, the information in the evaluations must be used to explain how the proposal was scored in each specific evaluation criterion. The evaluation criteria discussed at those debriefings must include only those that can fairly and properly be used for determining source selection.
- D. The contractor's performance history should be addressed, however briefly, in the evaluation document for both Phase I and Phase II selections. This may simply be a statement that the contractor has no past performance record upon which to base performance history. FAR 42.1502(a)(2) states that there is no dollar threshold for evaluating contractor performance under science and technology contracts. Per FAR 42.302(b)(11), the Contract Administration Office (CAO) may be authorized to provide this information. In most cases, the CAO will have this information on file. It is important

to note that, in accordance with FAR 15.506(e)(4), the names of individuals providing reference information about an offeror's past performance shall not be disclosed.

- E. The contractor's record of commercializing its prior SBIR and STTR projects, as shown in its Company Commercialization Report, must be considered when evaluating the potential for commercialization. Proposal evaluators should note two special circumstances discussed in Section 4.4 of the solicitation: (1) Proposers that score very low—a Commercialization Achievement Index (CAI) at the 20th percentile or below—can receive no more than half of the evaluation points available under evaluation criterion c in Sections 4.2 and 4.3 of the solicitation (potential for commercialization). (2) A Company Commercialization Report showing that the proposing firm has no prior Phase II awards will not affect the firm's ability to win an award. Such a firm's proposal will be evaluated for commercial potential based on its commercialization strategy per section 4.4 a. of the solicitation.
- F. The source selection authority's (SSA) decision shall be based on a comparative assessment of the proposals against all source selection criteria in the solicitation (See FAR 15.308). While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision must be documented and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. However, that documentation need not quantify the tradeoffs that led to the decision.
- G. Debriefing of unsuccessful offerors is discussed at Part XI. Technical evaluation documents must contain sufficient information for the conduct of a debriefing. Contractors need to understand why they did not win. FAR 15.506 (c) states that the contracting officer should normally chair any debriefing sessions, and individuals who conducted the evaluations shall provide support. Because of the selection procedures used within the DoD SBIR Program, the contracting officer may not be the one to conduct the debriefing of unsuccessful offerors. However, it is the responsibility of the contracting officer to ensure that the personnel conducting the debriefing are familiar with proper debriefing procedures. FAR 1.602-1(b) states: "No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met."
- H. Immediately upon receipt of a Phase II proposal, it should be determined whether that proposal qualifies for the "Fast Track" processing, as discussed at Part IV of this Desk Reference. Proposals qualifying for the Fast Track usually require both interim funding and the highest priority for evaluation and award of Phase II. Further DoD Guidance on the SBIR and STTR Fast Track program is available on the world wide web at: <http://www.acq.osd.mil/sadbu/sbir/fasttrack/fsttrack.htm>
- I. Once the source selection decision is made, good faith negotiations should follow. Award would be contingent upon full agreement of the terms and conditions to be included in the contract. Once the source selection decision is made and requirements are placed

upon the contractor to provide additional information in preparation for negotiating a contract, the decision should not be withdrawn.

III. PROCESSING THE ACQUISITION PACKAGE

1. The contracting officer and technical monitor should start processing the acquisition package as soon as a selection decision has been made. The contracting officer and the technical monitor must work in parallel. This is an important period in the SBIR acquisition cycle, laying the foundation for processing the award, as well as the administration of the program, through all phases. Some general guidelines follow:
 1. The contracting officer should acquire an advance copy of the acquisition package immediately after selection is made. At this point, the contractor should be contacted to establish a good business relationship. The time spent at the beginning of the process will result in much greater time savings later. In this initial discussion with the contractor, explain the acquisition process for SBIR contracts as administered by your activity. Find out what experience, if any, the contractor has in government contracting, and provide information as necessary. Make the contractor aware that the administration of the contract will be handled by government personnel who have the success of the SBIR Program and the SBIR contractor at heart. At the completion of this initial contact, the contractor should have, as a minimum, a general knowledge of:
 - a. The basic procedure for the acquisition process and whether or not they have an acceptable accounting system for the type of contract being contemplated;
 - b. A schedule of when things will happen;
 - c. What they are expected to do, and when;
 - d. What type of contract is contemplated, and the nature of that type of contract;
 - e. How, when, and under what circumstances payment will be made under the contract;
 - f. Who the government players are and how they may be contacted; and
 - g. The importance of an adequate cost accounting system.
 2. The contracting officer should provide necessary information to the contractor, including handouts that will assist him or her in providing the required cost information. This may include a copy of the suggestions for the preparation of the quantitative/qualitative analyses. During contacts with the contractor, practice: openness, not secrecy; firmness, but not arrogance; cooperation, not inflexibility; and discussion, not arbitrariness.
 3. The technical monitor and the contracting officer should review the cost proposal. The technical monitor should prepare a Quantitative/Qualitative (Q&Q) Analysis,

to include specific recommendations for each of the items in the cost proposal. If a modification to the proposed statement of work is recommended, the technical monitor should address the increase or decrease in cost elements to be expected. For example, if Task 10 is to be deleted from the statement of work, state the labor and material cost elements that should be reduced. If sufficient information is not available in the proposal to develop the Q&Q, the contracting officer should contact the contractor and obtain the required information.

2. The contracting officer and the technical monitor should be accessible to the contractor. If not available for an incoming call, return calls promptly. This is appreciated by the contractor, and is necessary for proper administration.
3. An audit should be requested only if required to prepare a sufficient price/cost analysis. If an audit is required, the DCAA auditor should be asked to initiate it early in the cycle. The audit is often a real bottleneck in the process. Do not wait for a final Q&Q if it is not quickly available. The final Q&Q can be provided later. The audit and pricing procedures should proceed as far as possible while the Q&Q is being finalized.
4. A waiver of certified cost or pricing data should be seriously considered if the contracting officer is able to determine the price to be fair and reasonable without its submission.
 1. A memorandum by Eleanor R. Spector, Director, Defense Procurement, points out that the Federal Acquisition Streamlining Act revised the Truth in Negotiations Act (TINA) to permit the head of the procuring activity, rather than the head of the agency, to waive the requirement to obtain certified cost or pricing data. This authority is at FAR 15.403-1(c)(4).
 2. Documentation justifying the waiver should be included in the contract file. This documentation should include a description of how the price was determined to be fair and reasonable, types of data required from the offeror, and the benefits achieved from use of the waiver.
5. Perform Tasks in Parallel, Rather than Serially. If SBIR contracts are to be processed in a timely manner, things must happen in parallel. There is no time to wait for one step (such as the Q&Q) to be completed before starting on the second and third steps. As far as the technical monitor and the contracting officer are concerned, "the ball is not in my court" is not a viable concept. As a team, the ball is always in your court. It is a mistake to wait until all information and documents in an SBIR acquisition package are available and delivered to the contracting office before the contracting officer begins work or assigns the task to a contract specialist. This is a practice that will almost never produce a timely SBIR award.
6. To pursue commercialization, SBIR contractors may require a security clearance even though the work otherwise required for completion of the effort does not. SBIR contracts will usually be unclassified. SBIR legislation stresses commercialization of the technology developed through federal SBIR research and development. Commercialization includes both government and private markets. Many SBIR

contractors do not possess a security clearance. If this situation arises, a request for facility security clearance should be processed through the Defense Investigative Service.

7. Contractor Qualifications

1. FAR 9.103(b) states, "No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility." FAR 9.105-2(a) states, "The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract."
2. As part of proposal evaluation, SBIR technical evaluators address qualifications of key personnel and availability of facilities and equipment. The first question the technical evaluator must address is "Does the contractor have the qualifications to perform the task?" For Phase I awards, this evaluation will normally be all that is necessary for the contracting officer to make an affirmative determination of responsibility. If a cost-reimbursement contract is anticipated, FAR 16.301-3(a) states that a cost-reimbursement contract may be used only when the contractor's accounting system is adequate for determining costs applicable to the contract, and appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used. In the absence of any adverse information, the determination that the contractor's accounting system is adequate should be sufficient information to allow the contracting officer to make an affirmative determination of responsibility for the award. In addition, the performance of a Phase II contractor during Phase I must have been excellent; otherwise he or she would not have been selected for a Phase II award.
3. If the contracting officer determines that a small business lacks certain elements of responsibility, he or she will withhold contract award and refer the matter to the Small Business Administration in accordance with agency procedures (FAR 19.602-1). The referral shall specify the elements of responsibility the contracting officer found lacking and provide pertinent information that supports the contracting officer's determination. Contract award should NOT be withheld without this notification being made.
4. Contracting officers should check the Excluded Parties List System (EPLS) website after receipt of proposals and prior to making any contract awards. This website is maintained by GSA and provides an electronic list of parties excluded from doing business with the government, <https://www.acquisition.gov>. See also FAR 9.404.
5. As part of the contracting officer's overall determination of contractor responsibility, the FAR also requires the contracting officer to review information in the Federal Awardee Performance and Integrity Information System (FAPIIS) before awarding a contract in excess of the simplified acquisition threshold (\$100,000). See FAR 9.104-6. The contracting officer shall notify the agency responsible for initiating debarment or suspension action if the information

appears appropriate for the official's consideration. Prospective contractors are required to confirm information pertaining to criminal, civil and administrative proceedings through which a requisite determination of fault was made, and report this information into the FAPIIS system. Contractors shall update their information in FAPIIS on a semi-annual basis throughout the life of the contract via the Central Contractor Registration database at <https://www.acquisition.gov>.

8. Electronic Representations and Certifications

1. In an effort to lessen the administrative burden on small businesses, a new FAR subpart 4.12 and DFARS subpart 204.12 have been added requiring annual submission by electronic means of contractor representations and certifications. See FAC 2001-26, Item I, dated 10 January 2008, and DFARS Change Notice 20080110, Item V, for a full discussion of this requirement. Contractors shall submit annual representations and certifications via the Online Representations and Certifications Application (ORCA) at <https://www.acquisition.gov>. This submission is made in conjunction with the contractor's required registration in the Central Contractor Registration (CCR) database. Validation of the contractor's Taxpayer Identification Number (TIN) will occur as part of CCR registration.
2. Full implementation of this new procedure over time should help streamline the contract award process, eliminating the need for separate contractor submission of representations and certifications for each individual contract. Any additional agency specific representations or certifications would still have to be obtained by the PCO for each contract as required by the agency.
3. With respect to ORCA records retention, contracting officers may reference the date of the contractor's ORCA annual online verification update in the contract file, rather than including a paper copy in the file.
4. To satisfy the requirements of FAR 52.219-28, Post Award Small Business Program Rerepresentation, the contractor should utilize the ORCA system and CCR to make any necessary changes to its small business size status as a result of long term contracts (over 5 years), novations or mergers, if business size status has changed. Any change in size does not change the terms and conditions of the existing contract.
5. Potential SBIR contractors should be aware of solicitation provision 252.203-7005, Representation Relating to Compensation of Former DoD Officials. Each offeror must represent that all covered DoD officials employed by or otherwise receiving compensation from the offeror, and who are expected to undertake activities on behalf of the offeror for any resulting contract, are presently in compliance with all post-employment restrictions covered by 18 U.S.C. 207, 41 U.S.C. 2101-2107, and CFR parts 2637 and 2641, including Federal Acquisition Regulation 3.104-2. DFARS contract clause 252.203-7000, Requirements Relating of Compensation of Former DoD Officials, will also be included in any resulting SBIR contract.

9. Employment Eligibility Verification

1. Executive Order 12989, as implemented in FAR 22.18, requires contractors to verify that certain of their employees are eligible to work in the U.S. Contractors shall utilize the E-Verify system administered by the Department of Homeland Security, U.S. Citizenship and Immigration Services. Contractors must enroll in the program and agree to the E-Verify Memorandum of Understanding required of program participants. This requirement applies to contracts exceeding the simplified acquisition threshold (\$100,000) that are performed in the U.S. and have a duration of at least 120 days. Contracts for commercial off the shelf items are exempt, but this exemption should not apply to the SBIR Program.
2. SBIR contractors should also become familiar with FAR contract clause 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION – JAN 09 for a full discussion of this requirement.

IV. FAST TRACK

Note: if you need assistance in processing a Fast Track application, you may call the DoD SBIR Help Desk 866-SBIRHLP (866-724-7457), which will put you in touch with DoD personnel who can provide assistance.

1. Background

Under the Fast Track policy, SBIR projects that attract outside investors receive a significantly higher chance of Phase II award and continuous funding. Starting in FY 1996, DoD implemented an SBIR "Fast Track" policy, the purpose of which is to focus SBIR funding on those R&D projects most likely to lead to viable new products that will make a major contribution to U.S. military and economic capabilities. Under the Fast Track policy, SBIR projects that attract matching funds (cash) from outside investors receive a significantly higher chance of Phase II award, as well as continuous funding between Phases I and II. The rationale is that an outside investor's willingness to make a cash investment in an SBIR project is very strong evidence (1) that the small company not only has strong R&D capabilities, but also the business and marketing expertise needed to develop its SBIR technology into a viable new product; and (2) that there is a significant market for the SBIR technology. It usually represents stronger evidence of market potential than anything the company could write down on a piece of paper in its research proposal. Fast Track guidance and a list of Fast Track Awards is available at: <http://www.acq.osd.mil/sadbu/sbir/fasttrack>

2. How To Process a Fast Track application

1. **The sponsoring DoD organization should determine whether the applicant meets the Fast Track requirements.** When a DoD organization receives a Fast Track application, it should first determine whether the proposing company meets the Fast Track requirements. The Fast Track requirements are set out in Section 4.5 of the SBIR solicitation, and can be summarized as follows.
 - a. The company must submit its Fast Track application within 150 days after the effective start date of the Phase I contract, unless a different deadline is specified by the DoD Component funding the project. In the application, the company and its investor state that the investor will match both interim and Phase II SBIR funding, in cash, contingent on the company's selection for Phase II award. The matching rates needed to qualify for the Fast Track are set out in Section 4.5(b) of the solicitation. In the application, the company and investor also must certify that the investor qualifies as an "outside investor," as defined in DoD Fast Track Guidance. Outside investors may include such entities as another company, a venture capital firm, an individual "angel" investor, a non-SBIR, non-STTR government program; they do not include the owners of the small business, their family members, and/or affiliates of the small business.

- b. The company must submit its Phase II proposal within 180 days after the effective start date of its Phase I contract, unless a different deadline is specified by the DoD Component funding the contract.
2. If the Fast Track requirements are met, the sponsoring DoD organization should process the SBIR project in accordance with the Fast Track procedures in section 4.5(c) of the solicitation. The Fast Track procedures in section 4.5(c) can be summarized as follows: if an SBIR project qualifies for the Fast Track—
 - a. It should receive interim SBIR funding of \$30,000 to \$50,000, commencing approximately at the end of Phase I. This can be readily accomplished through a modification to the Phase I contract—see sample provided by Phillips Laboratory. Alternatively, if an option of \$30,000 to \$50,000 was negotiated at the start of the Phase I contract, the interim funds can be provided by exercising the option.
 - b. The Fast Track Phase II proposal should be evaluated under a separate, expedited process, and may be selected for Phase II award provided it meets or exceeds evaluation criteria (a) and (b), as described in Section 4.3 of the solicitation, and has substantially met its Phase I technical goals.
 - c. The Fast Track company should receive notification, no later than ten weeks after the completion of its Phase I project, of whether it has been selected for a Phase II award. Once the company has been notified that it has been selected for Phase II award, it must certify, within 45 days, that the entire amount of the matching funds from the outside investor has been transferred to the company. Certification consists of a letter, signed by both the company and its outside investor, stating that "\$_____ in cash has been transferred to our company from our outside investor in accord with the SBIR Fast Track procedures." The letter must be sent to the DoD contracting office along with a copy of the company's bank statement showing the funds have been deposited. If the outside investor is a non-SBIR/non-STTR DoD program, it must provide a line of accounting within the 45 days that can be accessed immediately. If the company does not make this certification within the 45 days, it will generally be ineligible to compete for Phase II, unless a specific written exception is granted by the Component's SBIR program manager.
 - d. If selected, the company should receive its Phase II award within an average of five months from the completion of its Phase I project.

Consistent with DoD policy, this process should prevent any significant gaps in funding between Phases I and II for Fast Track projects.

V. CONTRACT TYPE

- A. The firm fixed price contract is used by most agencies for Phase I awards. For Phase II, the cost- plus-fixed-fee contract is more typical. Fixed-price, level-of-effort contracts are used, on occasion, for Phase I and Phase II awards.
- B. The type of contract awarded is an important factor for simplification and reduction of regulatory and administrative burden. When determining the contract type, consider whether the administrative burden involved in the type of contract being considered is necessary to protect the government's interest. Weigh the risks against the cost of the increased regulatory burden. Money saved by reducing administrative burden may be of more benefit when applied to development of the technology. As pointed out in Part I, FAR 1.102-2(c), we must shift our focus from "risk avoidance" to one of "risk management." This doctrine provides strong support for all reasonable initiatives toward simplification.
- C. Model contracts currently in use at DoD Agencies are available on the DoD SBIR/STTR Home Page. These model contracts should prove useful when constructing SBIR contracts. They will also allow for transferring tested ideas and practices from one agency to another.
 1. A firm fixed-price contract requires a minimum of regulatory and administrative burden. This type contract can be constructed to provide for payments as work progresses and allow for final payment as soon as the final report and any other required deliverables have been accepted. Some advantages in using firm fixed-price contracts are:
 2. Unlike cost-reimbursement contracts, firm-fixed price contracts do not require a Government approved accounting system. Cost-reimbursement contracts do require approval of the contractor's accounting system. For proposing companies that have not been awarded a Government contract before, developing an accounting system capable of DCAA approval is a formidable task. Thus, a fixed price contract for Phase I presents a more efficient contract type for the Government and the contractor. It should be noted that the deliverables and the statement of work on a Phase I contract should be appropriate in risk for a fixed price contract. Usually the deliverables are reports, which keeps the risk to the contractor reasonable. However, some companies are overly optimistic about the statement of work that can be completed for the funds available on a Phase I contract. In a case where the Contracting Officer believes the company cannot realistically complete the statement of work for the proposed value, the Contracting Officer should discuss these concerns with the company and the Technical Monitor.
 3. Fewer financial/cost reports are required. This would result in a substantial reduction in administrative costs for both the contractor and the government;

4. Vouchering procedure are simplified. Vouchers for provisional payments under cost-reimbursement contracts are complicated, and submission of incorrect or incomplete vouchers will result in delays in payments. The completion or final voucher (for cost-reimbursement contracts) requires even more data, including a contractor's release of claims. This would not be required for fixed-price contracts. In contrast, invoicing for a Phase I fixed price contract is typically accomplished using a DD250 or an invoice in contractor format based on acceptance of a report by the Technical Monitor. If an invoice in contractor format is used, the contract should contain instruction on the information required by the DFAS. Firm-fixed-price contracts may also be financed by the Government using "progress payments." However, progress payments require approval of the contractor's accounting system. Other interim payment procedures are usually provided;
5. Final payment can be made soon after satisfactory completion of the effort. Final payment for a cost-reimbursement contract will be delayed because an audit of indirect rates must be completed before submission of the voucher; and
6. The Allowable Cost and Payment Clause at FAR 52.216-7 would not be required. This clause must be included in cost-reimbursement contracts and requires the contractor to submit an incurred cost proposal to determine actual indirect rates, together with supporting data, within the 6-month period following the expiration of each of its fiscal years. The incurred cost proposal is discussed in chapter 6 of DCAAP 7641.90 (see Part VI, paragraph D). An auditor from the Defense Contract Audit Agency (DCAA) will usually set up an "entrance conference" and if the submission is inadequate, the audit will be delayed pending receipt of the necessary financial information. This is a burden for a first time Phase I SBIR contractor, and may not be necessary to protect the government's interest in most SBIR contracts.

D. Discussion on Specific Contract Types

E. Under a Firm-Fixed-Price Contract, the contractor is required to perform the work described in the contract for the negotiated price.

1. The price is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. In order to provide for periodic payments without the administrative burden required to administer "progress payments," the contract may require periodic progress reports, listed by contract line item number, and allow for payment of that portion of the work upon approval of each report. Upon satisfactory completion of the work and delivery of all items required, the contractor is paid the remaining contract amount.
2. **Under a Firm-Fixed Price, Level-of-Effort Term Contract, the contractor must provide a specified level of effort (hours) over a stated period of time, and the government pays the contractor a fixed dollar amount.**

This type of contract may be practicable and appropriate for SBIR efforts (both Phase I and Phase II). FAR 16.207-2 states "A firm-fixed-price, level-of-effort term contract is suitable for investigation or study in a specific research and development area. The product of the contract is usually a report showing the results achieved through application of the required level of effort. However, payment is based on the effort expended rather than on the results achieved." This contract type may be considered when it is determined that the work required cannot otherwise be clearly defined, the required level-of-effort (hours) is identified and agreed upon in advance, and there is reasonable assurance that the intended results cannot be achieved by expending less than the stated effort. Under this type contract, the contractor is paid based upon the hours expended, and "completion" (usually a final report) with less than the stated number of hours expended will result in final payment of less than the total contract price. As the amount of work that can reasonably be expended during performance of an SBIR contract is usually greater than the amount which limited funding can allow, this should not be a problem. The contract should allow the contractor to voucher for hours expended based on an hourly rate computed by dividing the total contract price by the number of hours specified. The model firm-fixed-price contract includes the clause at FAR 52.246-15—Certificate of Conformance. This clause requires the contractor to provide a certificate with the receiving report or voucher. This procedure should simplify payment procedures and is allowed when the conditions stated at FAR 46.504 apply. Up to ten percent of the contract price may be withheld under the clause at DFARS 252.227-7030 Technical Data-Withholding of Payment, until the required technical data are delivered and accepted.

3. Under a Cost-Plus-Fixed-Fee Contract, the contractor receives payment for allowable incurred costs to the extent prescribed in the contract.

All cost-reimbursement contracts provide a negotiated best estimate of total costs for the purpose of obligating funds and establishing a ceiling which contractors may not exceed (except at their own risk) without the approval of the contracting officer. The fee is fixed; that is, it does not vary with actual cost. This type of contract may be either a term form or a completion form. Under the term form, the work is described in general terms and obligates the contractor to devote a specified level of effort (number of hours) for a stated period of time. If the performance is considered satisfactory (usually best effort), the fixed fee is payable if the specified number of hours has been expended in performing the work called for in the contract. The completion form of a cost-plus-fixed-fee contract describes the work by stating a definite goal or target and specifying an end product (e.g., a final report) to be completed within the estimated cost, if possible, as a condition for payment of the entire fixed fee. In the event the work cannot be completed within the estimated cost, the government may require more effort without increase in fee, provided the government increases the estimated cost. The completion form is used by most agencies for Phase II contracts when the work, or specific milestones for the work, can be defined well enough to

permit development of estimates within which the contractor can be expected to complete the work.

4. Under a Cost-Sharing Contract, the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs.

This may be agreeable to the contractor under certain circumstances, such as when the contractor expects substantial compensating benefits from commercialization. This type of contract is not recommended unless unusual circumstances indicate that this type would be practical. A sample for this type of contract is NOT provided.

VI. PAYMENT SCHEDULES AND VOUCHERS

A. Payments under Firm-Fixed-Price Research and Development Contracts

1. FAR SubPart 32.111(a)(2) requires that the clause at FAR 52.232-2 be used in fixed-price research and development contracts. This clause clearly provides that the contractor should be paid promptly as portions of the required work are completed. In order to provide for payment for a portion of the work rendered, the work and price must be separately stated in the contract. For firm-fixed-price contracts, this could be accomplished by allowing for periodic payments as status reports are delivered and accepted. Under the firm-fixed-price, level-of-effort term contract, this could be accomplished by allowing for payment based on a composite rate for each hour expended.
2. Under fixed-price contracts (both firm-fixed-price, and firm-fixed-price, level-of-effort term), the contract should provide for periodic payments as portions of the work are completed. FAR 32.102 (d) allows for these payments. Progress payments (see paragraph 4. below), which are a method of contract financing, may be appropriate under fixed-price R&D contracts; however, other methods, such as partial payments as portions of the work are completed, are usually appropriate and more practicable for SBIR contracts.
3. Acceptance of and payment approval for the contractor's deliverables can be made by DD250, contractor invoice or a Certificate of Conformance. For firm-fixed price contracts, a DD250 or contractor invoice signed by the Technical Monitor would be suitable. For fixed price level of effort contracts, a Certificate of Conformance might also be appropriate. A DD250, while confusing to a contractor new to Government contracts, provides all the information required for payment. However, fewer payment problems would probably occur if the contractor's invoice is allowed with specific instruction in the contract stating the information required on the invoice. FAR 46.315 provides that the contracting officer shall insert the clause at 52.246-15 Certificate of Conformance, when the conditions at FAR 46.504 apply (relatively low risk because of the contractor's reputation or past performance, or because only small losses would be incurred in the event of a defect). FAR 52.246-15 provides for shipment with a Certificate of Conformance for which the contract would otherwise require inspection. A format for the Certificate of Conformance is at sub-paragraph (d) of the clause.
4. Progress payments are a form of contract financing for firm-fixed-price contracts. Progress payments are based on costs incurred as work progresses, not on completion of a portion of the work. Qualification for progress payments would require an audit of the contractor's accounting system and might delay award unless the contractor has an approved accounting system. Approval of an accounting system generally takes one to three months, depending on the ability of the contractor to design and implement an acceptable accounting system. Normally, payments for Phase I contracts awarded on a firm-fixed-price basis can

be more efficiently made using partial payment methods or contract line items. For Phase I contracts, progress payments should not be used unless the contractor has knowledge of the conditions for payment and administrative procedures, and desires this form of contract financing. If the progress payment clause is desired and included in the contract, the contractor must prepare a "Contractor's Request for Progress Payment" SF 1443 in order to receive the payments. (Instructions for the preparation of this form are on the back of the form.) Also, a detailed discussion and a sample request for progress payment form are contained in the DCAA pamphlet discussed in paragraph D. below. Contract financing through progress payments may be appropriate for Phase II firm-fixed-price contracts if the Contracting Officer determines it is in the best interest of the Government.

B. Payments under Cost Plus Fixed Fee and Cost Reimbursable Cost Sharing Contracts

FAR 16.307(a) requires that the clause at FAR 52.216-7 Allowable Cost and Payment be included in all cost-reimbursement contracts. This clause allows for submission of vouchers approximately every two weeks for actual costs incurred; however, subparagraph (c) of this clause allows a small business to voucher more often than every two weeks. Also, subparagraph (b) of the clause provides that certain costs incurred, but not necessarily paid, may be paid.

C. Clauses and Reporting Requirements for Incrementally Funded Contracts

1. The clause at FAR 52.232-22 Limitation of Funds is required for incrementally funded cost-reimbursement contracts. This clause requires the contractor to notify the contracting officer in writing when costs expected to be incurred within the next sixty (60) days (may be varied from 30 to 90 days) will exceed 75 percent (may be 75 to 85 percent) of the total amount allotted. This notice should state the estimated amount of the additional funds required to continue performance. This clause also provides that if additional funds are not allotted by the end of the period specified in the schedule or other agreed-upon date, upon the contractor's written request the contracting officer will terminate the contract.
2. The clause at DFARS 252.232-7007 Limitation of Government's Obligation is required for incrementally funded fixed-price contracts. This clause requires the contractor to make the notification described at C.1. above at least 90 days prior to the time when 85 percent of the allotted funds are expected to be expended, and also provides that if such additional funds are not allotted, the contracting officer will terminate any items for which additional funds have not been allotted.
3. Note that for a fixed-price contract that is incrementally funded, a funding schedule should be negotiated and included at paragraph (i) of the clause. It is also good policy in a cost-reimbursement incrementally funded contract to agree upon a funding schedule. Modifications that allot additional funds to incrementally funded contracts should clearly indicate the completion schedule for the increment being funded.

- D. Information on the audit process, including submission of reports and vouchers, is available from the Defense Contract Audit Agency. The DCAA Pamphlet 7641.90, Information for Contractors and DCAAM 7640.1, Contract Audit Manual (CAM) are available on the Defense Acquisition Deskbook (DAD) at <http://www.deskbook.osd.mil>. Under Mandatory & Discretionary References, go to Organizations, then go to Defense Contract Audit Agency (DCAA).
- E. E. Pursuant to DFARS 232.903, it is DoD policy to assist small business concerns by paying them as quickly as possible after invoices and all proper documentation, including acceptance, are received and before normal payment due dates established in the contract.

Note: DFAS is under federal mandate, with some rare exceptions, to replace paper invoices and vouchers with electronic invoices and vouchers. Pursuant to DFARS Change Notice 20080303, dated 3 March 2008, and contract clauses 252.232-7003 Electronic Submission of Payment Requests and Receiving Reports, and 252.246-7000 Material Inspection and Receiving Report, contractors are required to use the Wide Area Work Flow (<https://wawf.eb.mil>) electronic system for submitting and processing payment requests and receiving reports under DoD contracts. The contracting officer is permitted to authorize alternate electronic forms or a non-electronic method in rare cases (such as in a contingency contracting environment).

VII. NEGOTIATION

1. Negotiation means contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract.
2. A list of clauses that may appear in SBIR contracts is provided. This list: (1) identifies the clause by number and title; (2) provides the effective date of the clause when last reviewed; (3) explains briefly what the clause contains; (4) lists the paragraph in the FAR or DFARS which requires the clause; (5) provides information as to when the clause is required; and (6) states whether, or under what circumstances, the clause must flow down to prime subcontracts. This list should not be used as an authority base, but may be used as an aid in understanding and deciding whether further reading of the clause is necessary.

3. How negotiations differ in the SBIR arena

1. The Phase I award may be the first government contract a company receives. Selection for a Phase I award is a strong indication that the firm has knowledge and is well qualified in the technical field, but it does not assure that the firm has knowledge of government contract administration. SBIR Phase I proposals are selected for award based primarily upon technical merit and innovation. The contracting officer should consider the potential inexperience of the SBIR contractor throughout negotiations. The goal is to award the contract at a price that is fair and reasonable, not the lowest price attainable.
2. It is important that the contracting officer call attention to important clauses and other terms in the contract. Many FAR and DFARS clauses are included only by reference. When it appears that a contractor lacks understanding, the proper action is to proactively provide assistance. It is not sufficient for a contracting officer to simply tell contractors that all they have to do is "read the contract." Most experienced contracting officers will admit that reading and understanding everything in every clause of the contract is very difficult; it is nearly impossible for an SBIR contractor with little or no previous experience with government contracts. The list of contract clauses, found in paragraph B. above, could be provided to new contractors at time of negotiation or award. A review of the clause list should help the contractor understand why clauses are included in a proposed contract and reduce or eliminate the necessity for any discussion of contract clauses during negotiation. It should also be noted that FAR Clause 52.252-2 is required when clauses are incorporated by reference. This clause states: "This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es)."

3. It may be appropriate to modify the proposed statement of work. For example, a proposed task may not be of benefit to the government, or the work in certain tasks may need to be reduced. In such cases, the parties must agree upon precise changes to the statement of work and resultant changes in cost.
4. It may be appropriate to allow for additional labor costs during negotiations. It is not unusual for an SBIR proposal to include equipment costs which are not allowable as direct costs. A common problem occurs when a contractor includes a unit of equipment in his or her cost proposal that will be classified as an indirect cost and thus is not allowable as a direct charge to the contract. For example, a new contractor may include the cost of electronic equipment that would be used in performing various contracts and expect that the cost would be allowed as a direct charge to the specific contract. As SBIR contracts have a monetary limit, any disallowed cost would cause the price to be significantly below the amount allowed in the solicitation. The contractor will often want to replace the cost of equipment with more labor. When considering whether to allow this, the contracting officer and the technical monitor should consider whether the additional hours would benefit the program and inquire as to whether those additional hours would have been expended by the contractor in any case. Many times a contractor will have proposed less hours than he or she intended to perform due to the dollar limit contained in the solicitation.
4. Federal, State, and Local Taxes may be required when purchasing Special Testing Equipment or components even though the Government takes title to the equipment immediately upon delivery. If there is a question as to whether these taxes are properly assessed, the contractor should request instructions from the Contracting Officer in accordance with FAR 31.205-41.

5. Profit and Fee

1. For DoD contracts, the profit/fee calculation is usually based on the record of weighted guidelines method as discussed at DFARS SubPart 215.404-71-1. DD Form 1547 provides the format for performing the analysis. The form is available at: <http://www.dior.whs.mil/forms/dd1547.pdf>. Instructions for processing the DD Form 1547 are at DFARS 253.215-70.
2. The weighted guidelines method focuses on four profit factors:
 - a. DFARS 215.404-71-2 addresses **performance risk**, which includes technical and management/cost control.
 - b. DFARS 215.404-71-3 addresses **contract type risk**, which focuses on the degree of cost risk accepted by the contractor under varying contract types.
 - c. DFARS 215.404-71-4 addresses **facilities capital employed**, which focuses on encouraging and rewarding capital investment in facilities that benefit DoD.

- d. DFARS 215.404-71-5 addresses the **cost efficiency** factor. This special factor provides an incentive for contractors to reduce costs by demonstrating cost reduction efforts that benefit the pending contract.

6. Cost Sharing by the Contractor

1. Cost participation could serve the mutual interest of the participating agencies and certain SBIR performers by helping to assure the efficient use of available resources. Cost sharing, however, shall not normally be encouraged except where required by other statutes." SBIR legislation further states that cost sharing is allowed but will not be an evaluation factor for selection of a Phase I award. Cost sharing may be proposed for a Phase I contract for several reasons:
 - a. The contractor is limited by the funding level provided in the solicitation; however, it may be desirable for the contractor to provide work in excess of what will be funded in the contract.
 - b. If the feasibility study for Phase I cannot be completed sufficiently with allotted funds, the contractor may want to perform all necessary work without additional funding in order to enhance commercialization, improve the chances of qualifying for the fast track, and/or selection for Phase II.
 - c. Cost sharing, although not an evaluation factor for Phase I awards, may improve the technical score. When a contractor proposes to accomplish work beyond what can reasonably be expected to be accomplished with the hours and money proposed, that contractor's proposal may be scored lower for that reason. The only way to overcome this is to show all the effort and cost in the proposal. If this is the case, the contractor would have to absorb some of the costs to stay within the funding limit.
 - d. If the technology being proposed has a very high potential for commercialization, the contractor may want to contribute a considerable sum towards its development.
2. When a contractor wishes to participate in the cost of the effort, and a fixed-price contract is to be awarded, the following should be recognized:
 - a. Profit is allowed. No fee is allowed in cost-sharing contracts; however, a fixed-price contract is not a cost-sharing contract. A cost-sharing contract is a cost-reimbursement contract in which contractors receive no fee and are reimbursed only for an agreed-upon portion of the allowable costs.
 - b. In a fixed-price contract, a reasonable price (cost and profit) must be negotiated prior to award. If the contracting officer takes exception to some of the cost elements or profit, but the price (what is being funded in the contract) is considered fair and reasonable, that price should be allowed even though all cost elements or profit may not be agreed upon.

Consider the proposed dollar amount prior to deducting any amount the contractor claims to be cost sharing; and if the amount to be funded is reasonable for the total effort proposed, further negotiation on price should not be necessary.

7. A Cost-sharing contract may be appropriate if a cost-reimbursement contract is to be negotiated and cost sharing is proposed. The description and application for this type of contract is at FAR 16.303.

8. Funding Profile and Schedule of Payments

1. It is extremely important that the funds be provided be sufficient for the contractor to perform on schedule. Any delay while awaiting a funding authorization will likely impact the small SBIR contractor to a much greater extent than larger contractors. The very small SBIR contractor may have at least one engineer whose primary work is for the accomplishment of a specific SBIR contract. It becomes very costly to retain that person when funds are not available to continue the work.
2. Funding schedules (specifying the amount presently available for payment and anticipated dates for future allotments) for incrementally funded contracts are discussed at Part VI. C. The funding schedule should be a part of the negotiation. The clause at DFARS 252-232-7007 required in incrementally funded fixed-price contracts, provides that the amount available for payment upon award be included at paragraph (a) of that clause. Also, paragraph (i) of the clause requires a schedule of the dates the parties contemplate funds will be made available. The clause at FAR 52.232-22, required in incrementally funded cost-reimbursement contracts, contains no such paragraphs; however, the same information should be included in the schedule of the contract.
3. Payment schedules (specifying when and under what circumstances payments will be made) are discussed at Part VI. A. A schedule of payments should be developed and agreed upon during negotiations. The contracting officer should explain the payment procedure, reach agreement, and include it in the contract. If the contract does not include complete instructions for how and under what circumstances each payment may be made, the voucher will surely be rejected by the paying office. It may be helpful to call the contractor within two weeks after contract award and offer any assistance required in the vouchering and payment process.

9. Confirmation of Negotiations

1. At the completion of negotiations, the contractor should be required to provide a letter confirming the agreed-upon price, terms and conditions. Examples of what might be included in the confirmation letter would be the method and schedule of payments and any exceptions to the work originally proposed which were discussed and agreed upon during negotiations. If the contract amount is over

\$700,000, the contractor will usually be required to provide a certificate of current cost or pricing data (format at FAR 15.406-2) as of the date the negotiations were completed.

2. The DoD SBIR Program Solicitation requires that the awardee certify that "he or she has not previously been, nor is currently being, paid for essentially equivalent work by an agency of the Federal Government." If this has not been accomplished by other documentation, the contractor should be required to include this statement in the letter confirming negotiations.

VIII. SPECIAL CONTRACT PROVISIONS

- A. Proprietary Information which is identified in the proposal must be protected. If the contractor identifies pages in the proposal which contain proprietary information describing work to be performed, those pages should probably be included at Part III, Section J of the contract, by reference only. This would help prevent any inadvertent disclosure of proprietary data when making routine distribution of the contract document. A contract clause similar to the following could also be included:

"H-xx. INCORPORATION OF PROPOSAL PAGES WITH PROPRIETARY MARKINGS: The contractor agrees that the government may duplicate, use and/or disclose inside the government, the pages of its proposal which have been incorporated into this contract as necessary to implement and administer this contract. Such pages shall retain any proprietary markings placed thereon by the contractor, and the data which is marked proprietary shall not be disclosed outside the government unless (a) required by law, (b) agreed to by the contractor, or (c) disclosed to a government support contractor who has signed an appropriate non-disclosure agreement and has agreed to adequately protect such data."

- B. A prototype deliverable or a prototype to accomplish special purpose testing is often required in a Phase II contract. Some suggestions for identification, control and disposition of this equipment follow:
1. A prototype that is fabricated during performance of an SBIR contract will usually meet the definition of "Contractor-Acquired Property," "Equipment," or "Special Test Equipment." FAR 45.101(a) and FAR 52.245-1 provide these definitions.
 2. A prototype acquired during, and funded by, an SBIR contract will belong to the government. However, delivery of the prototype may not be desired. The purpose of the testing is to see if the new technology is working, as development progresses. The government's primary interest is usually in acquiring the technology (i.e., final report, etc.), not the hardware itself. Paragraph 8.(c) of the SBIR Policy Directive states: "Title Transfer of Agency Provided Property. Under the act, the Government may transfer title to equipment provided by the SBIR agency to the awardee where such transfer would be more cost effective than recovery of the property." If delivery of the prototype is desired, it should be so written into the contract. If delivery of the property is not desired, the property officer (usually at the contract administrative office), will conduct property disposal procedures to determine how the property should be disposed of. Paragraph 8.(d) of the SBIR Policy Directive states: "Continued Use of Government Equipment. The Act directs that an agency allow an SBIR awardee participating in the third phase of the SBIR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the

SBIR Program." This requirement must be considered when determining how the equipment will be disposed of at completion of the Phase II contract.

3. Special test equipment (as well as other government property) should be separately identified in the contract. A list of components for special test equipment is usually known at the time of negotiations. A good way to identify this in the contract is to include a tailored clause in Section H, generally as follows:

"H—SPECIAL TEST EQUIPMENT: The contractor may fabricate a (describe the prototype, e.g., Fiber Optical Amplifier) which will be a functional entity for special testing purposes. Components which may be acquired for the (describe, e.g., Fiber Optical Amplifier) are set forth below:

Description	Quantity	Unit Price	Estimated Cost
Mirrors	100 ea	\$575.00	\$57,500.00
Smoke	100 Yds	\$410.00	\$41,000.00
Total			\$98,500.00

The government will take title to the material/equipment when it is acquired, produced, or first used by the contractor in the performance of this contract. The contracting officer will give disposition instructions for such property at the end of the contract period of performance."

The above clause should streamline the process by justifying the cost of the special test equipment as a direct charge to the contract, helping the contractor and the government property office with the inventory of property, and identifying what could be made available to the contractor during Phase III.

4. In general, FAR contract clause 52.245-1 GOVERNMENT PROPERTY, governs the use, repair, acquisition, maintenance, administration, disposition and reporting requirements for government property and government furnished property. Contractor systems, management controls and best practices are encouraged to streamline this contractual topic and to encourage better efficiency in administration.

C. Funding and Contract Financing

1. When special funding contingencies are required, a special obligations clause could be included in the contract to provide a simplified procedure for administering the requirement. An example is provided as follows:

Example: The source selection authority selects a Phase II for negotiations for \$750,000, with the condition that any expenditures beyond \$500,000 must be matched by funds other than from the US Government (there may be other conditions, such as the satisfactory demonstration of a specific technical objective). This situation is not unique. The procedure should be simplified as much as possible. Use of a special obligations clause, rather than the basic/option procedure of awarding a basic contract for \$500,000 with an option in the amount of \$250,000, would require much less administrative burden. Exercise of options can cause delays in work and in some cases loss of the optional work due to administrative requirements, even though the conditions for funding the complete amount were met. The following sample clause is suggested:

"H—. SPECIAL CONDITIONS FOR OBLIGATIONS ABOVE \$500,000:

- a. Prior to incurring obligations in excess of \$500,000, (the contractor shall successfully show evidence that any funds expended beyond \$500,000 shall be matched by funds other than from the US Government) or (the contractor shall successfully show evidence that the—describe the required technical objective that must be met).
- b. The contractor shall not incur obligations in excess of \$500,000 until directed in writing by the contracting officer. This clause is in addition to and does not waive or change the provisions of the 'LIMITATIONS OF FUNDS' clause of this contract.

This clause would allow the government to contract the ceiling amount set by the selection authority. The government would still retain control over whether additional funds would be provided. If and when the contractor successfully demonstrates that the requirements for additional funds are met to the satisfaction of the contracting officer, a unilateral modification obligating additional funds could be issued.

2. Costs in excess of the original amount negotiated in cost-reimbursement contracts may be requested by the contractor. A common reason for such a request and a discussion and suggested actions that may be taken are:

The indirect cost rates for a small R&D company can increase rapidly due to a decline in revenue with no commensurate decline in indirect expense. FAR 16.301-1 provides that the contractor may not exceed the ceiling established in cost-reimbursement contracts (except at its own risk) without approval of the contracting officer. The clause at FAR 52.232-22 requires the contractor to notify the contracting officer when the expected costs will reach a certain percentage of that which is funded. When costs are expected to exceed the estimate established in the contract, the contracting officer must determine whether to increase the funding. If the funding is not to be increased, the contractor should be notified and advised that in the absence of a modification to the contract to provide additional funds, the Government is not obligated to reimburse the contractor for any costs

in excess of the total amount then allotted by the Government to the contract, whether incurred during the course of the contract or as a result of termination.

3. **Assignment of Claims** may be a means for the contractor to acquire financing.
 - a. Assignment of claims means the transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the government for contract performance. When making a determination as to whether to allow contract financing, the contracting officer must first consider the availability of private financing (FAR 32.106). Allowing the contractor to assign the contract is a way of helping the contractor obtain private financing.
 - b. The clause at FAR 52.232-23 applies. DFARS 232.803 provides that only contracts for personal services may prohibit the assignment of claims. "No-setoff commitment" means a contractual undertaking that, to the extent permitted by the Act, payments by the designated agency to the assignee under an assignment of claims will not be reduced to liquidate the indebtedness of the contractor to the Government. A "no-setoff commitment" would provide greater security for the loan. DFARS 232.803 also provides that a need exists for DoD to agree not to reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract. Nevertheless, if departments/agencies decide it is in the Government's interests, or if the contracting officer makes a determination in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment. The clause at FAR 52.232-23, with its Alternate I will be used when a no-setoff commitment is included.
- D. As recommended by the DoD SBIR Process Action Team and approved by the Under Secretary of Defense (Acquisition and Technology), patent searches and applications may be included in the statements of work for Phase II contracts. (Patent searches and applications may be included in the proposed statement of work or as part of indirect cost.) It should be noted that obtaining a patent will probably take a number of years. In the case where a cost reimbursable contract has been awarded for the effort, the contract may need to remain open until the patent is granted in order for the associated cost be recovered. If the statement of work does not contain authorization for the direct charging of patent effort, the Contracting Officer may want to add a clause that the patent cost is an allowable indirect cost. The Government obtains rights to the patent in accordance with 52.227-11, Patent Rights--Retention by the Contractor (Short Form). This clause will assure that the contractor will at least receive partial compensation for the incurred patent cost.

E. Export-Controlled Items, Information and Technology

Technology developed under the SBIR Program may be subject to U.S. export-control laws and regulations. These laws restrict the transfer, by any means, of certain types of items, information and technology to unauthorized persons. The International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) establish these restrictions. Potential security risks may occur when contractors employ foreign nationals or outsource portions of the contract's statement of work overseas. Contracting officers shall include DFARS clause 252.204-7008, Export-Controlled Items, in all SBIR contracts, to remind contractors to comply with all export-control laws and regulations (when export-controlled items are involved with contract performance).

IX. CONTRACT ADMINISTRATION

1. Contract Administration Office

Contract administration may be performed by the Contract Administration Office (CAO) in order to provide for specialized assistance through field offices located near the contractor's establishment. Assignment of contract administration responsibility automatically carries with it the authority to perform all of the normal functions listed at FAR 42.302(a). However, the Contracting officer may retain certain of these functions.

2. An executed copy of the contract should be provided to the contractor with a cover letter signed by the contracting officer.

The letter should include any attachments required to be furnished to the contractor, such as the poster entitled "equal employment opportunity is the law" required by FAR 22.805(b). The letter could also address the initial telephone kick-off meeting as discussed in C. below. Section 8. G of the SBIR Policy Directive states: "Congress intends that the awardee of a funding agreement under the SBIR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible in keeping with the overall purpose of the Program. Each SBIR Agency must provide each awardee a notice of this requirement." This notice requirement could be met by putting it in the cover letter. A suggested cover letter, which can be modified as necessary, is provided."

3. A telephonic post-award orientation is recommended, particularly if the contractor has little or no experience in government contracting.

This meeting should be conducted within the first two weeks after award of the contract. FAR 42.502 lists a number of things that the contracting officer should consider when deciding whether a post-award orientation is necessary. This list should also be considered to help determine participants. For example, if the contract involves hazardous materials or operations, a safety expert may need to participate. The accounting system could also be discussed at this meeting.

4. A new contractor may not have a Commercial and Government Entity (CAGE) Code. If the contractor does not have a CAGE code, the contracting officer may use the procedures outlined at DFARS 204.7202-1

Cage code search information is available at: http://www.dlis.dla.mil/cage_welcome.asp

5. Incremental Funding

1. The funding schedule for incrementally funded contracts is discussed at SubPart VI. C. It is important to follow the anticipated schedule for funding as determined during negotiations. The anticipated schedule must be included in incrementally funded fixed-price contracts (DFARS 252.232-7007). Modifications adding funds

to the contract should clearly indicate the completion schedule for the increments being funded.

2. Fixed-Price contracts must be fully funded as soon as practicable after funding is available (see DFARS 232.703-1(2)). Upon receipt of contractors' funding notices required by the Limitation of Funds clause in cost-reimbursement contracts, or Limitation of Government's Obligation clause under fixed-price contracts, the contracting officer should promptly provide written notice to the contractor of the government's plan for further funding.
3. Any delay in funding is likely to result in significant hardship for the small SBIR contractor. If work is delayed or stopped while waiting for additional funding, that contractor must still meet its payroll. A key employee may be assigned primarily to one SBIR contract, and the contractor may have no alternative work for that employee. If funding schedules are not met, the contractor may be forced to continue the work at risk, or continue paying the employee even though adequate hours cannot be applied to the contract. A third choice would be to release the employee. If the employee is a "key person," termination of that employee would not be a satisfactory solution because the contractor has agreed to use certain "key personnel" to perform the contract.

6. Withholding of Funds

1. The clause at FAR 52.232-9, Limitation on Withholding of Payments, provides that the total of the amounts withheld at any one time shall not exceed the greatest amount under any one clause or schedule term. This clause is required when the contract includes two or more terms authorizing the withholding of amounts otherwise payable to the contractor.
2. Withholding clauses are based upon a limit that may be withheld. A lesser amount should be withheld if that amount would reasonably protect the government's interest. A common withholding clause for SBIR contracts is at DFARS 252.227-7030, which allows the contracting officer to withhold payment of up to ten percent of the contract price until technical data are delivered as specified in the contract. Cost-plus-fixed-fee contracts would also contain the fixed-fee clause at FAR 52.216-8, which provides that after payment of 85 percent of the fee, the contracting officer may withhold further payment of fee until a reserve is set aside "in an amount that the contracting officer considers necessary to protect the government's interest." Withholding amounts should not automatically be the maximum allowed under a clause, but should be limited to what is necessary to protect the government's interest. Also, withholdings are "temporary," and should not be for a period of time longer than is reasonably necessary to protect the government's interest. A good practice is to document the reason for any withholding under an SBIR contract.

7. Contract Modifications

1. Contractors are expected to complete their contracts within the period of performance stated in the contract; however, contracts should be extended when in the government's interest. One example is when a critical test needs to be repeated and the contractor wishes to extend the completion date in order to repeat the test at no increase in contract price. The extension would result in a better final report. However, if the test could be completed soon after the completion date, the work could continue without modification. In that case, the administrative cost of a contract modification would probably not be justified.
2. It may be in the government's interest to increase the effort, period of performance, and funding for an ongoing Phase II contract. One example would be when a significant increase in the potential for commercialization and dual use has been realized during Phase II, and "X" Corporation (or a government agency) has agreed to commit non-SBIR funds for additional work. However, that commitment is contingent upon further funding under the current Phase II contract. The Phase II contract is progressing well and is expected to meet the objectives as presently funded; but to take advantage of the increased potential for dual-use and enhance the agency's applications, additional work will be required. A reasonable position would be that anything that could have been negotiated into the contract at time of award can be negotiated and included by modification under the statutory authority of the SBIR Program (Public Law 97-219, Public Law 99-443, and Public Law 102-564). If the additional effort to be provided under the modification would assure or greatly increase the potential for commercialization of the technology and enhance the agency's applications, it also makes good business sense. It would also improve the ratio of SBIR funds expended to total commercialization as measured in dollars.
3. Continuity between all Phase I and Phase II contracts is the ideal. Any delay in work between Phase I and II is inefficient. It impacts the contractor financially, delays commercialization, and makes it difficult for the contractor to maintain key personnel to develop the technology. If the contractor qualifies for the Fast Track, as described in Part IV, interim funding is required in most cases. Continuity will not always be achieved, but there are a number of things that the contracting officer and the technical monitor can do to shorten the gap between Phase I and Phase II. Some suggestions are:
 - a. Continuity should be discussed with the contractor during performance of Phase I. If Phase I is going well, suggest ways the contractor may address interim funding in the Phase II proposal. For example, discuss what work or task will be performed during the interim funding period, and how that work would be of benefit to the government even if the Phase II effort is not funded.
 - b. Interim funding should be considered even if it is not addressed in the Phase II proposal. If it is in the government's interest, the statement of work and cost for a continuity effort could still be negotiated and the Phase I contract modified accordingly.

- c. If an optional task is in the Phase I contract, the technical monitor and the contractor should review that task prior to exercising the option and consider making any necessary modifications. Work completed during the first few months of Phase I may indicate that the task description, as originally proposed to move the effort into Phase II, could be improved. Also, receipt of matching funds under the Fast Track may require a change in the work for the optional task. If a modification to the optional task would be beneficial to the government, and the contractor agrees, the change could be accomplished contractually at the time the option is exercised.

8. Termination

1. A decision to terminate or to stop funding an SBIR contract should be made only after considering the potential for dual-use, other military applications, and commercialization. An SBIR proposal is selected for award base on the potential for commercial applications and dual-use, among other things. For that reason, it may not always be in the government's interests to terminate a contract, even if the program it was intended to support is canceled. The effort could possibly be redirected, within the original scope, to fit other applications. Termination decisions will depend to some extent upon the type of contract, as discussed at a. and b. below.
 - a. Incrementally funded fixed-price contracts require the clause at DFARS 252.232-7007, which provides that if the government does not allot additional funds by a date shown in the contract or an agreed substitute date, the contracting officer will terminate any item(s) for which additional funds have not been allotted.
 - b. Incrementally funded cost-reimbursement contracts require the clause at FAR 52.232-22, which provides that if the government does not allot additional funds the contracting officer will terminate the contract upon the contractor's written request.
2. The prime contractor may receive assistance from the Termination Contracting Officer (TCO) in the termination of a sub-contract. FAR 49.108-6 and FAR 49.108-7 provide information regarding TCO assistance in termination of subcontracts.

9. Levies on Payments to Contractors

1. Contracting officers should make their SBIR contractors aware of the notification requirements of DFARS clause 252.232-7010, Levies on Payments to Contractors. It is important that contractors promptly notify the PCO whenever contract performance is jeopardized by IRS levies against payments. This task could be accomplished during the post-award orientation meeting.

X. TECHNICAL MONITOR GUIDELINES

- A. The role of the contract Technical Monitor (TM) involves numerous techniques and procedures for determining whether satisfactory delivery and contract completion is likely. A contract is monitored to determine whether it will be performed in accordance with the contract requirements and address problems as they occur. The TM should refer all contracting issues to the contracting officer.

The SBIR contract requires a different monitoring system than most other contracts. Normally, Phase I contracts are firm-fixed-price, with a duration of 6 months. Some DoD agencies have variations on this, including fixed price level-of-effort contracts, options to provide for continued work and funding between Phase I and Phase II, and durations up to 9 months. The Phase I end product (contract deliverable) is usually a final report, which describes accomplishments and includes other data as required. The main task of the TM is to closely monitor the technical progress of the contract and determine if the feasibility of the idea or concept is being successfully demonstrated. To do this, the TM must communicate often with the contractor and have a thorough understanding of the tasks at hand. The role of the TM is one of oversight, not actual direction of the work.

Phase II contracts are normally cost plus fixed fee, with a duration of 24 months. Variations again include firm-fixed-price and fixed price level-of-effort contracts. The target contract award is usually determined by each DoD agency, with some agencies setting maximum funding at \$750,000 and others setting funding at \$600,000 for the base contract, with options to increase the funding up to \$750,000. Other variations occur.

- B. The TM is usually involved in the evaluation and selection of proposals. During the evaluation and selection process, the TM becomes familiar with the idea or concept and the statement of work (SOW). After the winning proposal is selected, the TM assists in processing the contract acquisition package
- C. The TM prepares a Quantitative/Qualitative Analysis (Q&Q) for contract negotiation. The purpose of the Q&Q is to provide information necessary for a price analysis and negotiation. The TM reviews the proposed labor hours, category of labor and labor mix, travel, material and other direct costs, and any request for government furnished property, to determine if all of these items have been addressed adequately. If not, the TM works with the contracting officer to get the necessary information from the contractor. By working together, in parallel instead of serially, the contracting officer and the technical monitor can save time. Suggestions for preparation of the Q&Q and a sample Q&Q are provided here and are also at Part III
- D. The TM should become well acquainted with the statement of work, the requirements of the contract, and the people who will be doing the work. A visit to the contractor facility may not be warranted immediately after award, but will probably be required by the fourth or fifth month of the Phase I, and quarterly to yearly during the Phase II. A telephone conversation with the contractor, in lieu of an initial visit, may be sufficient at time of award (see Part IX.C. re post-award orientation). Participants may include the

TM, the contracting officer, and other parties as appropriate. This is a good time to make sure the contractor understands the contract requirements, the administrative procedures that will be used, and the identity and roles of government personnel who will be involved in administering the contract. Questions can be answered and any additional information can be provided at this time. The role of the TM is to monitor, not direct. SBIR contractors may need help in understanding how government contracts are administered (reports, vouchers, etc.), so this is the time to help them understand what is required before a problem arises. Assistance in these areas should be continued as required during contract performance. The post-award orientation also provides an opportunity to discuss possible future funding for the Phase III (venture capital, government, and company funding). The TM may be able to assist by pointing out sources for future funding beyond the SBIR Program. To avoid inadvertent disclosure of the contractor's technical data, the contractor's permission should be obtained before any non-government people are allowed to attend any post-award meetings

- E. The TM will usually have a primary role in ensuring that the contractor is paid on schedule. A major concern of the contractor is that funds be allotted in a timely manner and that payments are received as the work progresses. The TM should ensure that adequate funds are allotted, and usually reviews vouchers for fixed price contracts prior to payment to establish that the deliverables are accepted and the billed amount is in accordance with the contract. Expedient processing of vouchers, DD250s or contractor format invoices by the TM can help ensure that the contractor is paid in a timely manner. The goal for handling vouchers should be same-day processing. See part VI. E. for special procedures to expedite payments to SBIR contractors
- F. The TM should consider scheduling a final briefing near the end of the contract. A final briefing by the contractor at the government facility is highly recommended for Phase I and Phase II. If the contractor has not proposed such a trip to the government facility, it is recommended that the statement of work be modified along with the cost proposal to accommodate this. The TM should coordinate this briefing and ensure that the right technical experts are available to evaluate the contractor's progress and determine if the feasibility of the concept has been demonstrated. All persons known to be interested in the technology should be invited. This is an excellent time to discuss Phase II or Phase III funding possibilities. It is certainly to the contractor's advantage to make this presentation a "really good show" since this could be the best chance to present his or her idea before final decisions are made regarding future funding
- G. Authors of SBIR solicitation topics, and other technical personnel, are authorized and encouraged to talk by telephone with potential offerors up to the day the solicitation officially opens. In fact, as a result of the recent SBIR Process Action Team report signed by USD (A&T), approximately six weeks before each SBIR solicitation opens, the solicitation topics are "pre-released" electronically, along with names and phone numbers of the topic authors (or other technical experts on particular solicitation topics). The purpose of this pre-release is to give contractors an opportunity to ask technical questions about specific solicitation topics. Once the SBIR solicitation officially opens, topic authors should not talk directly with potential offerors. Topic authors may still answer written questions about solicitation topics through the SBIR Interactive Topic

Information System (SITIS), in which the questioner and respondent remain anonymous and all questions and answers are posted electronically for general viewing. SITIS can be accessed through the DoD home page at: <http://www.dodsbir.net/Sitis/Default.asp>

XI. DEBRIEFING UNSUCCESSFUL OFFERORS

1. General

1. FAR 15.505 provides that unsuccessful offerors may request a debriefing before award. Specific instructions for requesting debriefing are contained in the DoD SBIR Solicitation. Be advised that an offeror that fails to submit a timely request is not entitled to a debriefing, although untimely debriefing requests may be accommodated at the government's discretion. Debriefing information shall include those items listed at FAR 15.505(e), but shall not include data listed at FAR 15.505(f) or 15.506(e). ***Note that the names of individuals providing reference information about an offeror's past performance must not be revealed.***
2. As a result of a debriefing, the contractor should fully understand why the proposal was not selected for award. Inadequate debriefings may result in inadequate future proposals. If practicable, the contracting officer and at least one engineer or scientist knowledgeable in the applicable field of technology should conduct the debriefing. When centralized selection procedures are used, it may not be practical for contracting officers to be involved in those debriefings. In those cases, a summary of the debriefings should be provided to the contracting officer. FAR 15.505(g) requires that "An official summary of the debriefing shall be included in the contract file." For SBIR debriefings, maintaining a file including all debriefings of unsuccessful proposals under a specific solicitation topic would be a practical way to accomplish this.

2. Preparation for Debriefings

1. The engineer or scientist performing the technical debriefing should understand and be able to address weaknesses, strong points, and how the proposal might have been improved. It is very important that the debriefer be familiar with the evaluations, so that a thorough debriefing may be given.
2. The selection criteria provided in the solicitation must be followed. The evaluation and selection must be based on the evaluation criteria provided in the solicitation as discussed at Part II. FAR 15.304(d) states that all factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation. The substance of the debriefing must not leave the contractor with the impression that the evaluation and selection were based on factors other than those specified in the solicitation.
3. If the technical merit of the proposal is good, it may be appropriate to collect any available information that could assist the contractor in marketing the technology. This would include information as to current and future government interest in the technology outside the SBIR Program, and/or names of private contractors or other government agencies that may be a possible source of funding for the technology.

3. Content of Debriefings

1. General information provided at debriefings should include the following:
 - a. The agency's evaluation of the significant weaknesses or deficient factors in the unsuccessful offeror's proposal.
 - b. A good debriefing will leave contractors knowing why they did not win.
 - c. A summary of the rationale for the award.
 - d. Point out the contractor's strong points also. This will give hope and guidance for the future.
 - e. A possible discussion of how the proposal can be improved.
 - f. It may be necessary to point out that the proposal was evaluated solely on its content and that evaluators may not assume anything that is not contained in the proposal. It may be appropriate here to suggest that the contractor consider resubmitting the proposal, revised as necessary, if an appropriate SBIR topic is published in a future solicitation. This would be appropriate if the results of the debriefing indicate that the technology proposed may have scored higher, had the proposal included some additional critical data that were discovered during the debriefing. However, it should be made clear to the contractor that there is no guarantee that relevant topics will be published in the future and that any suggestion concerning resubmission of the proposal does not indicate that it is the opinion of the government that it would be likely that the resubmitted proposal would be selected.
 - g. Reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed.
2. In addition to addressing specific reasons for non-selection, other things may be discussed that may be helpful to the contractor, such as:
 - a. Points of contact outside the SBIR area for the technology proposed.
 - b. A discussion with these points of contact may reveal other methods of getting the technology funded.
 - c. Other competitive acquisitions within the technical area of the proposed technology.
 - d. Subcontracting opportunities with prime contractors who are currently performing DoD contracts.

- e. Perhaps the technology being proposed may be used to help with an existing problem, even though it does not fit well into the SBIR Program.

4. Method of Debriefing

1. Oral debriefings would probably result in more information to the contractor, because the contractor would have the opportunity to ask questions and discuss all aspects of the proposal. This method would also allow the government to meet the requirement to respond to relevant questions posed by the debriefed offeror, as pointed out at C. 1. d. above. The following is an example of a procedure that has worked well and resulted in almost one hundred percent satisfaction in the debriefing process (but not necessarily the selection decision) by the contractors:
 - a. Upon receipt of a request for debriefing, a telephone debriefing was arranged. Participants included government personnel, as stated above, and contractor personnel as desired by the contractor.
 - b. The technical participant provided general information regarding the evaluation and selection and agreed to respond to questions.
 - c. Discussion was continued as long as desired by the contractor.
2. Written debriefings may be the preferred method. A written debriefing may save time and still accomplish all that is desired by the contractor. If a written debriefing is provided, many of the criteria described above should be included. As the government is required to respond to certain questions, a written debriefing could be followed by an oral debriefing if the number and content of questions asked in response to the written debriefing would make it more desirable and efficient than responding by letter.

XII. PHASE II

1. General

The object of Phase II is to continue the R/R&D effort from the completed Phase I. Only SBIR awardees in Phase I are eligible to participate in Phase II. Phase II awards will be made to firms on the basis of results of their Phase I effort and the scientific, technical, and commercial merit of the Phase II proposal. Phase II award threshold is \$1,000,000 over a period generally not to exceed 24 months (subject to negotiation). Phase II is the principal research or research and development effort and is expected to produce a well-defined deliverable prototype. A more comprehensive proposal will be required for Phase II.

2. Eligibility Requirements

A Phase II proposal can be submitted only by a Phase I awardee and only in response to a request from the agency. Each proposer must qualify as a small business for research or research and development purposes as defined in Section 2.0 of the program solicitation and certify to this on the Cover Sheet of the proposal. For Phase II, A minimum of one-half of the research and/or analytical work must be performed by the proposing firm. The percent of work is usually measured by both direct and indirect costs, although proposers planning to subcontract a significant fraction of their work should verify how it will be measured with their DoD contracting officer during contract negotiations. Further DoD Guidance on proposer eligibility and limitations is available in the program solicitation under Section 1.3.

3. Proposal Requirements

Each Phase II proposal must contain a Proposal Cover Sheet, technical proposal, cost proposal and a Company Commercialization Report submitted through the DoD Electronic Submission Web Site (www.dodsbir.net/submission). The general guidance in Section 3.5 of the program solicitation for Phase I proposal format should be followed for Phase II proposals. In addition, each Phase II proposal must contain a two-page commercialization strategy as part of the technical proposal, addressing the following questions:

1. What is the first product that this technology will go into?
2. Who will be your customers, and what is your estimate of the market size?
3. How much money will you need to bring the technology to market, and how will you raise that money?
4. Does your company contain marketing expertise and, if not, how do you intend to bring that expertise into the company?

5. Who are your competitors, and what is your price and/or quality advantage over your competitors?

The commercialization strategy must also include a schedule showing the quantitative commercialization results from the Phase II project that your company expects to report in its Company Commercialization Report Updates one year after the start of Phase II, at the completion of Phase II, and after the completion of Phase II (i.e., amount of additional investment, sales revenue, etc.).

4. Timely Receipt and Review of Proposals

Each Phase II proposal must be submitted through the DoD Electronic Submission Web Site by the deadline specified in the invitation. Proposals prepared on the Submission site are considered a work in progress until the "Submit" button is clicked. Once submitted, Phase II proposals will be subject to a technical review process similar to Phase I.

Phase II Evaluation Criteria. Each Phase II proposal will be reviewed for overall merit based upon the criteria which are listed in descending order of importance, unless otherwise stated in the Component's instructions.

1. The soundness, technical merit, and innovation of the proposed approach and its incremental progress toward topic or subtopic solution.
2. The qualifications of the proposed principal/key investigators, supporting staff, and consultants. Qualifications include not only the ability to perform the research and development but also the ability to commercialize the results.
3. The potential for commercial (Government or private sector) application and the benefits expected to accrue from this commercialization (see Sections 3.7 and 4.4 of the program solicitation)

Other factors that may be considered during the selection process are: a commitment for Phase III follow-on funding, the possible duplication with other research or research and development, program balance, budget limitations, and the potential of a successful Phase II effort leading to a product of continuing interest to DoD. Evaluation and selection is also discussed in Part II of this Desk Reference.

5. Contractual Consideration

1. Number of Phase II Awards. The number of Phase II awards will depend upon the results of the Phase I efforts and the availability of funds. *The DoD Components anticipate that at least 40 percent of its Phase I awards will result in Phase II projects. This is merely an advisory estimate and the government reserves the right and discretion not to award to any or to award less than this percentage of Phase II projects.*
2. Type of Funding Agreement. Each Phase II proposal selected for award will be funded under a negotiated contract and may include a reasonable fee or profit

consistent with normal profit margins provided to profit-making firms for R/R&D work.

3. Average Dollar Value of Awards. Average Phase II awards will typically cover 2 to 5 person-years of effort over a period generally not to exceed 24 months (subject to negotiation). Phase II awards may be up to \$1,000,000 each without justification. *Each DoD Component may have its own special instructions.*
4. Timing of Phase II Awards. Across DoD, the median time between DoD's receipt of a Phase II proposal and the award of a Phase II contract is 6.5 months.
5. Commercialization Updates in Phase II: If, after completion of Phase I, the contractor is awarded a Phase II contract, the contractor shall be required to periodically update the following commercialization results of the Phase II project through the Web Site at www.dodsbir.net/submission:
 - a. Sales revenue from new products and non-R&D services resulting from the Phase II technology;
 - b. Additional investment from sources other than the federal SBIR/STTR program in activities that further the development and/or commercialization of the Phase II technology;
 - c. Whether the Phase II technology has been used in a fielded DoD system or acquisition program and, if so, which system or program;
 - d. The number of patents resulting from the contractor's participation in the SBIR/STTR program;
 - e. Growth in number of firm employees; and
 - f. Whether the firm has completed an initial public offering of stock (IPO) resulting, in part, from the Phase II project.

These updates on the project will be required one year after the start of Phase II, at the completion of Phase II, and subsequently when the contractor submits a new SBIR or STTR proposal to DoD. Firms that do not submit a new proposal to DoD will be asked to provide updates on an annual basis after the completion of Phase II.

6. Payment Schedule: The specific payment schedule (including payment amounts) for each contract will be incorporated into the contract upon completion of negotiations between the DoD and the successful Phase I or Phase II offeror. Successful offerors may be paid periodically as work progresses in accordance with the negotiated price and payment schedule.
7. Additional Information: Further DoD Guidance on **Contractual Consideration** is available in the program solicitation under section 5.0 of the program solicitation.

6. Phase II Enhancements

To further encourage the transition of SBIR research into DoD acquisition programs as well as the private sector, each DoD Component has developed its own Phase II Enhancement policy. Under this policy, the Component will provide a Phase II awardee with additional Phase II SBIR funding if the company can match the additional SBIR funds with non-SBIR funds from DoD acquisition programs or the private sector. Phase II projects that qualify under Phase II Enhancement may;

1. Extend an existing Phase II contract for up to one year and
2. Match up to \$500,000 of non-SBIR funds, from either DoD non-SBIR programs or from an outside investor, with SBIR funds.

If selected for Enhancement, the funds from the outside investor must be transferred to the company before the SBIR/STTR-matching funds will be added to the Phase II contract. It is possible for a Phase II project to receive additional SBIR/STTR funds from both Fast Track and Phase II Enhancement as long as the outside investment for Fast Track is separate and distinct from the outside investment for Phase II Enhancement.

Phase II Enhancement applications must be prepared and submitted by the small business through the DoD SBIR Submission website at www.dodsbir.net/submission. Phase II Enhancements requirements and matching rates vary by Component. See the Phase II Enhancement section of www.dodsbir.net for details.

7. Component Phase II Instructions

Additional instructions regarding Phase II proposal preparation and submission will be provided or made available by the DoD Components to Phase I winners at time of Phase I contract award or Phase II proposal invitation. In general the following Component Phase II Submission limits and requirements may be found below. In instances where the below information differs from the specific instructions included in the Government Phase II solicitation, the Phase II solicitation instructions prevail.

Component Phase II—Submission Limits and Requirements

DoD Agency	Cost	Duration	Page Count*	Technical Proposal Upload	Mailed Proposal Submission	Due
Army SBIR	Year 1 + Year 2 NTE \$1,000,000	24 months	40 pages	Required	None	Date specified in Phase II invitation; usually in April
Army STTR	Year 1 + Year 2	24 months	50 pages	Required	None	Date specified

	NTE \$1,000,000					in Phase II invitation; usually in March
Navy SBIR	No limit, but in general 9 mo. Base ~\$250K, 18 mo. Option ~\$750K	9 months base + 18 month option	40-80 page, varies by Command	Required	Specified in Phase II invitation, if required	Date specified in Phase II invitation
Navy STTR	No limit, but in general: Base ~\$250K, 18 mo. Option ~\$750K	9 months base + 18 month option	30-60 page, varies by Command	Required	Specified in Phase II invitation, if required	Date specified in Phase II invitation
Air Force SBIR & STTR	Year 1 + Year 2 NTE \$750,000	24 months	50 pages	Required	None	Date specified in Phase II invitation
DARPA	No limit, but in general Base + Option ~\$1,000,000	24 months	40 pages (attachments may be an additional 40 pages)	Required	None	By invitation only
DTRA	NTE \$1,000,000	24 months	50 pages	Required	None	Date specified in Phase II invitation
MDA	Amount stipulated in invitation letter	24 months	50 page	Required	None	Date specified in Phase II invitation
OSD	NTE \$1,000,000	24 months	OSD/Army same as Army OSD/AF same as AF OSD/DHP same as Army	Required	None	

			OSD/NAVY sam as Navy OSD/SOCOM same as SOCOM			
SOCOM	NTE \$1,000,000	24 months	No limit	Required	None	30 days after receipt of Phase II invitation
CBD	Year 1 + Year 2 NTE \$1,000,000	24 months	50 pages	Required	None	Date specified in Phase II invitation; usually in Feb
NIMA/NGA	NTE \$250,000 Base and \$250,000 Option	12 month base + 12 month option		Required		

*Proposal page limitations exclude the cost proposal and Company Commercialization Report.

XIII. PHASE III

A. General

SBIR Phase III refers to work that derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements, but is funded by sources other than the SBIR Program. Phase III work is typically oriented towards commercialization of SBIR research or technology. A Federal agency may enter into a Phase III SBIR agreement at any time with a Phase II awardee. Similarly, a Federal agency may enter into a Phase III SBIR agreement at any time with a Phase I awardee.

B. Competition

SBIR Phase III awards may be made without further competition. The competition for SBIR Phase I and Phase II awards satisfies any competition requirement when processing Phase III awards. Therefore, an agency is not required to conduct another competition in order to satisfy any statutory provisions for competition. Contract file documentation should demonstrate that the proposed Phase III award is derived from, extends or logically concludes efforts performed under prior SBIR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2). A separate J&A document is not required, pursuant to 10 U.S.C. 2304(b)(3) or 41 U.S.C. 253(b)(3).

C. Phase III Limitations

There is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern. There is no limit on the time that may elapse between a Phase I or Phase II award and Phase III award or between a Phase III award and any subsequent Phase III award. Also, the small business size limits for Phase I and Phase II awards do not apply to Phase III awards.

D. Data Rights

A Phase III award is, by its nature, an SBIR award, has SBIR status, and must be accorded SBIR data rights. If an SBIR awardee wins a competition for work that derives from, extends, or logically concludes that firm's work under a prior SBIR funding agreement, then the funding agreement for the new competed work must have all SBIR Phase III status and data rights.

E. Property

SBIR legislation directs that an agency allow an SBIR awardee participating in the third phase of the SBIR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. A federally funded Phase III award (normally a government contract) would include appropriate property clauses. However, a non-federally funded Phase III agreement would not address government property. A separate bailment agreement would need to be made between the Government and the contractor. A suggested Bailment agreement format is provided.

F. Preference for follow-on Awards to SBIR Contractor and SBA Notification Requirement

The SBIR Program Policy Directive points out that Congress intends that agencies that pursue R/R&D or production developed under the SBIR Program, give preference, including sole source awards, to the awardee that developed the technology. Agencies that intend to pursue R/R&D, production, services, or any combination thereof of a technology developed by an SBIR awardee of that agency, with an entity other than that SBIR awardee, must notify SBA in writing prior to such an award. This notice requirement also applies to technologies of SBIR awardees with SBIR funding from two or more agencies where one of the agencies determines to pursue the technology with an entity other than that awardee. This notification must include, at a minimum: (a) the reasons why the follow-on funding agreement with the SBC is not practicable, (b) the identity of the entity with which the agency intends to make an award to perform research, development or production; and (c) a description of the type of funding agreement under which the research, development, or production will be obtained. SBA may appeal the decision to the head of the contracting activity. If SBA decides to appeal the decision, it must file a notice of intent to appeal with the contracting officer no later than 5 business days after receiving the agency's notice of intent to make award. **Upon receipt of the SBA's notice of intent to appeal, the contracting officer shall suspend further action on the acquisition until the head of the contracting activity issues a written decision on the appeal.** However, the contracting officer may proceed with award if he or she determines in writing that the award must be made to protect the public interest.

G. Indefinite Delivery/Indefinite Quantity (ID/IQ) Contracts in Phase III

In order to facilitate the rapid transition of SBIR technologies from Phase II to Phase III, the Navy has pioneered the use of the ID/IQ type contract for Phase III efforts. See also FAR subpart 16.5. This approach allows multiple sponsors to contract with SBIR companies for Phase III follow-on efforts in an efficient and expedited manner through the use of individual task or delivery orders. This approach eliminates the necessity of writing multiple contracts with the same contractor for a particular technology. The basic ID/IQ contract can be written for a maximum 10 year term (5 years basic plus options). See DFARS 217.204(e)(i). This contracting approach can save a significant amount of procurement administrative lead time over the life of the contract. Contracting officers are reminded of the enhanced competition requirements for individual large dollar value task or delivery orders as outlined in FAR Subparts 16.504 and 16.505 (FAC 2005-27).

H. Item Identification and Valuation

SBIR contracting officers should be aware of the DFARS requirement for marking and valuing items delivered to DoD with a unit acquisition cost of \$5,000 or more. See DFARS 211.274-2 for policy on unique item identification, and DFARS 211.274-3 for policy on valuation. This requirement was instituted to provide more effective accountability of items in the DoD supply chain. While this requirement generally would not apply to most SBIR Phase I and Phase II procurements (since R&D prototypes and

not supply items are delivered), the marking and valuing requirement potentially could apply to those follow-on Phase III acquisitions where items for the DoD inventory are delivered. In such cases, contracts should be structured to provide for line, subline or exhibit line items reflecting deliverables having a unit acquisition cost of \$5,000 or more. In addition, contract clauses DFARS 252.211-7003, Item Identification and Valuation (June 2011) and 252.246-7006, Warranty Tracking of Serialized Items (June 2011) should be included in the contract.

ANNEX A: SBIR POLICY DIRECTIVE

1. Purpose

- a. Section 9(j) of the Small Business Act (Act) requires that the Small Business Administration (SBA) issue an SBIR Program Policy Directive for the general conduct of the SBIR Program within the Federal Government.
- b. This Policy Directive fulfills SBA's statutory obligation to provide guidance to the participating Federal agencies for the general operation of the SBIR Program. Additional or modified instructions may be issued by the SBA as a result of public comment or experience.
- c. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in Federally-funded research or research and development (R/R&D). Specific program purposes are to: (1) stimulate technological innovation; (2) use small business to meet Federal R/R&D needs; (3) foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51 percent owned and controlled by women, in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth.
- d. Federal agencies participating in the SBIR Program (SBIR agencies) are obligated to follow the guidance provided by this Policy Directive. Each agency is required to review its rules, policies, and guidance on the SBIR Program to ensure consistency with this Policy Directive and to make any necessary changes in accordance with each agency's normal procedures. This is consistent with the statutory authority provided to the SBA concerning the SBIR Program.

2. Summary of Legislative Provisions

- a. The Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106-554, amended section 9 of the Act (15 U.S.C. 638).
 - i. The amendments:
 - i. Continue the SBIR Program through September 30, 2008;
 - ii. Clarify data rights pertaining to SBIR Phase I, Phase II, and Federally-funded Phase III awards;
 - iii. Establish databases—one for the public and one for Government use—to collect and maintain in a common format information that is necessary to assist SBCs and assess the SBIR Program;

- iv. Require agencies with an SBIR budget of over \$50,000,000 for fiscal year 1999 to enter into an agreement with the National Academy of Sciences for the National Research Council to conduct a review of each agency's SBIR Program;
 - v. Require SBIR agencies to report to SBA on the calculation of the agency's extramural budget within 4 months of enactment of each agency's annual Appropriations Act;
 - vi. Establish the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of SBCs;
 - vii. Extend the Rural Outreach Program through September 30, 2005.
- b. Each Federal agency with an extramural budget for R/R&D in excess of \$100,000,000 must participate in the SBIR Program.
 - c. The statutory requirements establish a uniform, simplified process for the operation of the SBIR Program while allowing the SBIR agencies flexibility in the operation of their individual SBIR Program. This Policy Directive fulfills the Congressional intent to minimize regulatory burden in the conduct of this program.
 - d. Each SBIR agency must establish an SBIR Program by reserving, in each fiscal year, not less than 2.5 percent of its extramural budget for awards to SBCs for R/R&D through the following uniform, three-phase process:
 1. Phases I and II. These phases help SBIR agencies meet R/R&D and commercialization objectives through funding agreements.
 2. Phase III. This phase, where appropriate, helps Federal agencies participating in the SBIR Program by:
 - i. providing Federal agencies the benefits of commercial applications derived from Government-funded R/R&D which stimulates technological innovation and enhances the national return on investment from R/R&D,
 - ii. providing SBIR awardees access to the Federal market through non-SBIR funding agreements; and
 - iii. providing SBIR awardees access to private sector markets to stimulate economic growth and create jobs.
 - e. The Act directs each SBIR agency to report annually to SBA. The Act also requires SBA to obtain annual reports and monitor each agency's SBIR Program and to report these findings annually to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.

- f. The competition requirements of the Armed Services Procurement Act of 1947 (10 U.S.C. 2302 et seq.) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) must be read in conjunction with the procurement notice publication requirements of Section 8(e) of the Small Business Act (15 U.S.C. 637(e)). The following notice publication requirements of Section 8(e) of the Small Business Act apply to SBIR agencies using contracts as a SBIR funding agreement.
1. Any Federal executive agency intending to solicit a proposal to contract for property or services valued above \$25,000 must transmit a notice of the impending solicitation to the Governmentwide point of entry (GPE) for access by interested sources. See FAR 5.201. The GPE, located at <http://www.fedbizopps.gov>, is the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. In addition, no agency must issue its solicitation for at least 15 days from the date of the publication of the GPE. The agency may not establish a deadline for submission of proposals in response to a solicitation earlier than 30 days after the date on which the solicitation was issued.
 2. The contracting officer must generally make available through the GPE those solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. See FAR 5.102.
 3. Any executive agency awarding a contract for property or services valued at more than \$25,000 must submit a synopsis of the award through the GPE if a subcontract is likely to result from such contract. See FAR 5.301.
 4. The following are exemptions from the notice publication requirements:
 - i. In the case of agencies intending to solicit Phase I proposals for contracts in excess of \$25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if that official makes a written determination, after consulting with the Administrator of the Office of Federal Procurement Policy and the SBA Administrator, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.
 - ii. The SBIR Phase II award process is exempt.
 - iii. The SBIR Phase III award process is exempt.

3. Definitions

- a. **Act**—The Small Business Act (15 U.S.C. 631 et seq.), as amended.

- b. **Additionally Eligible State**—A State in which the total value of funding agreements awarded to SBCs (as defined in this section) under all agency SBIR Programs is less than the total value of funding agreements awarded to SBCs in a majority of other States, as determined by SBA's Administrator in biennial fiscal years and based on the most recent statistics compiled by the Administrator.
- c. **Applicant**—The organizational entity that, at the time of award, will qualify as an SBC and that submits a contract proposal or a grant application for a funding agreement under the SBIR Program.
- d. **Awardee**—The organizational entity receiving an SBIR Phase I, Phase II, or Phase III award.
- e. **Commercialization**—The process of developing marketable products or services and producing and delivering products or services for sale (whether by the originating party or by others) to Government or commercial markets.
- f. **Cooperative Agreement**—A financial assistance mechanism used when substantial Federal programmatic involvement with the awardee during performance is anticipated by the issuing agency. The Cooperative Agreement contains the responsibilities and respective obligations of the parties.
- g. **Eligible State**—A State: (1) where the total value of SBIR and Small Business Technology Transfer (STTR) Program awards made to recipient businesses in the State during fiscal year 1995 was less than \$5,000,000 (as reflected in SBA's database of fiscal year 1995 awards), and (2) that certifies to SBA's Administrator that it will, upon receipt of assistance, provide matching funds from non-Federal sources in an amount that is not less than 50 percent of the amount of assistance provided.
- h. **Essentially Equivalent Work**—This occurs when (1) substantially the same research is proposed for funding in more than one contract proposal or grant application submitted to the same Federal agency; (2) substantially the same research is submitted to two or more different Federal agencies for review and funding consideration; or (3) a specific research objective and the research design for accomplishing an objective are the same or closely related in two or more proposals or awards, regardless of the funding source.
- i. **Extramural Budget**—The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of a Federal agency in or through Government-owned, Government-operated facilities. For the Agency for International Development, the "extramural budget" must not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries. For the Department of Energy, the "extramural budget" must not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs. (Also see Section 7(i) of this Policy Directive for additional exemptions related to national security.)
- j. **Feasibility**—The practical extent to which a project can be performed successfully.

- k. **Federal Agency**—An executive agency as defined in 5 U.S.C. 105, or a military department as defined in 5 U.S.C. 102, except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, Section 3.4(f), or its successor orders.
- l. **Funding Agreement**—Any contract, grant, or cooperative agreement entered into between any Federal agency and any SBC for the performance of experimental, developmental, or research work, including products or services, funded in whole or in part by the Federal Government.
- m. **Funding Agreement Officer**—A contracting officer, a grants officer, or a cooperative agreement officer.
- n. **Grant**—A financial assistance mechanism providing money, property, or both to an eligible entity to carry out an approved project or activity. A grant is used whenever the Federal agency anticipates no substantial programmatic involvement with the awardee during performance.
- o. **Innovation**—Something new or improved, having marketable potential, including (1) development of new technologies, (2) refinement of existing technologies, or (3) development of new applications for existing technologies.
- p. **Intellectual Property**—The separate and distinct types of intangible property that are referred to collectively as "intellectual property," including but not limited to: patents, trademarks, copyrights, trade secrets, SBIR technical data (as defined in this section), ideas, designs, know-how, business, technical and research methods, other types of intangible business assets, and all types of intangible assets either proposed or generated by an SBC as a result of its participation in the SBIR Program.
- q. **Joint Venture**—An association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.
- r. **Outcomes**—The measures of long-term, eventual, program impact.
- s. **Outputs**—The measures of near-term program impact.
- t. **Principal Investigator/Project Manager**—The one individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.
- u. **Program Solicitation**—A formal solicitation for proposals whereby a Federal agency notifies the small business community of its R/R&D needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from SBCs in

- response to these needs and interests. Announcements in the Federal Register or the GPE are not considered an SBIR Program solicitation.
- v. **Prototype**—A model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.
 - w. **Research or Research and Development (R/R&D)**—Any activity that is:
 - 1. A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;
 - 2. A systematic study directed specifically toward applying new knowledge to meet a recognized need; or
 - 3. 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.
 - x. **Small Business Concern**—A concern that, on the date of award for both Phase I and Phase II funding agreements:
 - 1. is organized for profit, with a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor;
 - 2. is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture;
 - 3. is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and
 - 4. has, including its affiliates, not more than 500 employees.
 - y. **Socially and Economically Disadvantaged SBC**—See 13 CFR Part 124 — 8(A) Business Development/Small Disadvantaged Business Status Determinations, §§124.103 (Who is socially disadvantaged?) and 124.104 (Who is economically disadvantaged?).
 - z. **SBIR Participants**—Business concerns that have received SBIR awards or that have submitted SBIR proposals/applications.

- aa. **SBIR Technical Data**—All data generated during the performance of an SBIR award.
- bb. **SBIR Technical Data rights**—The rights an SBC obtains in data generated during the performance of any SBIR Phase I, Phase II, or Phase III award that an awardee delivers to the Government during or upon completion of a Federally-funded project, and to which the Government receives a license.
- cc. **Subcontract**—Any agreement, other than one involving an employer-employee relationship, entered into by an awardee of a funding agreement calling for supplies or services for the performance of the original funding agreement.
- dd. Technology Development Program**
 - 1. the Experimental Program to Stimulate Competitive Research of the National Science Foundation as established under 42 U.S.C. 1862g;
 - 2. the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;
 - 3. the Experimental Program to Stimulate Competitive Research of the Department of Energy;
 - 4. the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;
 - 5. the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;
 - 6. the Institutional Development Award Program of the National Institutes of Health; and
 - 7. the National Research Initiative Competitive Grants Program of the Department of Agriculture.
- ee. **United States**—Means the 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
- ff. **Women-Owned SBC**—An SBC that is at least 51 percent owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock is owned by women, and women control the management and daily business operations.

4. Competitively Phased Structure of the Program

The SBIR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D, production, services, or any combination, to meet stated agency needs or missions. In order to stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process of the following three phases:

- a. **PHASE I**—Phase I involves a solicitation of contract proposals or grant applications (hereinafter referred to as proposals) to conduct feasibility-related experimental or theoretical R/R&D related to described agency requirements. These requirements, as defined by agency topics contained in a solicitation, may be general or narrow in scope, depending on the needs of the agency. The object of this phase is to determine the scientific and technical merit and feasibility of the proposed effort and the quality of performance of the SBC with a relatively small agency investment before consideration of further Federal support in Phase II.
 1. Several different proposed solutions to a given problem may be funded.
 2. Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate proposals must give consideration to the scientific and technical merit and feasibility of the proposal along with its potential for commercialization. Considerations may also include program balance or critical agency requirements.
 3. Agencies may require the submission of a Phase II proposal as a deliverable item under Phase I.
- b. **PHASE II**—The object of Phase II is to continue the R/R&D effort from the completed Phase I. Only SBIR awardees in Phase I are eligible to participate in Phases II and III. This includes those awardees identified via a "novated" or "successor in interest" or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. Agencies may require the original awardee to relinquish its rights and interests in an SBIR project in favor of another applicant as a condition for that applicant's eligibility to participate in the SBIR Program for that project.
 1. Funding must be based upon the results of Phase I and the scientific and technical merit and commercial potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or Federal needs beyond the SBIR Program. The Phase II funding agreement with the awardee may, at the discretion of the awarding agency, establish the procedures applicable to Phase III agreements. The Government is not obligated to fund any specific Phase II proposal.

2. The SBIR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential. Commercial potential includes the potential to transition the technology to private sector applications, Government applications, or Government contractor applications. Commercial potential in a Phase II proposal may be evidenced by:
 - i. the SBC's record of successfully commercializing SBIR or other research;
 - ii. the existence of Phase II funding commitments from private sector or other non- SBIR funding sources;
 - iii. the existence of Phase III, follow-on commitments for the subject of the research; and
 - iv. other indicators of commercial potential of the idea.
- c. **PHASE III**—SBIR Phase III refers to work that derives from, extends, or logically concludes effort(s) performed under prior SBIR funding agreements, but is funded by sources other than the SBIR Program. Phase III work is typically oriented towards commercialization of SBIR research or technology.
 1. Each of the following types of activity constitutes SBIR Phase III work:
 - i. commercial application of SBIR-funded R/R&D financed by non-Federal sources of capital (Note: The guidance in this Policy Directive regarding SBIR Phase III pertains to the non-SBIR federally-funded work described in (ii) and (iii) below. It does not address the nature of private agreements the SBIR firm may make in the commercialization of its technology.);
 - ii. SBIR-derived products or services intended for use by the Federal Government, funded by non-SBIR sources of Federal funding;
 - iii. continuation of R/R&D that has been competitively selected using peer review or scientific review criteria, funded by non-SBIR Federal funding sources.
 2. A Phase III award is, by its nature, an SBIR award, has SBIR status, and must be accorded SBIR data rights. (See Section 8(b)(2) regarding the protection period for data rights.) If an SBIR awardee wins a competition for work that derives from, extends, or logically concludes that firm's work under a prior SBIR funding agreement, then the funding agreement for the new, competed work must have all SBIR Phase III status and data rights. A Federal agency may enter into a Phase III SBIR agreement at any time with a Phase II awardee. Similarly, a Federal agency may enter into a Phase III SBIR agreement at any time with a Phase I awardee. An agency official may

determine, using the criteria set forth in the Directive as guidance, whether a contract or agreement is a Phase III award.

3. The competition for SBIR Phase I and Phase II awards satisfies any competition requirement of the Armed Services Procurement Act, the Federal Property and Administrative Services Act, and the Competition in Contracting Act. Therefore, an agency that wishes to fund an SBIR Phase III project is not required to conduct another competition in order to satisfy those statutory provisions. As a result, in conducting actions relative to a Phase III SBIR award, it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302-5, that the project is a SBIR Phase III award that is derived from, extends, or logically concludes efforts performed under prior SBIR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2).
4. Phase III work may be for products, production, services, R/R&D, or any combination thereof.
5. There is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern. There is no limit on the time that may elapse between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award.
6. The small business size limits for Phase I and Phase II awards do not apply to Phase III awards.
7. For Phase III, Congress intends that agencies or their Government-owned, contractor-operated facilities, Federally-funded research and development centers, or Government prime contractors that pursue R/R&D or production developed under the SBIR Program, give preference, including sole source awards, to the awardee that developed the technology. In fact, the Act requires reporting to SBA of all instances in which an agency pursues research, development, or production of a technology developed by an SBIR awardee, with a concern other than the one that developed the SBIR technology. (See Section 4(c)(7) immediately below for agency notification to SBA prior to award of such a funding agreement and Section 9(a)(12) regarding agency reporting of the issuance of such award.) SBA will report such instances, including those discovered independently by SBA, to Congress.
8. For Phase III, agencies, their Government-owned, contractor-operated facilities, or Federally-funded research and development centers, that intend to pursue R/R&D, production, services, or any combination thereof of a technology developed by an SBIR awardee of that agency, with an entity other than that SBIR awardee, must notify SBA in writing prior to such an award. This notice requirement also applies to technologies of SBIR awardees with SBIR funding from two or more agencies where one of the agencies determines to pursue the technology with an entity other than that awardee.

This notification must include, at a minimum: (a) the reasons why the follow-on funding agreement with the SBIR awardee is not practicable; (b) the identity of the entity with which the agency intends to make an award to perform research, development, or production; and (c) a description of the type of funding award under which the research, development, or production will be obtained. SBA may appeal the decision to the head of the contracting activity. If SBA decides to appeal the decision, it must file a notice of intent to appeal with the contracting officer no later than 5 business days after receiving the agency's notice of intent to make award. Upon receipt of SBA's notice of intent to appeal, the contracting officer must suspend further action on the acquisition until the head of the contracting activity issues a written decision on the appeal. The contracting officer may proceed with award if he or she determines in writing that the award must be made to protect the public interest. The contracting officer must include a statement of the facts justifying that determination and provide a copy of its determination to SBA. Within 30 days of receiving SBA's appeal, the head of the contracting activity must render a written decision setting forth the basis of his or her determination.

5. Program Solicitation Process

- a. At least annually, each agency must issue a program solicitation that sets forth a substantial number of R/R&D topics and subtopic areas consistent with stated agency needs or missions. Both the list of topics and the description of the topics and subtopics must be sufficiently comprehensive to provide a wide range of opportunities for SBCs to participate in the agency R&D programs. Topics and subtopics must emphasize the need for proposals with advanced concepts to meet specific agency R/R&D needs. Each topic and subtopic must describe the needs in sufficient detail to assist in providing on-target responses, but cannot involve detailed specifications to prescribed solutions of the problems.
- b. The Act requires issuance of SBIR (Phase I) Program solicitations in accordance with a Master Schedule coordinated between SBA and the SBIR agency. The SBA office responsible for coordination is:

Office of Technology
Office of Government Contracting
Office of Government Contracting and Business Development
U. S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416
Phone: (202) 205-6450
Fax: (202) 205-7754
E-mail: technology@sba.gov
Internet site: www.sba.gov/sbir

- c. For maximum participation by interested SBCs, it is important that the planning, scheduling and coordination of agency program solicitation release dates be

completed as early as practicable to coincide with the commencement of the fiscal year on October 1. Bunching of agency program solicitation release and closing dates may prohibit SBCs from preparation and timely submission of proposals for more than one SBIR project. SBA's coordination of agency schedules minimizes the bunching of proposed release and closing dates. Participating agencies may elect to publish multiple program solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

d. Master Schedule

SBA posts an electronic Master Schedule of release dates of program solicitations with links to Internet web sites of agency solicitations. Agencies must post on their Internet web sites the following information regarding each program solicitation:

1. The list of topics upon which R/R&D proposals will be sought.
 2. Agency address, phone number, or email address from which SBIR Program solicitations can be requested or obtained, especially through electronic means.
 3. Names, addresses, and phone numbers of agency contact points where SBIR-related inquiries may be directed.
 4. Release date(s) of program solicitation(s).
 5. Closing date(s) for receipt of proposals.
 6. Estimated number and average dollar amounts of Phase I awards to be made under the solicitation.
- e. On or before August 1, each agency representative must notify SBA in writing or by e-mail of its proposed program solicitation release and proposal due dates for the next fiscal year. SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. In all cases, SBA will make final decisions.
- f. For those agencies that use both general topic and more specific subtopic designations in their SBIR solicitations, the topic data should accurately describe the research solicited. For example, rather than just announcing topic information characterized as "Chemistry" or "Aerodynamics," the SBIR agency should summarize the subtopic statements and, where appropriate, utilize National Critical Technologies.

g. Simplified, Standardized, and Timely SBIR Program Solicitations

1. The Act requires "...simplified, standardized and timely SBIR solicitations" and for SBIR agencies to use a "uniform process" minimizing the regulatory burden for SBCs. Therefore, the instructions in Appendix I to this Policy Directive purposely depart from normal Government solicitation format and

requirements. SBIR Program solicitations must be prepared according to Appendix I.

2. Agencies must provide SBA's Office of Technology with two hard copies or an e-mail version of each solicitation and any modifications no later than the date of release of the solicitation or modification to the public. Agencies that issue program solicitations in electronic format only must provide the Internet site at which the program solicitation may be accessed no later than the date of posting at that site of the program solicitation.
3. SBA does not intend that the SBIR Program solicitation replace or be used as a substitute for unsolicited proposals for R/R&D awards to SBCs. In addition, the SBIR Program solicitation procedures do not prohibit other agency R/R&D actions with SBCs that are carried on in accordance with applicable statutory or regulatory authorizations.

6. Eligibility and Application (Proposal) Requirements

a. Eligibility Requirements

1. To receive SBIR funds, each awardee of a SBIR Phase I or Phase II award must qualify as an SBC.
2. For Phase I, a minimum of two-thirds of the research or analytical effort must be performed by the awardee. Occasionally, deviations from this requirement may occur, and must be approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator.
3. For Phase II, a minimum of one-half of the research or analytical effort must be performed by the awardee. Occasionally, deviations from this requirement may occur, and must be approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator.
4. For both Phase I and Phase II, the primary employment of the principal investigator must be with the SBC at the time of award and during the conduct of the proposed project. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC. This precludes full-time employment with another organization. Occasionally, deviations from this requirement may occur, and must be approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator. Further, an SBC may replace the principal investigator on an SBIR Phase I or Phase II award, subject to approval in writing by the funding agreement officer. For purposes of the SBIR Program, personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR §121.106—Small Business Size Regulations.

5. For both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, agencies may approve a particular portion of the R/R&D work to be performed or obtained in a country outside of the United States, for example, if a supply or material or other item or project requirement is not available in the United States. The funding agreement officer must approve each such specific condition in writing.

b. Proposal Requirements

1. **Documentation of commercialization record of firms with multiple Phase II awards**—An SBC submitting a proposal for a funding agreement for Phase I of an SBIR Program that has received more than 15 Phase II SBIR awards during the preceding 5 fiscal years must document the extent to which it was able to secure Phase III funding to develop concepts resulting from previous Phase II SBIR awards.
2. **Commercialization Plan**—A succinct commercialization plan must be included with each proposal for an SBIR Phase II award moving toward commercialization. Elements of a commercialization plan may include the following:
 - i. **Company information**—Focused objectives/core competencies; size; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding, regulatory experience, and subsequent commercialization.
 - ii. **Customer and Competition**—Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.
 - iii. **Market**—Milestones, target dates, analyses of market size, and estimated market share after first year sales and after 5 years; explanation of plan to obtain market share.
 - iv. **Intellectual Property**—Patent status, technology lead, trade secrets or other demonstration of a plan to achieve sufficient protection to realize the commercialization stage and attain at least a temporal competitive advantage.
 - v. **Financing**—Plans for securing necessary funding in Phase III.
 - vi. **Assistance and mentoring**—Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, SBDCs, Federally-funded research laboratories, Manufacturing Extension Partnership centers, or other assistance providers.

3. **Data Collection**—Each Phase II applicant will be required to provide information to the Tech-Net Database System (<http://technet.sba.gov>). See Appendix I, Section 3(c), "Data Collection Requirement," for additional information.

7. SBIR Funding Process

Because the Act requires a "simplified, standardized funding process," specific attention must be given to the following areas of SBIR Program administration:

a. Timely Receipt and Review of Proposals

1. Participating agencies must establish appropriate dates and formats for review of proposals.
 - i. All activities related to Phase I proposal reviews must normally be completed and awards made within 6 months from the closing date of the program solicitation. However, agencies may extend that period up to 12 months based on agency needs.
 - ii. Program solicitations must establish proposal submission dates for Phase I and may establish proposal submission dates for Phase II. However, agencies may also negotiate mutually acceptable Phase II proposal submission dates with individual Phase I awardees, accomplish proposal reviews expeditiously, and proceed with Phase II awards. While recognizing that Phase II arrangements between the agency and applicant may require more detailed negotiation to establish terms acceptable to both parties, agencies must not sacrifice the R/R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.
 - iii. SBIR participants often submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements, which are within the expertise and capability levels of the applicant. To the extent feasible, more than one agency should not fund "essentially equivalent work" under the SBIR or other Federal programs. For this purpose, the standardized program solicitation will require applicants to indicate the name and address of the agencies to which essentially equivalent work proposals were made, or anticipated to be made, and to identify by subject the projects for which the proposal was submitted and the dates submitted. The same information will be required for any previous Federal Government awards. To assist in avoiding duplicate funding, each agency must provide to SBA and to each SBIR agency a listing of Phase I and Phase II awardees, their complete address, and the title of each SBIR project. This information should be distributed no later than release of the funding agreement award information to the public.

- b. **Review of SBIR Proposals**—SBA encourages SBIR agencies to use their routine review processes for SBIR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, "peer" reviews external to the agency are authorized by the Act. SBA cautions SBIR agencies that all review procedures must be designed to minimize any possible conflict of interest as it pertains to applicant proprietary data. The standardized SBIR solicitation advises potential applicants that proposals may be subject to an established external review process and that the applicant may include company designated proprietary information in its proposal.
- c. **Selection of Awardees**—Normally, SBIR agencies must establish a proposal review cycle wherein successful and unsuccessful applicants will be notified of final award decisions within 6-months of the agency's Phase I proposal closing date. However, agencies may extend that period up to 12 months based on agency needs.
 - 1. The standardized SBIR Program solicitation must:
 - i. Advise Phase I applicants that additional information may be requested by the awarding agency to evidence awardee responsibility for project completion.
 - ii. Advise applicants of the proposal evaluation criteria for Phase I and Phase II.
 - 2. The SBIR agency and each Phase I awardee considered for a Phase II award must arrange to manage Phase II proposal submissions, reviews, and selections.
- d. **Cost Sharing**—Cost sharing can serve the mutual interests of the SBIR agencies and certain SBIR awardees by assuring the efficient use of available resources. However, cost sharing on SBIR projects is not required, although it may be encouraged. Therefore, cost sharing cannot be an evaluation factor in the review of proposals. The standardized SBIR Program solicitation (Appendix I) will provide information to prospective SBIR applicants concerning cost sharing.
- e. **Payment Schedules and Cost Principles**
 - 1. SBIR awardees may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitized price and payment schedule. Advance payments are optional and may be made under appropriate law. In all cases, agencies must make payment to recipients under SBIR funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the funding agreement requirements.
 - 2. All SBIR funding agreements must use, as appropriate, current cost principles and procedures authorized for use by the SBIR agencies. At the time of award, agencies must inform each SBIR awardee, to the extent possible, of the

applicable Federal regulations and procedures that refer to the costs that, generally, are allowable under funding agreements.

f. **Funding Agreement Types and Fee or Profit**—Statutory requirements for uniformity and standardization require consistency in application of SBIR Program provisions among SBIR agencies. However, consistency must allow for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to SBIR Programs in the agencies. The following instructions meet all of these requirements:

1. **Funding Agreement**—The type of funding agreement (contract, grant, or cooperative agreement) is determined by the awarding agency, but must be consistent with 31 U.S.C. 6301-6308.
2. **Fee or Profit**—Except as expressly excluded or limited by statute, awarding agencies must provide for a reasonable fee or profit on SBIR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work.

g. **Periods of Performance and Extensions**

1. In keeping with the legislative intent to make a large number of relatively small awards, modification of funding agreements to extend periods of performance, to increase the scope of work, or to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.
2. **Phase I**—Period of performance normally should not exceed 6 months. However, agencies may provide a longer performance period where appropriate for a particular project.
3. **Phase II**—Period of performance under Phase II is a subject of negotiation between the awardee and the issuing agency. The duration of Phase II normally should not exceed 2 years. However, agencies may provide a longer performance period where appropriate for a particular project.

h. **Dollar Value of Awards**

1. Generally, a Phase I award may not exceed \$100,000 and a Phase II award may not exceed \$750,000. SBA may adjust these amounts once every 5 years to reflect economic adjustments and programmatic considerations. There is no dollar level associated with Phase III SBIR awards.
2. An awarding agency may exceed those award values where appropriate for a particular project. After award of any funding agreement exceeding \$100,000 for Phase I or \$750,000 for Phase II, the agency's SBIR representative must provide SBA with written justification of such action. This justification must be submitted with the agency's Annual Report data. Similar justification is

required for any modification to a funding agreement that would bring the cumulative dollar amount to a total in excess of the amounts set forth above.

- i. **National Security Exemption**—The Act provides for exemptions related to the simplified standardized funding process "... if national security or intelligence functions clearly would be jeopardized." This exemption should not be interpreted as a blanket exemption or prohibition of SBIR participation related to the acquisition of effort on national security or intelligence functions except as specifically defined under Section 9(e)(2) of the Act, 15 U.S.C. 638(e)(2). Agency technology managers directing R/R&D projects under the SBIR Program, where the project subject matter may be affected by this exemption, must first make a determination on which, if any, of the standardized proceedings clearly place national security and intelligence functions in jeopardy, and then proceed with an acceptable modified process to complete the SBIR action. SBA's SBIR Program monitoring activities, except where prohibited by security considerations, must include a review of nonconforming SBIR actions justified under this public law provision.

8. Terms of Agreement Under SBIR Awards

- a. **Proprietary Information Contained in Proposals**—The standardized SBIR Program solicitation will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. Agencies will discourage SBCs from submitting information considered proprietary unless the information is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The Government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the SBIR Program, from disclosure.
- b. **Rights in Data Developed Under SBIR Funding Agreement**—The Act provides for "retention by an SBC of the rights to data generated by the concern in the performance of an SBIR award."
 1. Each agency must refrain from disclosing SBIR technical data to outside the Government (except reviewers) and especially to competitors of the SBC, or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation.
 2. SBIR agencies must protect from disclosure and non-governmental use all SBIR technical data developed from work performed under an SBIR funding

agreement for a period of not less than four years from delivery of the last deliverable under that agreement (either Phase I, Phase II, or Federally-funded SBIR Phase III) unless, subject to (b)(3) of this section, the agency obtains permission to disclose such SBIR technical data from the awardee or SBIR applicant. Agencies are released from obligation to protect SBIR data upon expiration of the protection period except that any such data that is also protected and referenced under a subsequent SBIR award must remain protected through the protection period of that subsequent SBIR award. For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than four years. The Government retains a royalty-free license for Government use of any technical data delivered under an SBIR award, whether patented or not. This section does not apply to program evaluation.

3. SBIR technical data rights apply to all SBIR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the SBIR Program, as described in Section 4 of this Policy Directive. The scope and extent of the SBIR technical data rights applicable to Federally-funded Phase III awards is identical to the SBIR data rights applicable to Phases I and II SBIR awards. The data rights protection period lapses only: (i) upon expiration of the protection period applicable to the SBIR award, or (ii) by agreement between the awardee and the agency.
4. Agencies must insert the provisions of (b)(1), (2), and (3) immediately above as SBIR data rights clauses into all SBIR Phase I, Phase II, and Phase III awards. These data rights clauses are non-negotiable and must not be the subject of negotiations pertaining to an SBIR Phase III award, or diminished or removed during award administration. An agency must not, in any way, make issuance of an SBIR Phase III award conditional on data rights. If the SBIR awardee wishes to transfer its SBIR data rights to the awarding agency or to a third party, it must do so in writing under a separate agreement. A decision by the awardee to relinquish, transfer, or modify in any way its SBIR data rights must be made without pressure or coercion by the agency or any other party. Following issuance of an SBIR Phase III award, the awardee may enter into an agreement with the awarding agency to transfer or modify the data rights contained in that SBIR Phase III award. Such a bilateral data rights agreement must be entered into only after the SBIR Phase III award, which includes the appropriate SBIR data rights clause, has been signed. SBA must immediately report to the Congress any attempt or action by an agency to condition an SBIR award on data rights, to exclude the appropriate data rights clause from the award, or to diminish such rights.

- c. **Title Transfer of Agency-Provided Property**—Under the Act, the Government may transfer title to equipment provided by the SBIR agency to the awardee where such transfer would be more cost effective than recovery of the property.
- d. **Continued Use of Government Equipment**—The Act directs that an agency allow an SBIR awardee participating in the third phase of the SBIR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the SBIR Program.
- e. **Grant Authority**—The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.
- f. **Conflicts of Interest**—SBA cautions SBIR agencies that awards made to SBCs owned by or employing current or previous Federal Government employees may create conflicts of interest in violation of FAR Part 3 and the Ethics in Government Act of 1978, as amended. Each SBIR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.
- g. **American-Made Equipment and Products**—Congress intends that the awardee of a funding agreement under the SBIR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible, in keeping with the overall purposes of this program. Each SBIR agency must provide to each awardee a notice of this requirement.

9. Responsibilities of SBIR Participating Agencies and Departments

- a. The Act requires each agency participating in the SBIR Program to:
 - 1. Submit to SBA's Administrator, not later than 4 months after the date of enactment of its annual Appropriations Act, a report describing the methodology used for calculating the amount of its extramural budget. The report must also include an itemization of each research program excluded from the calculation of its extramural budget and a brief explanation of why it is excluded.
 - 2. Unilaterally determine the categories of projects to be included in its SBIR Program, giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by:
 - i. the National Critical Technologies panel (or its successor) in reports required under 42 U.S.C. 6683, or
 - ii. the Secretary of Defense in accordance with 10 U.S.C. 2522.

3. Release SBIR solicitations in accordance with the SBA master schedule.
4. Unilaterally receive and evaluate proposals resulting from program solicitations, select awardees, issue funding agreements, and inform each awardee under such agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement.
5. Require a succinct commercialization plan with each proposal submitted for a Phase II award.
6. Collect and maintain information from awardees and provide it to SBA to develop and maintain the Tech-Net Database, as identified in Section 11(e) of this policy Directive.
7. Administer its own SBIR funding agreements or delegate such administration to another agency.
8. Include provisions in each SBIR funding agreement setting forth the respective rights of the United States and the awardee with respect to intellectual property rights and with respect to any right to carry out follow-on research.
9. Ensure that the rights in data developed under each Federally-funded SBIR Phase I, Phase II, and Phase III award are protected properly.
10. Make payments to awardees of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to awardees under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.
11. Provide an annual report on the SBIR Program to SBA. See Section 10 of this Policy Directive.
12. Report at least annually to SBA's Office of Technology all instances in which an agency pursued research, development, production, or any such combination of a technology developed by an SBC using an award made under the SBIR Program of that agency, where the agency determined that it was not practicable to enter into a follow-on non-SBIR Program funding agreement with that concern. The report must include, at a minimum:
 - i. the reasons why the follow-on funding agreement with the concern was not practicable;
 - ii. the identity of the entity with which the agency contracted to perform the research, development, or production; and
 - iii. a description of the type of funding agreement under which the research, development, or production was obtained.

13. Include in its annual performance plan required by 31 U.S.C. 1115(a) and (b) a section on its SBIR Program, and submit such section to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.
- b. The Act permits an agency that has established a Technology Development Program to review for funding under that program, in each fiscal year:
 1. any proposal to provide outreach and assistance to 1 or more SBCs interested in participating in the SBIR Program, including any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in —
 - i. a State that is eligible to participate in that technology development program; or
 - ii. an Additionally Eligible State.
 - iii. any meritorious proposal for an SBIR Phase I award that is not funded through the SBIR Program for that fiscal year due to funding constraints, from an SBC located in a state identified in (i) or (ii) immediately above.
- c. The Act allows discretionary technical assistance to SBIR awardees.
 1. Agencies may enter into agreements with vendors to provide technical assistance to SBIR awardees, which may include access to a network of scientists and engineers engaged in a wide range of technologies or access to technical and business literature available through on-line data bases. Each agency may select a vendor for a term not to exceed 3 years. The vendor must be selected using competitive and merit-based criteria. The purpose of this technical assistance is to assist SBIR awardees in:
 - i. making better technical decisions on SBIR projects;
 - ii. solving technical problems that arise during SBIR projects;
 - iii. minimizing technical risks associated with SBIR projects; and
 - iv. commercializing the SBIR product or process.
 2. **Phase I awards**—Each agency may provide up to \$4,000 of SBIR funds for the technical assistance described above in (c)(1). The amount will be in addition to the award and will count as part of the agency's SBIR funding.
 3. **Phase II awards**—Each agency may allow awardees to expend up to \$4,000 of SBIR funds per year, using funds available from the SBIR award, for the technical assistance described above in (c)(1).

- d. Agencies are encouraged to develop programs to reduce the time period between the issuance of SBIR Phase I and Phase II awards. As appropriate, agencies should adopt accelerated proposal, evaluation, and selection procedures designed to address the gap in funding these competitive awards.

e. Interagency Actions

1. **Joint funding**—An SBIR project may be financed by more than one Federal agency. Joint funding is not required but can be an effective arrangement for some projects.
2. **Phase II awards**—An SBIR Phase II award may be issued by a Federal agency other than the one that made the Phase I award. The Phase I and Phase II agencies should document their files appropriately, providing clear rationale for the transfer of the Phase II proposal to, and award by, the funding Federal agency.
3. **Timely notification of awards**—In order to avoid duplicate funding of an SBIR project, agencies must promptly search the Tech-Net Database System for awards for essentially equivalent work. Discussion among agencies receiving similar proposals is strongly encouraged before an SBIR award is made.
4. **Participation by women-owned SBCs and socially and economically disadvantaged SBCs in the SBIR Program**—In order to meet statutory requirements for greater inclusion, SBA and the Federal participating agencies must conduct outreach efforts to find and place innovative women-owned SBCs and socially and economically disadvantaged SBCs in the SBIR Program information system. These SBCs will be required to compete for SBIR awards on the same basis as all other SBCs. However, participating agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified women-owned SBCs and socially and economically disadvantaged SBCs to participate in the SBIR Program.

f. Limitation of participation and use of funds

1. Each SBIR agency must expend 2.5 percent of its extramural budget on awards made to SBCs. Agencies may not make available for the purpose of meeting the 2.5 percent an amount of its extramural budget for basic research that exceeds 2.5 percent. Funding agreements with SBCs for R/R&D that result from competitive or single source selections other than an SBIR Program must not be considered to meet any portion of the 2.5 percent.
2. An agency must not use any of its SBIR budget for the purpose of funding administrative costs of the program, including costs associated with program operations, employee salaries, and other associated expenses.

3. An agency must not issue an SBIR funding agreement that includes a provision for subcontracting any portion of that agreement back to the issuing agency, to any other Federal Government agency, or to other units of the Federal Government. SBA may issue a case-by-case waiver to this provision after review of an agency's written justification that includes the following information:
 - i. An explanation of why the SBIR research project requires the use of the Federal facility or personnel, including data that verifies the absence of non-federal facilities or personnel capable of supporting the research effort.
 - ii. Why the Agency will not and can not fund the use of the federal facility or personnel for the SBIR project with non-SBIR money.
 - iii. The concurrence of the SBC's chief business official to use the federal facility or personnel.
4. No agency, at its own discretion, may unilaterally cease participation in the SBIR Program. R/R&D agency budgets may cause fluctuations and trends that must be reviewed in light of SBIR Program purposes. An agency may be considered by SBA for a phased withdrawal from participation in the SBIR Program over a period of time sufficient in duration to minimize any adverse impact on SBCs. However, the SBA decision concerning such a withdrawal will be made on a case-by-case basis and will depend on significant changes to extramural R/R&D 3-year forecasts as found in the annual Budget of the United States Government and National Science Foundation breakdowns of total R/R&D obligations as published in the Federal Funds for Research and Development. Any withdrawal of an SBIR Federal participating agency from the SBIR Program will be accomplished in a standardized and orderly manner in compliance with these statutorily mandated procedures.
5. Federal agencies not otherwise qualified for the SBIR Program may participate on a voluntary basis. Federal agencies seeking to participate in the SBIR Program must first submit their written requests to SBA. Voluntary participation requires the written approval of SBA.

10. Annual Report to the Small Business Administration

The Act requires a "simplified, standardized and timely annual report" from the SBIR agencies. The following paragraphs explain more about this requirement, including the due date, the kinds of information to be included, and the number of copies to be submitted to SBA.

- a. **Annual Report Due Date and Number of Copies**—Reporting must be on an annual basis and will be for the period ending September 30 of each fiscal year. A single, hard copy report is due to SBA by March 15 of each year. For example, the report for FY 2002 (October 1, 2001—September 30, 2002) must be submitted to SBA by

March 15, 2003. SBA encourages agencies to submit their annual report before the March 15 due date. The report should be sent to the address noted in Section 5(b). However, if agencies choose to send an electronic version, it should be sent to technology@sba.gov.

b. Annual Report Content

1. Agency total fiscal year, extramural R/R&D total obligations as reported to the National Science Foundation pursuant to the annual Budget of the United States Government.
2. SBIR Program total fiscal year dollars derived by applying the statutory percentum to the agency's extramural R/R&D total obligations.
3. SBIR Program fiscal year dollars obligated through SBIR Program funding agreements for Phase I and Phase II.
4. Number of topics and subtopics contained in each program solicitation.
5. Number of proposals received by the agency for each topic and subtopic in each program solicitation. Identify the number of proposals received from HUBZone SBCs.
6. For both Phase I and Phase II, the awardee's name and address, solicitation topic and subtopic, solicitation number, project title, and total dollar amount of funding agreement. Identify women-owned SBCs, economically and socially disadvantaged SBCs, HUBZone SBCs, and Phase II awardees with follow-on funding commitments.
7. Justification for the award of any funding agreement exceeding \$100,000 for Phase I or \$750,000 for Phase II.
8. The number of awardees for whom the Phase I process exceeded 6 months, starting from the closing date of the SBIR solicitation to award of the funding agreement.
9. For an agency Phase III award using non-SBIR Federal funds to continue a Phase II project, the agency must provide the name, address, project title, and dollar amount obligated.
10. Justification for awards made under a topic or subtopic where the agency received only one proposal. Agencies must also provide the awardee's name and address, the topic or subtopic, and the dollar amount of award. Information must be collected quarterly, but updated in the agency's annual reports.
11. An accounting of Phase I awards made to SBCs that have received more than 15 Phase II awards from all agencies in the preceding 5 fiscal years. Each agency must report: name of awardee; Phase I funding agreement number and

date of award; Phase I topic or subtopic title; amount and date of previous Phase II funding; and commercialization status for each prior Phase II award.

12. If applicable, report the number of National Critical Technology topic or subtopic funding agreements issued, including an identification of the specific critical technology topics, and the percentage by number and dollar amount of the agency's total SBIR awards to such National Critical Technologies topics.
13. Report all instances in which an agency pursued R/R&D, services, production, or any combination of a technology developed by an SBIR awardee and determined that it was not practicable to enter into a follow-on funding agreement with non-SBIR funds with that concern. See Section 9(a)(12) for minimum reporting requirements.
14. Report the number and dollar value of each SBIR and non-SBIR award over \$10,000 and compare the number and amount of SBIR awards with awards to other than SBCs.

11. Responsibilities of SBA

- a. SBA's Office of Technology will annually obtain available information on the current critical technologies from the National Critical Technologies panel (or its successor) and the Secretary of Defense and provide such information to the SBIR agencies.
- b. SBA will request this information in June of each year. The data received will be submitted to each of the participating Federal agencies and will also be published in the September issue of the SBIR Pre-Solicitation Announcement.
- c. Examples of SBIR Areas to be Monitored by SBA.
 1. **SBIR Funding Allocations**—The magnitude and source of each SBIR agency's annual allocation reserved for SBIR awards are critical to the success of the SBIR Program. The Act defines the SBIR effort (R/R&D), the source of the funds for financing the SBIR Program (extramural budget), and the percentage of such funds to be reserved for the SBIR Program (2.5 percent). The Act requires that SBA monitor these annual allocations.
 2. **SBIR Program Solicitation and Award Status**—The accomplishment of scheduled SBIR events, such as SBIR Program solicitation releases and the issuance of funding agreements, is critical to meeting statutory mandates and to operating an effective, useful program. SBA monitors these and other operational features of the SBIR Program. SBA does not plan to monitor administration of the awards except in instances where SBA assistance is requested and is related to a specific SBIR project or funding agreement.
 3. **Follow-on Funding Commitments**—SBA will monitor whether follow-on non-Federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.

4. **Agency Rules and Regulations**—It is essential that no policy, rule, regulation, or interpretation be promulgated by the SBIR agencies that are inconsistent with the Act or this Policy Directive. SBA's monitoring activity will include review of policies, rules, regulations, interpretations, and procedures generated to facilitate intra- and interagency SBIR Program implementation.
- d. SBA develops, participates in, and, when appropriate and feasible, sponsors seminars for innovative women-owned SBCs and socially and economically disadvantaged SBCs to inform them of the SBIR Program and Federal and commercial assistance and services available for potential SBIR Program participants.
 - e. **Standardized Collection of Data**—"Technology Resources Access Network" (Tech-Net) Database System Overview
 1. SBA's Office of Technology, as functional program manager for the SBIR and the STTR Programs, is required to collect and report to the Congress, information regarding awards made to SBCs by each Federal agency participating in these programs.
 2. The Office of Technology maintains an internal database of awards and uses the system to report on technology and demographical statistics regarding the SBIR and the STTR Programs. The system also stores the 200-word technical abstract for each SBIR and STTR award that is prepared by the awardee summarizing the research effort that has been supported by the Federal Government. The system also provides the Office of Technology with the ability to perform keyword searches in many areas, including any part of the name, address, and technical abstract of the awardee. The system produces many reports that are used in the conduct of audits performed by the General Accounting Office (GAO) and to expose potential duplication of research and development efforts funded by the SBIR agencies.
 3. The Office of Technology, in a joint effort with SBA's Office of the Chief Information Officer, has redesigned the Office of Technology's internal awards database system to operate on the Internet. The Internet system is titled the "Technology Resources Network," or Tech-Net.
 4. Tech-Net offers a vast array of user-friendly capabilities, and is accessible by the public at no charge. Tech-Net allows for the online submission of SBIR/STTR awards data from all SBIR agencies. Tech-Net also allows any end-user to perform keyword searches and create formatted reports of SBIR/STTR awards information. Tech-Net will allow for potential research partners to view research and development efforts that are ongoing in the SBIR and the STTR Programs, increasing the investment opportunities of the SBIR/STTR SBCs in the high tech arena. Tech-Net serves as an excellent marketing tool for the small, high tech business community, allowing investors to view first-hand the technical capabilities of SBIR/STTR awardees. This will

ultimately produce investments, partnerships, and strategic alliances resulting in commercialization of SBIR/STTR research.

5. Tech-Net also houses legislatively mandated information on all SBIR and STTR awards, as well as confidential outcome and output information that will be relevant to measuring the effectiveness and success of the programs.
6. Awardees can update their information and add project commercialization and sales data with user names and passwords. Username and passwords will be assigned only to awardees to provide access to their respective awards information maintained in the Tech-Net system. Award and commercialization data maintained in the Tech-Net database can be changed only by the awardee, SBA, or the awarding SBIR/STTR Federal agency.
7. Project commercialization and sales data can only be viewed by Congress, GAO, agencies participating in the SBIR and the STTR Programs, Office of Management and Budget (OMB), Office of Science and Technology Policy (OSTP), Office of Federal Procurement Policy (OFPP), and other authorized persons (for example, authorized contractors) who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.
8. To use the Tech-Net database system, visit the website <http://technet.sba.gov>. Online help is available.
9. **Public Tech-Net Database (See Appendix II for Data Fields)**—The public Tech-Net Database is a searchable, up-to-date, electronic database that includes:
 - i. the name, size, location, funding agreement number, and identifying number assigned by the Administrator of each SBC that has received an SBIR or STTR Phase I or Phase II award from a Federal agency;
 - ii. a description of each SBIR or STTR Phase I or Phase II award received by the SBC including:
 - iii. an abstract of the project funded by the award, excluding any proprietary information so identified by the awardee;
 - iv. the Federal agency making the award; and
 - v. the date and amount of the award.
 - vi. an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made; and

- vii. information regarding mentors and Mentoring Networks, as required in the Federal and State Technology (FAST) Partnership Program described in Section 12 of this Policy Directive.
10. **Government Tech-Net Database**—SBA, in consultation with the Federal agencies participating in the SBIR and the STTR Programs, develops and maintains a secure database that:
- i. contains, for each Phase II award:
 - A. information on revenue from the sale of new products or services resulting from the research conducted under each Phase II award;
 - B. information on additional investment from any source, other than Phase I or Phase II SBIR or STTR awards, to further the research and development conducted under each Phase II award; and
 - C. any other information received in connection with the award that the Administrator, in conjunction with the SBIR program managers of the participating agencies, considers relevant and appropriate;
 - ii. includes any narrative information that a Phase II awardee voluntarily submits to further describe the outputs and outcomes of its awards;
 - iii. includes for each applicant that does not receive a Phase I or Phase II award: (A) the name, size, location, and identifying number assigned by SBA; (B) an abstract of the project; and (C) the Federal agency to which the application was made;
 - iv. includes any other data collected by or available to any Federal agency that such agency considers to be useful for SBIR program evaluation; and
 - v. is available for use solely for program evaluation purposes by the Federal Government or, in accordance with Policy Directives issued by SBA, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database

11. Data Collection for Government Tech-Net Database

- i. Each SBC applying for a Phase II award is required to update the appropriate information in the Tech-Net database for any of its prior Phase II awards. In meeting this requirement, the SBC may apportion sales or additional investment information relating to more than one

Phase II award among those awards, if it notes the apportionment for each award.

- ii. Each Phase II awardee is required to update the appropriate information in the Tech-Net database on that award upon completion of the last deliverable under the funding agreement. In addition, the awardee is requested to voluntarily update the appropriate information on that award in the Tech-Net database annually thereafter for a minimum period of 5 years.
- iii. Pursuant to 15 U.S.C. 638(k)(4), information provided to the Government Tech-Net Database is privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 (Government Organization and Employees); nor must it be considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).
- iv. SBA will minimize the data reporting requirements of SBCs, make updating available electronically, and provide standardized procedures.

12. Federal and State Technology (FAST) Partnership Program and Outreach Program

a. Federal and State Technology Partnership Program

The Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106-554, established the Federal and State Technology Partnership Program (FAST Program) to strengthen the technological competitiveness of SBCs in the United States. Congress found that programs that foster economic development among small high-technology firms vary widely among the States. Thus, the purpose of the FAST Program is to improve the participation of small technology firms in the innovation and commercialization of new technology, thereby ensuring that the United States remains on the cutting-edge of research and development in the highly competitive arena of science and technology. SBA administers the FAST Program. Additional and detailed information regarding this program is available at www.sba.gov/sbir.

b. Rural Outreach Program

1. The Rural Outreach Program is authorized by section 9(s) of the Small Business Act, 15 U.S.C. 638(s). The Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106-554, extends the program through September 30, 2005.
2. Historically, SBCs located in a relatively small number of states have been highly successful in securing awards under the SBIR Program. To expand competition under the SBIR and STTR Programs, and to encourage the maximum number of SBCs to submit proposals and succeed in winning awards, SBA provides Federal assistance to support statewide outreach to small high-technology businesses located in states that are underrepresented in

SBIR/STTR awards. Cooperative agreements to "Eligible States" are made on a matching funds basis. The awards will be made in a ratio of Federal dollars to non-Federal dollars of 2:1, with a maximum Federal contribution of \$100,000. Assistance provided to an Eligible State under this program announcement must be used by the State, in consultation with State and local departments and agencies, for programs and activities to increase the participation of SBCs located in the State in the SBIR and STTR Programs.

3. Only Eligible States may submit proposals for the Rural Outreach Program.
4. SBA has determined that there are 25 "Eligible States": Alaska, Arkansas, Delaware, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming.

APPENDIX I—INSTRUCTIONS FOR SBIR PROGRAM SOLICITATION PREPARATION

- a. **General**—Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) requires "...simplified, standardized and timely SBIR solicitations" and for SBIR agencies to utilize a "uniform process" minimizing the regulatory burden of participation. Therefore, the following instructions purposely depart from normal Government solicitation formats and requirements. SBIR solicitations must be prepared and issued as program solicitations in accordance with the following instructions.
- b. **Limitation in Size of Solicitation**—In the interest of meeting the requirement for simplified and standardized solicitations, while also recognizing that the Internet has become the main vehicle for distribution, each agency should structure its entire SBIR solicitation to produce the least number of pages (electronic and printed), consistent with the procurement/assistance standing operating procedures and statutory requirements of the participating Federal agencies.
- c. **Format**—SBIR Program solicitations must be prepared in a simple, standardized, easy-to-read, and easy-to-understand format. It must include a cover sheet, a table of contents, and the following sections in the order listed.
 1. Program Description
 2. Definitions
 3. Proposal Preparation Instructions and Requirements
 4. Method of Selection and Evaluation Criteria
 5. Considerations
 6. Submission of Proposals
 7. Scientific and Technical Information Sources
 8. Submission Forms and Certifications
 9. Research Topics
- d. **Cover Sheet**—The cover sheet of an SBIR Program solicitation must clearly identify the solicitation as a SBIR solicitation, identify the agency releasing the solicitation, specify date(s) on which contract proposals or grant applications (proposals) are due under the solicitation, and state the solicitation number or year.

INSTRUCTIONS FOR PREPARATION OF SBIR PROGRAM SOLICITATION SECTIONS 1 THROUGH 9

a. Program Description

- a. Summarize in narrative form the invitation to submit proposals and the objectives of the SBIR Program.
- b. Describe in narrative form the agency's SBIR Program including a description of the three phases. Note in your description that the solicitation is for Phase I proposals only.
- c. Describe program eligibility, as follows:

Eligibility—Each concern submitting a proposal must qualify as an SBC for R/R&D purposes at the time of award. In addition, the primary employment of the principal investigator must be with the SBC at the time of award and during the conduct of the proposed research, unless otherwise approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator. Also, for both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, for example, a supply or material or other item or project requirement that is not available in the United States, agencies may allow that particular portion of the R/R&D work to be performed or obtained in a country outside of the United States. Approval by the funding agreement officer for each such specific condition must be in writing. Phase II proposals may be submitted only by Phase I awardees.

- d. List the name, address and telephone number of agency contacts for general information on the SBIR Program solicitation.
- b. **Definitions**—Whenever terms are used that are unique to the SBIR Program, a specific SBIR solicitation or a portion of a solicitation, they will be defined in a separate section entitled "Definitions." At a minimum, the definitions of "funding agreement," "R/R&D," "SBC," "SBIR technical data," "SBIR technical data rights," "subcontract," and "women-owned SBC," as stated in this Policy Directive, must be included.
- c. **Proposal Preparation Instructions and Requirements**—The purpose of this section is to inform the applicant on what to include in the proposal and to set forth limits on what may be included. It should also provide guidance to assist applicants, particularly those that may not have previous Government experience, in improving the quality and acceptance of proposals.

- a. **Limitations on Length of Proposal**—Include at least the following information:
 1. SBIR Phase I proposals must not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments, unless stated otherwise in the agency solicitation. Pages should be of standard size (8

1/2" X 11"; 21.6 cm X 27.9 cm) and should conform to the standard formatting instructions. Margins should be 2.5 cm and type at least 10 point font.

2. A notice that no additional attachments, appendices, or references beyond the 25-page limitation shall be considered in proposal evaluation (unless specifically solicited by an agency) and that proposals in excess of the page limitation shall not be considered for review or award.
- b. **Proposal Cover Sheet**—Every applicant is required to include at least the following information on the first page of proposals. Items 8 and 9 are for statistical purposes only.
1. Agency and solicitation number or year.
 2. Topic Number or Letter.
 3. Subtopic Number or Letter.
 4. Topic Area.
 5. Project Title.
 6. Name and Complete Address of Firm.
 7. Small Business Certification (by statement or checkbox) as follows: "The above concern certifies that it is an SBC and meets the definition as stated in this solicitation or that it will meet that definition at time of award."
 8. Socially and Economically Disadvantaged SBC Certification (by statement or checkbox) as follows:

"The above concern certifies that it (does/does not) qualify as a socially and economically disadvantaged SBC as defined in this solicitation."
 9. Women-owned SBC Certification (by statement or checkbox) as follows:

"The above concern certifies that it (does/does not) qualify as a women-owned SBC as defined in this solicitation."
 10. An information statement regarding duplicate research as follows:

"The applicant and/or Principal Investigator (has/has not) submitted proposals for essentially equivalent work under other Federal program solicitations or (has/has not) received other Federal awards for essentially equivalent work." (Identify proposals/awards in Section 3(e)(10), "Similar Proposals and Awards.")

11. Disclosure permission (by statement or checkbox), such as follows, may be included at the discretion of the funding agency:

"Will you permit the Government to disclose the title and technical abstract page of your proposed project, plus the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to concerns that may be interested in contacting you for further information? (Yes/No)"

12. Signature of a company official of the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.
13. Signature of Principal Investigator or Project Manager within the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.
14. Legend for proprietary information as described in the "Considerations" section of this program solicitation if appropriate. May also be noted by asterisks in the margins on proposal pages.

c. Data Collection Requirement

1. Each Phase II applicant is required to provide information for the Tech-Net Database System (<http://technet.sba.gov>). The following are examples of the data to be entered by applicants into Tech-Net:
 - i. Any business concern or subsidiary established for the commercial application of a product or service for which an SBIR award is made.
 - ii. Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;
 - iii. Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award.
 - iv. Update the information in the Tech-Net database for any prior Phase II award received by the SBC. The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.
2. Each Phase II awardee is required to update the appropriate information on the award in the Tech-Net database upon completion of the last deliverable under the funding agreement and is requested to voluntarily update the information in the Tech-Net database annually thereafter for a minimum period of 5 years.

- d. **Abstract or Summary**—Applicants will be required to include a one-page project summary of the proposed R/R&D including at least the following:
 1. Name and address of SBC.
 2. Name and title of principal investigator or project manager.
 3. Agency name, solicitation number, solicitation topic, and subtopic.
 4. Title of project.
 5. Technical abstract limited to two hundred words.
 6. Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.
- e. **Technical Content**—SBIR Program solicitations must require, as a minimum, the following to be included in proposals submitted thereunder:
 1. **Identification and Significance of the Problem or Opportunity**—A clear statement of the specific technical problem or opportunity addressed.
 2. **Phase I Technical Objectives**—State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.
 3. **Phase I Work Plan**—Include a detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done, and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in (e)(2) immediately above. The methods planned to achieve each objective or task should be discussed in detail.
 4. **Related R/R&D**—Describe significant R/R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing SBC. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The applicant must persuade reviewers of his or her awareness of key, recent R/R&D conducted by others in the specific topic area.
 5. **Key Personnel and Bibliography of Directly Related Work**—Identify key personnel involved in Phase I including their directly- related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.
 6. **Relationship with Future R/R&D**

- i. State the anticipated results of the proposed approach if the project is successful (Phase I and II).
 - ii. Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.
7. **Facilities**—A detailed description, availability and location of instrumentation and physical facilities proposed for Phase I should be provided.
8. **Consultants**—Involvement of consultants in the planning and research stages of the project is permitted. If such involvement is intended, it should be described in detail.
9. **Potential Post Applications**—Briefly describe:
 - i. Whether and by what means the proposed project appears to have potential commercial application.
 - ii. Whether and by what means the proposed project appears to have potential use by the Federal Government.
10. **Similar Proposals or Awards**—**WARNING**—While it is permissible with proposal notification to submit identical proposals or proposals containing a significant amount of essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:
 - i. The name and address of the agencies to which proposals were submitted or from which awards were received.
 - ii. Date of proposal submission or date of award.
 - iii. Title, number, and date of solicitations under which proposals were submitted or awards received.
 - iv. The specific applicable research topics for each proposal submitted or award received.
 - v. Titles of research projects.
 - vi. Name and title of principal investigator or project manager for each proposal submitted or award received.

11. **Prior SBIR Phase II Awards**—If the SBC has received more than 15 Phase II awards in the prior 5 fiscal years, the SBC must submit in its Phase I proposal: name of the awarding agency; date of award; funding agreement number; amount of award; topic or subtopic title; follow-on agreement amount; source and date of commitment ; and current commercialization status for each Phase II award. (This required proposal information will not be counted toward the proposal pages limitation.)

- a. **Cost Breakdown/Proposed Budget**—The solicitation will require the submission of simplified cost or budget data.

d. Method of Selection and Evaluation Criteria

- a. **Standard Statement**—Essentially, the following statement must be included in all SBIR Program solicitations:

"All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic or subtopic."

b. Evaluation Criteria

1. The SBIR agency must develop a standardized method in its evaluation process that will consider, at a minimum, the following factors:
 - i. The technical approach and the anticipated agency and commercial benefits that may be derived from the research.
 - ii. The adequacy of the proposed effort and its relationship to the fulfillment of requirements of the research topic or subtopics.
 - iii. The soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution.
 - iv. Qualifications of the proposed principal/key investigators, supporting staff, and consultants.
 - v. Evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:
 - A. the SBC's record of commercializing SBIR or other research,

- B. the existence of second phase funding commitments from private sector or non-SBIR funding sources,
 - C. the existence of third phase follow-on commitments for the subject of the research, and,
 - D. the presence of other indicators of the commercial potential of the idea.
2. The factors in (b)(1) above and other appropriate evaluation criteria, if any, must be specified in the "Method of Selection" section of SBIR Program solicitations.
- c. **Peer Review**—The program solicitation must indicate if the SBIR agency contemplates that as a part of the SBIR proposal evaluation, it will use external peer review.
 - d. **Release of Proposal Review Information**—After final award decisions have been announced, the technical evaluations of the applicant's proposal may be provided to the applicant. The identity of the reviewer must not be disclosed.

e. Considerations

This section must include, as a minimum, the following information:

- a. **Awards**—Indicate the estimated number and type of awards anticipated under the particular SBIR Program solicitation in question, including:
 - 1. Approximate number of Phase I awards expected to be made.
 - 2. Type of funding agreement, that is, contract, grant, or cooperative agreement.
 - 3. Whether fee or profit will be allowed.
 - 4. Cost basis of funding agreement, for example, firm-fixed-price, cost reimbursement, or cost-plus-fixed fee.
 - 5. Information on the approximate average dollar value of awards for Phase I and Phase II.
- b. **Reports**—Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.
- c. **Payment Schedule**—Specify the method and frequency of progress and final payment under Phase I and II agreements.
- d. **Innovations, Inventions and Patents**

1. Limited Rights Information and Data

- i. **Proprietary Information**—Essentially, the following statement must be included in all SBIR solicitations:

"Information contained in unsuccessful proposals will remain the property of the applicant. The Government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements. If proprietary information is provided by an applicant in a proposal, which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law. This information must be clearly marked by the applicant with the term "confidential proprietary information" and the following legend must appear on the title page of the proposal:

"These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal. If a funding agreement is awarded to this applicant as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages ____ of this proposal."

Any other legend may be unacceptable to the Government and may constitute grounds for removing the proposal from further consideration, without assuming any liability for inadvertent disclosure. The Government will limit dissemination of such information to within official channels."

- ii. **Alternative To Minimize Proprietary Information**—Agencies may elect to instruct applicants to:
 - A. Limit proprietary information to only that absolutely essential to their proposal.
 - B. Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.
- iii. **Rights in Data Developed Under SBIR Funding Agreements**—Agencies should insert essentially the following statement in their

SBIR Program solicitations to notify SBCs of the necessity to mark SBIR technical data before delivering it to the Agency:

"To preserve the SBIR data rights of the awardee, the legend (or statements) used in the SBIR Data Rights clause included in the SBIR award must be affixed to any submissions of technical data developed under that SBIR award. If no Data Rights clause is included in the SBIR award, the following legend, at a minimum, should be affixed to any data submissions under that award.

These SBIR data are furnished with SBIR rights under Funding Agreement No. ____ (and subcontract No. ____ if appropriate), Awardee Name _____, Address, Expiration Period of SBIR Data Rights _____. The Government may not use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend for (choose four (4) or five (5) years). After expiration of the (4- or 5-year period), the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties, except that any such data that is also protected and referenced under a subsequent SBIR award shall remain protected through the protection period of that subsequent SBIR award. Reproductions of these data or software must include this legend."

- iv. **Copyrights**—Include an appropriate statement concerning copyrights and publications; for example:

"With prior written permission of the contracting officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal Government and requires that each publication contain an appropriate acknowledgement and disclaimer statement."

- v. **Patents**—Include an appropriate statement concerning patents. For example:

"Small business concerns normally may retain the principal worldwide patent rights to any invention developed with Government support. The Government receives a royalty-free license for Federal Government use, reserves the right to require the patent holder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To

the extent authorized by 35 U.S.C. 205, the Government will not make public any information disclosing a Government-supported invention for a minimum 4-year period (that may be extended by subsequent SBIR funding agreements) to allow the awardee a reasonable time to pursue a patent."

- vi. **Invention Reporting**—Include requirements for reporting inventions. Include appropriate information concerning the reporting of inventions, for example:

"SBIR awardees must report inventions to the awarding agency within 2 months of the inventor's report to the awardee. The reporting of inventions may be accomplished by submitting paper documentation, including fax."

Note: Some agencies provide electronic reporting of inventions through the NIH Edison Invention Reporting System (Edison System). Use of the Edison System satisfies all invention reporting requirements mandated by 37 CFR Part 401, with particular emphasis on the Standard Patent Rights Clauses, 37 CFR 401.14. Access to the system is through a secure interactive Internet site, <http://www.iedison.gov>, to ensure that all information submitted is protected. All agencies are encouraged to use the Edison System. In addition to fulfilling reporting requirements, the Edison System notifies the user of future time sensitive deadlines with enough lead-time to avoid the possibility of loss of patent rights due to administrative oversight.

- e. **Cost-Sharing**—Include a statement essentially as follows:

"Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal."

- f. **Profit or Fee**—Include a statement on the payment of profit or fee on awards made under the SBIR Program solicitation.

- g. **Joint Ventures or Limited Partnerships**—Include essentially the following language:

"Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern as defined in this program solicitation."

- h. **Research and Analytical Work**—Include essentially the following statement:

1. "For **Phase I** a minimum of **two-thirds** of the research and/or analytical effort must be performed by the proposing small business concern unless

otherwise approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator.

2. For **Phase II** a minimum of **one-half** of the research and/or analytical effort must be performed by the proposing small business concern unless otherwise approved in writing by the funding agreement officer after consultation with the agency SBIR Program Manager/Coordinator."

- i. **Awardee Commitments**—To meet the legislative requirement that SBIR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in SBIR funding agreements must not be included in full or by reference in SBIR Program solicitations. Rather, applicants must be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from SBIR Program solicitations. Essentially, the following statement must be included in the "Considerations" section of SBIR Program solicitations:

"Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list is not a complete list of clauses to be included in Phase I funding agreements, and is not the specific wording of such clauses. Copies of complete terms and conditions are available upon request."

- j. **Summary Statements**—The following are illustrative of the type of summary statements to be included immediately following the statement in subparagraph (i). These statements are examples only and may vary depending upon the type of funding agreement used.
 1. **Standards of Work**—Work performed under the funding agreement must conform to high professional standards.
 2. **Inspection**—Work performed under the funding agreement is subject to Government inspection and evaluation at all times.
 3. **Examination of Records**—The Comptroller General (or a duly authorized representative) must have the right to examine any pertinent records of the awardee involving transactions related to this funding agreement.
 4. **Default**—The Government may terminate the funding agreement if the contractor fails to perform the work contracted.
 5. **Termination for Convenience**—The funding agreement may be terminated at any time by the Government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.

6. **Disputes**—Any dispute concerning the funding agreement that cannot be resolved by agreement must be decided by the contracting officer with right of appeal.
 7. **Contract Work Hours**—The awardee may not require an employee to work more than 8 hours a day or 40 hours a week unless the employee is compensated accordingly (for example, overtime pay).
 8. **Equal Opportunity**—The awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
 9. **Affirmative Action for Veterans**—The awardee will not discriminate against any employee or application for employment because he or she is a disabled veteran or veteran of the Vietnam era.
 10. **Affirmative Action for Handicapped**—The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.
 11. **Officials Not To Benefit**—No Government official must benefit personally from the SBIR funding agreement.
 12. **Covenant Against Contingent Fees**—No person or agency has been employed to solicit or secure the funding agreement upon an understanding for compensation except bonafide employees or commercial agencies maintained by the awardee for the purpose of securing business.
 13. **Gratuities**—The funding agreement may be terminated by the Government if any gratuities have been offered to any representative of the Government to secure the award.
 14. **Patent Infringement**—The awardee must report each notice or claim of patent infringement based on the performance of the funding agreement.
 15. **American Made Equipment and Products**—When purchasing equipment or a product under the SBIR funding agreement, purchase only American-made items whenever possible.
- k. **Additional Information**—Information pertinent to an understanding of the administration requirements of SBIR proposals and funding agreements not included elsewhere must be included in this section. As a minimum, statements essentially as follows must be included under "Additional Information" in SBIR Program solicitations:
1. This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the

information contained herein and the terms of any resulting SBIR funding agreement, the terms of the funding agreement are controlling.

2. Before award of an SBIR funding agreement, the Government may request the applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the applicant.
3. The Government is not responsible for any monies expended by the applicant before award of any funding agreement.
4. This program solicitation is not an offer by the Government and does not obligate the Government to make any specific number of awards. Also, awards under the SBIR Program are contingent upon the availability of funds.
5. The SBIR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals must not be accepted under the SBIR Program in either Phase I or Phase II.
6. If an award is made pursuant to a proposal submitted under this SBIR Program solicitation, a representative of the contractor or grantee or party to a cooperative agreement will be required to certify that the concern has not previously been, nor is currently being, paid for essentially equivalent work by any Federal agency.

f. Submission of Proposals

- a. This section must clearly specify the closing date on which all proposals are due to be received.
- b. This section must specify the number of copies of the proposal that are to be submitted.
- c. This section must clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.
- d. This section may include other instructions such as the following:
 1. **Bindings**—Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.
 2. **Packaging**—All copies of a proposal should be sent in the same package.

g. Scientific and Technical Information Sources

Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available must be included in a

separate section of the solicitation entitled "Scientific and Technical Information Sources."

h. Research Topics

Describe sufficiently the R/R&D topics and subtopics for which proposals are being solicited to inform the applicant of technical details of what is desired. Allow flexibility in order to obtain the greatest degree of creativity and innovation consistent with the overall objectives of the SBIR Program.

i. Submission Forms and Certifications

Multiple copies of proposal preparation forms necessary to the contracting and granting process may be required. This section may include Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals.

This section may also include certifying forms required by legislation, regulation or standing operating procedures, to be submitted by the applicant to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

APPENDIX II—TECH-NET DATA FIELDS FOR PUBLIC DATABASE

The following are the data fields for the Public Tech-Net DataBase described in Section 11(e)(9) of this Policy Directive.

- a. For all Agency SBIR/STTR Annual Data Submissions to the

Note: Those fields denoted with an asterisk (*) are deemed mandatory in all agency submissions. It is understood that all agencies will not have data for each data field listed above. Each agency must ensure that data submissions to the SBA include all of the data fields above, even if they are empty.

- b. **Codes**

- a. **Program Identification Code**

0. 0STTR (Small Business Technology Transfer)
 1. SBIR (Small Business Innovation Research)
 2. ATP (Advanced Technology Program)

- b. **Agency Codes**

1. DOD (Department of Defense)
 2. DOE (Department of Energy)
 3. NASA (National Aeronautics and Space Administration)
 4. HHS (Health and Human Services)
 5. NSF (National Science Foundation)
 6. DOT (Department of Transportation)
 7. EPA (Environmental Protection Agency)
 8. ED (Department of Education)
 9. DOA (Department of Agriculture)
 10. DOC (Department of Commerce)
 11. NIST (National Institute of Standards and Technology)

- c. **Branch Codes**

1. AF (Department of the Air Force)
2. ARMY (Department of the Army)
3. MDA (Missile Defense Agency)
4. DARPA (Defense Advanced Research Projects Agency)
5. DSWA (Defense Special Weapons Agency)
6. NAVY (Department of the Navy)
7. OSD (Office of the Secretary of Defense)
8. SOCO (Special Operations Command)
9. NIMA (National Imaging and Mapping Agency)

If any new codes, please advise the Office of Technology.

TITLE 13—BUSINESS CREDIT AND ASSISTANCE**CHAPTER I—SMALL BUSINESS ADMINISTRATION****PART 121—SMALL BUSINESS SIZE REGULATIONS—Table of Contents****Subpart A—Size Eligibility Provisions and Standards**

Sec. 121.702 What size standards are applicable to the SBIR program?

To be eligible to compete for award of funding agreements in SBA's Small Business Innovation Research (SBIR) program, a business concern must:

- a. Be at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and
- b. Not have more than 500 employees, including its affiliates.

Effective Date Note: At 69 FR 70185, Dec. 3, 2004, Sec. 121.702 was revised, effective Jan. 3, 2005. For the convenience of the user the revised text is set forth as follows:

Sec. 121.702 What size standards are applicable to the SBIR program?

To be eligible for award of funding agreements in the SBA's Small Business Innovation Research (SBIR) program, a business concern must meet the requirements of paragraphs (a) and (b) below:

- a. Ownership and control.
 1. An SBIR awardee must
 - i. be a concern which is at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; or
 - ii. Be a concern which is at least 51% owned and controlled by another business concern that is itself at least 51% owned and controlled by individuals who are citizens of, or permanent resident aliens in the United States; or
 - iii. Be a joint venture in which each entity to the venture must meet the requirements set forth in either paragraphs (a)(1)(i) or (a)(1)(ii) of this section.

2. If an Employee Stock Option Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner.
 3. If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner.
- b. Size. An SBIR awardee, together with its affiliates, not have more than 500 employees.

ANNEX B: STTR POLICY DIRECTIVE

1. Purpose

- a. Section 9(p) of the Small Business Act (Act) requires that the Small Business Administration (SBA) issue an STTR Program Policy Directive for the general conduct of the STTR Program within the Federal Government.
- b. This Policy Directive fulfills SBA's statutory obligation to provide guidance to the participating Federal agencies for the general operation of the STTR Program. Additional or modified instructions may be issued by the SBA as a result of public comment or experience.
- c. The purpose of the STTR Program is to stimulate a partnership of ideas and technologies between innovative small business concerns (SBCs) and research institutions through Federally-funded research or research and development (R/R&D). By providing awards to SBCs for cooperative R/R&D efforts with research institutions, the STTR Program assists the small business and research communities by commercializing innovative technologies.
- d. Federal agencies participating in the STTR Program (STTR agencies) are obligated to follow the guidance provided by this Policy Directive. Each agency is required to review its rules, policies, and guidance on the STTR Program to ensure consistency with this Policy Directive and to make any necessary changes in accordance with each agency's normal procedures. This is consistent with the statutory authority provided to the SBA concerning the STTR Program.

2. Summary of Legislative Provisions

- a. The Small Business Technology Transfer Program Reauthorization Act of 2001, Pub. L. 107-50, amended section 9 of the Act (15 U.S.C. 638).
 1. The amendments:
 - i. Continue the STTR Program through September 30, 2009;
 - ii. Clarify data rights pertaining to STTR Phase I, Phase II, and Federally-funded Phase III awards.
 - iii. Establish databases—one for the public and one for Government use—to collect and maintain in a common format information that is necessary to assist SBCs and assess the STTR Program.
- b. Each Federal agency with an extramural budget for R/R&D in excess of \$1,000,000,000 must participate in the STTR Program.

- c. The statutory requirements establish a uniform, simplified process for the operation of the STTR Program while allowing the STTR agencies flexibility in the operation of their individual STTR Program. This Policy Directive fulfills the Congressional intent to minimize regulatory burden in the conduct of this program.
- d. Each STTR agency must establish an STTR Program by reserving not less than 0.3 percent of its extramural budget for awards to SBCs for cooperative R/R&D through the following uniform, three-phase process:
 1. Phases I and II: These phases help STTR agencies meet R/R&D and commercialization objectives through funding agreements.
 2. Phase III. This phase, where appropriate, helps Federal agencies participating in the STTR Program by:
 - i. Providing Federal agencies the benefits of commercial applications derived from the cooperative conduct of Government-funded R/R&D which stimulates technological innovation and enhances the national return on investment from R/R&D;
 - ii. Providing STTR awardees access to the Federal market through non-STTR funding agreements; and
 - iii. Providing STTR awardees access to private sector markets to stimulate economic growth and create jobs.
- e. The Act directs each STTR agency to report annually to SBA. The Act also requires SBA to obtain annual reports and monitor each agency's STTR Program and to report these findings annually to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.
- f. The competition requirements of the Armed Services Procurement Act of 1947 (10 U.S.C. 2302 et seq.) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) must be read in conjunction with the procurement notice publication requirements of section 8(e) of the Small Business Act (15 U.S.C. 637(e)). The following notice publication requirements of section 8(e) of the Small Business Act apply to STTR agencies using contracts as a STTR funding agreement:
 1. Any Federal executive agency intending to solicit a proposal to contract for property or services valued above \$25,000 must transmit a notice of the impending solicitation to the Government-wide point of entry (GPE) for access by interested sources. See FAR 5.201. The GPE, located at <https://www.fbo.gov>, is the single point where Government business opportunities greater than \$25,000, including synopses of final contract actions, solicitations, and associated information, can be accessed electronically by the public. In addition, an agency must not issue its solicitation until 15 days after the date of the publication in the GPE. The agency may not establish a deadline for submission of proposals in response to

- a solicitation earlier than 30 days after the date on which the solicitation was issued.
2. The contracting officer must generally make available through the GPE those solicitations synopsisized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. See FAR 5.102.
 3. Any executive agency awarding a contract for property or services valued at more than \$25,000 must submit a synopsis of the award through the GPE if a subcontract is likely to result from such contract. See FAR 5.301.
 4. The following are exemptions from the notice publication requirements:
 - i. In the case of agencies intending to solicit Phase I proposals for contracts in excess of \$25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if that official makes a written determination, after consulting with the Administrator of the Office of Federal Procurement Policy and the SBA Administrator, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.
 - ii. The STTR Phase II award process.
 - iii. The STTR Phase III award process.

3. Definitions

- a. **Act**—The Small Business Act (15 U.S.C. 631 et seq.), as amended.
- b. **Applicant**—The organizational entity that, at the time of award, will qualify as a SBC and that submits a contract proposal or a grant application for a funding agreement under the STTR Program.
- c. **Affiliate**—This term has the same meaning as set forth in 13 CFR Part 121—Small Business Size Regulations, Sec. 121.103, What is affiliation?
- d. **Alaska Native-Serving Institution (ANSI)**—As defined by 20 U.S.C. 1059d, it is An institution of higher education that is an eligible institution that at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students;
- e. **Awardee**—The organizational entity receiving an STTR Phase I, Phase II, or Phase III award.
- f. **Commercialization**—The process of developing marketable products or services and producing and delivering products or services for sale (whether by the originating party or by others) to Government or commercial markets.

- g. **Cooperative Agreement**—A financial assistance mechanism used when substantial Federal programmatic involvement with the awardee during performance is anticipated by the issuing agency. The Cooperative Agreement contains the responsibilities and respective obligations of the parties.
- h. **Cooperative Research and Development**—R/R&D conducted jointly by a SBC and a research institution in which not less than 40 percent of the work is performed by the SBC, and not less than 30 percent of the work is performed by the single, partnering research institution.
- i. **Essentially Equivalent Work**—This occurs when (1) substantially the same research is final for funding in more than one contract proposal or grant application submitted to the same Federal agency (2) substantially the same research is submitted to two or more different Federal agencies for review and funding consideration or (3) a specific research objective and the research design for accomplishing an objective are the same or closely related in two or more proposals or awards, regardless of the funding source.
- j. **Extramural Budget**—The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of a Federal agency in or through Government-owned, Government-operated facilities. For the Agency for International Development, the "extramural budget" support of international research centers or for grants to foreign countries. For the Department of Energy, the "extramural budget" must not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs.
- k. **Feasibility**—The practical extent to which a project can be performed successfully.
- l. **Federal Agency**—An executive agency as defined in 5 U.S.C. 105, or a military department as defined in 5 U.S.C. 102, except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, section 3.4(f), or its successor orders.
- m. **Funding Agreement**—Any contract, grant, or cooperative agreement entered into between any Federal agency and any SBC for the performance of experimental, developmental, or research work, including products or services, funded in whole or in part by the Federal Government.
- n. **Funding Agreement Officer**—A contracting officer, a grants officer, or a cooperative agreement officer.
- o. **Grant**—A financial assistance mechanism providing money, property, or both to an eligible entity to carry out an approved project or activity. A grant is used whenever the Federal agency anticipates no substantial programmatic involvement with the awardee during performance.

- p. **Hispanic-Serving Institutions (HSI)**—Pursuant to 20 U.S.C. 1101 (5), a non-profit institution that has at least 25% Hispanic full-time equivalent (FTE) enrollment, and of the Hispanic student enrollment at least 50% are low income.
- q. **Historically Black College or University (HBCU)**—Pursuant to 20 U.S.C. 1061 (2), a black college or university that was established prior to 1964, whose principle mission was, and is, the education of Black Americans, and that is accredited by a nationally recognized agency or association determined by the Secretary of Education to be a reliable authority as to the quality of training offered or is, according to such an agency or association is making reasonable progress toward accreditation, with certain exceptions noted in statute.
- r. **Innovation**—Something new or improved, having marketable potential, including (1) development of new technologies, (2) refinement of existing technologies, or (3) development of new applications for existing technologies.
- s. **Intellectual Property**—The separate and distinct types of intangible property that are referred to collectively as "intellectual property," including but not limited to: patents, trademarks, copyrights, trade secrets, STTR technical data (as defined in this section), ideas, designs, know-how, business, technical and research methods, other types of intangible business assets, and all types of intangible assets either final or generated by an SBC as a result of its participation in the STTR Program.
- t. **Joint Venture**—An association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.
- u. **Native Hawaiian-Serving Institutions (NHSI)**—Pursuant to 20 U.S.C. 1059(d) is an institution of higher education which is an eligible institution under 20 U.S.C. 1058(b) at the time of application, and has an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students.
- v. **Outcomes**—The measures of long-term, eventual, program impact.
- w. **Outputs**—The measures of near-term program impact.
- x. **Principal Investigator/Project Manager**—The one individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.
- y. **Program Solicitation**—A formal solicitation for proposals whereby a Federal agency notifies the small business community of its R/R&D needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from SBCs in response to these needs and interests. Announcements in the Federal Register or the GPE are not considered STTR Program solicitations.

- z. **Prototype**—A model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.
- aa. **Research or Research and Development (R/R&D)**—Any activity that is:
1. A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;
 2. A systematic study directed specifically toward applying new knowledge to meet a recognized need; or
 3. 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.
- bb. **Research Institution**—One that has a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor, and is:
1. A non-profit institution as defined in section 4(5) of the Stevenson-Wydler Technology Innovation Act of 1980 (that is, an organization that is owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual) and includes non-profit medical and surgical hospitals; or
 2. A Federally-funded R&D center as identified by the National Science Foundation in accordance with the Government-wide Federal Acquisition Regulation issued in accordance with section 35(c)(1) of the Office of Federal Procurement Policy Act (or any successor regulation thereto).
- cc. **Small Business Concern**—A concern that, on the date of award for both Phase I and Phase II funding agreements:
1. Is organized for profit, with a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor;
 2. Is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture;
 3. Is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent

owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and

4. Has, including its affiliates, not more than 500 employees.
 - dd. **Socially and Economically Disadvantaged SBC**—See 13 CFR Part 124—8(A) Business Development/Small Disadvantaged Business Status Determinations, Sec. Sec. 124.103 (Who is socially disadvantaged?) and 124.104 (Who is economically disadvantaged?).
 - ee. **STTR Participants**—Business concerns that have received STTR awards or that have submitted STTR proposals/applications.
 - ff. **STTR Technical Data**—All data generated during the performance of an STTR award.
 - gg. **STTR Technical Data Rights**—The rights an STTR awardee obtains in data generated during the performance of any STTR Phase I, Phase II, or phase III award that an awardee delivers to the Government during or upon completion of a Federally-funded project, and to which the Government receives a license.
 - hh. **Subcontract**—Any agreement, other than one involving an employer employee relationship, entered into by an awardee of a funding agreement calling for supplies or services for the performance of the original funding agreement.
 - ii. **Tribal-Serving Institution (TSI)**—Those institutions defined under section 532 of the Equity in Educational Land-Grants Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualified for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 et. seq.) which is also known as tribally controlled colleges or universities and the Navajo Community College Assistance Act of 1978, Pub. L. 95-471, Title II (25 U.S.C. 640a note).
 - jj. **United States**—The 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic Women-Owned SBC. of Palau.
 - kk. **Women-Owned SBC**—A SBC that is at least 51 percent owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock is owned by women, and women control the management and daily business operations.

4. Competitively Phased Structure of the Program

The STTR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D, production, services, or any combination, to meet stated agency needs or missions. In order to stimulate and foster scientific and technological innovation, including increasing commercialization of Federal

R/R&D, the program must follow a uniform competitive process of the following three phases:

- a. **Phase I**—Phase I involves a solicitation of contract proposals or grant applications (hereinafter referred to as proposals) to conduct feasibility-related experimental or theoretical R/R&D related to described agency requirements. These requirements, as defined by agency topics contained in a solicitation, may be general or narrow in scope, depending on the needs of the agency. The object of this phase is to determine the scientific and technical merit and feasibility of the final effort and the quality of performance of the SBC with a relatively small agency investment before consideration of further Federal support in Phase II.
 1. Several different final solutions to a given problem may be funded.
 2. Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate STTR proposals must give consideration to the scientific and technical merit and feasibility of the proposal along with its potential for commercialization. Considerations may also include program balance or critical agency requirements.
 3. Agencies may require the submission of a Phase II proposal as a deliverable item under Phase I.
- b. **Phase II**—The object of Phase II is to continue the R/R&D effort from the completed Phase I. Only STTR awardees in Phase I are eligible to participate in Phases II and III. This includes those awardees identified via a "novated" or "successor in interest" or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. Agencies may require the original awardee to relinquish its rights and interests in an STTR project in favor of another applicant as a condition for that applicant's eligibility to participate in the STTR Program for that project.
 1. Funding shall be based upon the results of Phase I and the scientific and technical merit and commercial potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or Federal needs beyond the STTR Program. The Phase II funding agreement with the awardee may, at the discretion of the awarding agency, establish the procedures applicable to Phase III agreements. The Government is not obligated to fund any specific Phase II proposal.
 2. The STTR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential. Commercial potential includes the potential to transition the technology to private sector applications, Government applications, or Government contractor applications. Commercial potential in a Phase II proposal may be evidenced by:

- i. The SBC's record of successfully commercializing STTR or other research;
 - ii. The existence of Phase II funding commitments from private sector or other non-STTR funding sources;
 - iii. The existence of Phase III, follow-on commitments for the subject of the research; and
 - iv. Other indicators of commercial potential of the idea.
- c. **Phase III**—STTR Phase III refers to work that derives from, extends, or logically concludes effort(s) performed under prior STTR funding agreements, but is funded by sources other than the STTR Program. Phase III work is typically oriented towards commercialization of STTR research or technology.
 1. Each of the following types of activity constitutes STTR Phase III work:
 - i. Commercial application of STTR-funded R/R&D financed by non-Federal sources of capital (Note: The guidance in this Policy Directive regarding STTR Phase III pertains to the non-STTR federally-funded work described in (ii) and (iii) below. It does not address the nature of private agreements the STTR firm may make in the commercialization of its technology.);
 - ii. STTR-derived products or services intended for use by the Federal Government, funded by non-STTR sources of Federal funding;
 - iii. Continuation of R/R&D that has been competitively selected using peer review or scientific review criteria, funded by non-STTR Federal funding sources.
 2. A Phase III award is, by its nature, an STTR award, has STTR status, and must be accorded STTR data rights. (See Section 8(b)(2) regarding the protection period for data rights.) If an STTR awardee wins a competition for work that derives from, extends, or logically concludes that firm's work under a prior STTR funding agreement, then the funding agreement for the new, competed, work must have all STTR Phase III status and data rights. A Federal agency may enter into a Phase III STTR agreement at any time with a Phase II awardee. Similarly, a Federal agency may enter into a Phase III STTR agreement at any time with a Phase I awardee. An agency official may determine, using the criteria set forth in the Directive as guidance, whether a contract or agreement is a Phase III award.
 3. The competition for STTR Phase I and Phase II awards satisfies any competition requirement of the Armed Services Procurement Act, the Federal Property and Administrative Services Act, and the Competition in Contracting Act. Therefore, an agency that wishes to fund an STTR Phase III project is not

required to conduct another competition in order to satisfy those statutory provisions. As a result, in conducting actions relative to a Phase III STTR award, it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302-5, that the project is a STTR Phase III award that is derived from, extends, or logically concludes efforts performed under prior STTR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2).

4. The Phase III work may be for products, production, services, R/R&D, or any combination thereof.
5. There is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern. There is no limit on the time that may elapse between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award.
6. The small business size limits for Phase I and Phase II awards do not apply to Phase III awards.
7. For Phase III, Congress intends that agencies or their Government-owned, contractor-operated facilities, Federally-funded research and development centers, or Government prime contractors that pursue R/R&D or production developed under the STTR Program, give preference, including sole source awards, to the awardee that developed the technology. In fact, the Act requires reporting to SBA of all instances in which the agency pursues research, development, or production of a technology developed by an STTR awardee, with a concern other than the one that developed the STTR technology. (See section 4(c)(8) immediately below for agency notification to SBA prior to award of such a funding agreement and section 9(a)(11) regarding agency reporting of the issuance of such award.) SBA will report such instances, including those discovered independently by SBA, to Congress.
8. For Phase III, agencies, their Government-owned, contractor-operated facilities, or Federally-funded research and development centers, that intend to pursue R/R&D, production, services or any combination thereof of a technology developed by an STTR awardee of that agency, with an entity other than that STTR awardee, must notify SBA in writing prior to such an award. This notice requirement also applies to technologies of STTR awardees with STTR funding from two or more agencies where one of the agencies determines to pursue the technology with an entity other than that awardee. This notification must include, at a minimum: (a) The reasons why the follow-on award with the STTR awardee is not practicable; (b) the identity of the entity with which the agency intends to make an award to perform research, development, or production; and (c) a description of the type of funding award under which the research, development, or production will be obtained. SBA may appeal the decision to the head of the contracting activity. If SBA decides to appeal the decision, it must file a notice of intent to appeal with the

contracting officer no later than 5 business days after receiving the agency's notice of intent to make award. Upon receipt of SBA's notice of intent to appeal, the contracting officer must suspend further action on the acquisition until the head of the contracting activity issues a written decision on the appeal. The contracting officer may proceed with award if he or she determines in writing that the award must be made to protect the public interest. The contracting officer must include a statement of the facts justifying that determination and provide a copy of its determination to SBA. Within 30 days of receiving SBA's appeal, the head of the contracting activity must render a written decision setting forth the basis of his or her determination.

5. Program Solicitation Process

- a. At least annually, each agency must issue a program solicitation that sets forth a substantial number of R/R&D topics and subtopic areas consistent with stated agency needs or missions. Both the list of topics and the description of the topics and subtopics must be sufficiently comprehensive to provide a wide range of opportunities for SBCs to participate in the agency R/R&D programs. Topics and subtopics must emphasize the need for proposals with advanced concepts to meet specific agency R/R&D needs. Each topic and subtopic must describe the needs in sufficient detail to assist in providing on-target responses, but cannot involve detailed specifications to prescribed solutions of the problems.
- b. The Act requires issuance of STTR (Phase I) Program solicitations in accordance with a Master Schedule coordinated between SBA and the STTR agency. The SBA office responsible for coordination is:

Office of Technology
Office of Government Contracting
Office of Government Contracting and Business Development
U. S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416
Phone: (202) 205-6450
Fax: (202) 205-7754
E-mail: technology@sba.gov
Internet site: www.sba.gov/sbir

- c. For maximum participation by interested SBCs, it is important that the planning, scheduling and coordination of agency program solicitation release dates be completed as early as practicable to coincide with the commencement of the fiscal year on October 1. Bunching of agency program solicitation release and closing dates may prohibit SBCs from preparation and timely submission of proposals for more than one STTR project. SBA's coordination of agency schedules minimizes the bunching of final release and closing dates. Participating agencies may elect to publish multiple program solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

- d. **Master Schedule**—SBA posts an electronic Master Schedule of release dates of program solicitations with links to Internet Web sites of agency solicitations. Agencies must post on their Internet Web sites the following information regarding each program solicitation:
1. The list of topics upon which R/R&D proposals will be sought.
 2. Agency address, phone number, or e-mail address from which STTR Program solicitations can be requested or obtained, especially through electronic means.
 3. Names, addresses, and phone numbers of agency contact points where STTR-related inquiries may be directed.
 4. Release date(s) of program solicitation(s).
 5. Closing date(s) for receipt of proposals.
 6. Estimated number and average dollar amounts of Phase I awards to be made under the solicitation.
- e. On or before August 1, each agency representative must notify SBA in writing or by e-mail of its final program solicitation release and proposal due dates for the next fiscal year. SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. In all cases, SBA will make final decisions.
- f. For those agencies that use both general topic and more specific subtopic designations in their STTR solicitations, the topic data should accurately describe the research solicited. For example, rather than just announcing topic information characterized as "Chemistry" or "Aerodynamics," the STTR agency should summarize the subtopic statements and, where appropriate, utilize National Critical Technologies.
- g. Simplified, Standardized, and Timely STTR Program Solicitations.
1. The Act requires " * * * simplified, standardized and timely STTR solicitations" and for STTR agencies to use a "uniform process" minimizing the regulatory burden for SBCs. Therefore, the instructions in Appendix I to this Policy Directive purposely depart from normal Government solicitation format and requirements. STTR Program solicitations must be prepared according to Appendix I.
 2. Agencies must provide SBA's Office of Technology with two hard copies or an e-mail version of each solicitation and any modifications no later than the date of release of the solicitation or modification to the public. Agencies that issue program solicitations in electronic format only must provide the Internet site at which the program solicitation may be accessed no later than the date of posting at that site of the program solicitation.

3. SBA does not intend that the STTR Program solicitation replace or be used as a substitute for unsolicited proposals for R/R&D awards to SBCs. In addition, the STTR Program solicitation procedures do not prohibit other agency R/R&D actions with SBCs that are carried on in accordance with applicable statutory or regulatory authorizations.

6. Eligibility and Application (Proposal) Requirements

a. Eligibility Requirements

1. To receive STTR funds, each awardee of a STTR Phase I or Phase II award must qualify as an SBC.
2. For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the SBC, and not less than 30 percent of the R/R&D work must be performed by the single, partnering research institution.
3. For both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, agencies may approve a particular portion of the R/R&D work to be performed or obtained in a country outside of the United States, for example, if a supply or material or other item or project requirement is not available in the United States. The funding agreement officer must approve each such specific condition in writing.
4. For both Phase I and Phase II, the principal investigator can be with the SBC or the collaborative partner at the time of award and during the conduct of the final project. An SBC may replace the principal investigator on an STTR Phase I or Phase II award, subject to approval in writing by the funding agreement officer. For purposes of the STTR Program, personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR 121.106—Small Business Size Regulations.

b. Proposal Requirements

1. **Commercialization Plan**—A succinct commercialization plan must be included with each proposal for an STTR Phase II award moving toward commercialization. Elements of a commercialization plan may include the following:
 - i. **Company information**—Focused objectives/core competencies; size; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding, regulatory experience, and subsequent commercialization.
 - ii. **Customer and Competition**—Clear description of key technology objectives, current competition, and advantages compared to

competing products or services; description of hurdles to acceptance of the innovation.

- iii. **Market**—Milestones, target dates, analyses of market size, and estimated market share after first year sales and after 5 years; explanation of plan to obtain market share.
 - iv. **Intellectual Property**—Patent status, technology lead, trade secrets or other demonstration of a plan to achieve sufficient protection to realize the commercialization stage and attain at least a temporal competitive advantage.
 - v. **Financing**—Plans for securing necessary funding in Phase III.
 - vi. **Assistance and mentoring**—Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, SBDCs, Federally-funded research laboratories, Manufacturing Extension Partnership Centers, or other assistance providers.
2. **Data Collection**—Each Phase II applicant will be required to provide information to the Tech-Net Database System (<http://technet.sba.gov>). See Appendix I, section 3(c), "Data Collection Requirement," for additional information.

7. STTR Funding Process

Because the Act requires a "simplified, standardized funding process," specific attention must be given to the following areas of STTR Program administration:

a. Timely Receipt and Review of Proposals

1. Participating agencies must establish appropriate dates and formats for review of proposals.
 - i. All activities related to Phase I proposal reviews must normally be completed and awards made within 6 months from the closing date of the program solicitation. However, agencies may extend that period up to 12 months based on agency needs.
 - ii. Program solicitations must establish proposal submission dates for Phase I and may establish proposal submission dates for Phase II. However, agencies may also negotiate mutually acceptable Phase II proposal submission dates with individual Phase I awardees, accomplish proposal reviews expeditiously, and proceed with Phase II awards. While recognizing that Phase II arrangements between the agency and applicant may require more detailed negotiation to establish terms acceptable to both parties, agencies must not sacrifice

the R/R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

- iii. STTR participants often submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements, which are within the expertise and capability levels of the applicant. To the extent feasible, more than one agency should not fund "essentially equivalent work" under the STTR or other Federal programs. For this purpose, the standardized program solicitation requires applicants to indicate the name and address of the agencies to which essentially equivalent work proposals were made, or anticipated to be made, and to identify by subject the projects for which the proposal was submitted and the dates submitted. The same information will be required for any previous Federal Government awards. To assist in avoiding duplicate funding, each agency must provide to SBA and to each STTR agency a listing of Phase I and Phase II awardees, their complete address, and the title of each STTR project. This information should be distributed no later than release of the funding agreement award information to the public.
- b. **Review of STTR Proposals**—SBA encourages STTR agencies to use their routine review processes for STTR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, "peer" reviews external to the agency are authorized by the Act. SBA cautions STTR agencies that all review procedures must be designed to minimize any possible conflict of interest as it pertains to applicant proprietary data. The standardized STTR solicitation advises potential applicants that proposals may be subject to an established external review process and that the applicant may include company designated proprietary information in its proposal.
- c. **Selection of Awardees**—Normally, STTR agencies must establish a proposal review cycle wherein successful and unsuccessful applicants will be notified of final award decisions within 6-months of the agency's Phase I proposal closing date. However, agencies may extend that period up to 12 months based on agency needs.
 1. The standardized STTR Program solicitation must:
 - i. Advise Phase I applicants that additional information may be requested by the awarding agency to evidence awardee responsibility for project completion.
 - ii. Advise applicants of the proposal evaluation criteria for Phase I and Phase II.
 2. The STTR agency and each Phase I awardee considered for a Phase II award must arrange to manage Phase II proposal submissions, reviews, and selections.

- d. **Management of the STTR Project**—The SBC, and not the single, partnering research institution, is to provide satisfactory evidence that it will exercise management direction and control of the performance of the STTR funding agreement. Regardless of the proportion of the work or funding allocated to each of the performers under the funding agreement, the SBC is to be the primary party with overall responsibility for performance of the project. All agreements between the SBC and the research institution cooperating in the STTR funding agreement, or any business plans reflecting agreements and responsibilities between the parties during performance of STTR Phase I or Phase II funding agreement, or for the commercialization of the resulting technology, should reflect the controlling position of the SBC.
- e. **Cost Sharing**—Cost sharing can serve the mutual interests of the STTR agencies and certain STTR awardees by assuring the efficient use of available resources. However, cost sharing on STTR projects is not required, although it may be encouraged. Therefore, cost sharing cannot be an evaluation factor in the review of proposals. The standardized STTR Program solicitation (Appendix I) will provide information to prospective STTR applicants concerning cost sharing.
- f. **Payment Schedules and Cost Principles.**
1. STTR awardees may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitive price and payment schedule. Advance payments are optional and may be made under appropriate law. In all cases, agencies must make payment to recipients under STTR funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the funding agreement requirements.
 2. All STTR funding agreements must use, as appropriate, current cost principles and procedures authorized for use by the STTR agencies. At the time of award, agencies shall inform each STTR awardee, to the extent possible, of the applicable Federal regulations and procedures that refer to the costs that, generally, are allowable under funding agreements.
- g. **Funding Agreement Types and Fee or Profit**—Statutory requirements for uniformity and standardization require consistency in application of STTR Program provisions among STTR agencies. However, consistency must allow for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to STTR Programs in the agencies. The following instructions meet all of these requirements:
1. **Funding Agreement**—The type of funding agreement (contract, grant, or cooperative agreement) is determined by the awarding agency, but must be consistent with 31 U.S.C. 6301-6308.

2. **Fee or Profit**—Except as expressly excluded or limited by statute, awarding agencies must provide for a reasonable fee or profit on STTR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work.

h. Periods of Performance and Extensions

1. In keeping with the legislative intent to make the largest possible number of STTR awards, modification of funding agreements to extend periods of performance, to increase the scope of work, or to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.
2. **Phase I**—Period of performance normally should not exceed 1 year. However, agencies may provide a longer performance period where appropriate for a particular project. Agencies may approve a shorter or longer period of time, when appropriate for a particular project.
3. **Phase II**—Period of performance under Phase II is a subject of negotiation between the awardee and the issuing agency. The duration of Phase II normally should not exceed 2 years. However, agencies may provide a longer performance period where appropriate for a particular project. Agencies may approve a shorter or longer period of time, when appropriate for a particular project.

i. Dollar Value of Awards

1. Generally, a Phase I award may not exceed \$100,000 and a Phase II award may not exceed \$750,000. SBA may adjust these amounts once every 5 years to reflect economic adjustments and programmatic considerations. There is no dollar level associated with Phase III STTR awards.
2. An awarding agency may exceed those award values where appropriate for a particular project. After award of any funding agreement exceeding \$100,000 for Phase I or \$750,000 for Phase II, the agency's STTR representative must provide SBA with written justification of such action. This justification must be submitted with the agency's Annual Report data. Similar justification is required for any modification of a funding agreement that would bring the cumulative dollar amount to a total in excess of the amounts set forth above.

8. Terms of Agreement Under STTR Awards

- a. **Proprietary Information Contained in Proposals**—The standardized STTR Program solicitation will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. Agencies will discourage SBCs from submitting information considered proprietary unless the information is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed

legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The Government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the STTR Program, from disclosure.

- b. **Rights in Data Developed Under STTR Funding Agreement**—The Act provides for "retention by an SBC of the rights to data generated by the concern in the performance of an STTR award."
1. Each agency must refrain from disclosing STTR technical data to outside the Government (except reviewers) and especially to competitors of the SBC, or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation.
 2. STTR agencies must protect from disclosure and non-governmental use all STTR technical data developed from work performed under an STTR funding agreement for a period of not less than 4 years from delivery of the last deliverable under that agreement (either Phase I, Phase II, or Federally-funded STTR Phase III) unless, subject to (b)(3) of this section, the agency obtains permission to disclose such STTR technical data from the awardee or STTR applicant. Agencies are released from obligation to protect STTR data upon expiration of the protection period except that any such data that is also protected and referenced under a subsequent STTR award must remain protected through the protection period of that subsequent STTR award. For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than four years. The Government retains a royalty-free license for Government use of any technical data delivered under an STTR award, whether patented or not. This section does not apply to program evaluation.
 3. STTR technical data rights apply to all STTR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the STTR Program, as described in Section 4 of this Policy Directive. The scope and extent of the STTR technical data rights applicable to Federally-funded Phase III awards is identical to the STTR data rights applicable to Phases I and II STTR awards. The data rights protection period lapses only: (i) Upon expiration of the protection period applicable to the STTR award, or (ii) by agreement between the awardee and the agency.
 4. Agencies must insert the provisions of (b)(1), (2), and (3) immediately above as STTR data rights clauses into all STTR Phase I, Phase II, and Phase III

awards. These data rights clauses are non-negotiable and must not be the subject of negotiations pertaining to an STTR Phase III award, or diminished or removed during award administration. An agency must not, in any way, make issuance of an STTR Phase III award conditional on data rights. If the STTR awardee wishes to transfer its STTR data rights to the awarding agency or to a third party, it must do so in writing under a separate agreement. A decision by the awardee to relinquish, transfer, or modify in any way its STTR data rights must be made without pressure or coercion by the agency or any other party. Following issuance of an STTR Phase III award, the awardee may enter into an agreement with the awarding agency to transfer or modify the data rights contained in that STTR Phase III award. Such a bilateral data rights agreement must be entered into only after the STTR Phase III award, which includes the appropriate STTR data rights clause, has been signed. SBA must immediately report to the Congress any attempt or action by an agency to condition an STTR award on data rights, to exclude the appropriate data rights clause from the award, or to diminish such rights.

c. Allocation of Rights

1. An SBC, before receiving an STTR award, must negotiate a written agreement between the SBC and the single, partnering research institution, allocating intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. The SBC must submit this agreement to the awarding agency upon request—either with the proposal or any time thereafter. The SBC must certify in all proposals that the agreement is satisfactory to the SBC.
2. The awarding agency may accept an existing agreement between the two parties if the SBC certifies its satisfaction with the agreement, and such agreement does not conflict with the interests of the Government. Each agency participating in the STTR Program shall provide a model agreement to be used as guidance by the SBC in the development of an agreement with the research institution. The model agreement should direct the parties to, at a minimum:
 - i. State specifically the degree of responsibility, and ownership of any product, process, or other invention or innovation resulting from the cooperative research. The degree of responsibility shall include responsibility for expenses and liability, and the degree of ownership shall also include the specific rights to revenues and profits.
 - ii. State which party may obtain United States or foreign patents or otherwise protect any inventions resulting from the cooperative research.
 - iii. State which party has the right to any continuation of research, including non-STTR follow-on awards.

The Government will not normally be a party to any agreement between the SBC and the research institution. Nothing in the agreement is to conflict with any provisions setting forth the respective rights of the United States and the SBC with respect to intellectual property rights and with respect to any right to carry out follow-on research.

3. Pursuant to the Act, SBA will establish a single model agreement for use in the STTR Program that allocates between SBCs and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. Written comments from affected Federal agencies, SBCs, research institutions, and other interested parties will be solicited in the development of the model agreement. Each agency participating in the STTR Program will adopt the agreement developed by SBA as the agency's model agreement.
- d. **Title Transfer of Agency Provided Property**—Under the Act, the Government may transfer title to equipment provided by the STTR agency to the awardee where such transfer would be more cost effective than recovery of the property.
- e. **Continued Use of Government Equipment**—The Act directs that an agency allow an STTR awardee participating in the third phase of the STTR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the STTR Program.
- f. **Grant Authority**—The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.
- g. **Conflicts of Interest**—SBA cautions STTR agencies that awards made to SBCs owned by or employing current or previous Federal Government employees may create conflicts of interest in violation of FAR Part 3 and the Ethics in Government Act of 1978, as amended. Each STTR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.
- h. **American-made Equipment and Products**—Congress intends that the awardee of a funding agreement under the STTR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible, in keeping with the overall purposes of this program. Each STTR agency must provide to each awardee a notice of this requirement.

9. Responsibilities of STTR Participating Agencies and Departments

- a. The Act requires each agency participating in the STTR Program to:

1. Unilaterally determine the categories of projects to be included in its STTR Program, giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by:
 - i. The National Critical Technologies panel (or its successor) in reports required under 42 U.S.C. 6683, or
 - ii. The Secretary of Defense in accordance with 10 U.S.C. 2522.
2. Release STTR solicitations in accordance with the SBA master schedule.
3. Unilaterally receive and evaluate proposals resulting from program solicitations, select awardees, issue funding agreements, and inform each awardee under such agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement.
4. Require a succinct commercialization plan with each proposal submitted for a Phase II award.
5. Collect and maintain information from awardees and provide it to SBA to develop and maintain the Tech-Net Database, as identified in Section 11(e) of this Policy Directive.
6. Administer its own STTR funding agreements or delegate such administration to another agency.
7. Include provisions in each STTR funding agreement setting forth the respective rights of the United States and the awardee with respect to intellectual property rights and with respect to any right to carry out follow-on research.
8. Ensure that the rights in data developed under each Federally-funded STTR Phase I, Phase II, and Phase III award are protected properly.
9. Make payments to awardees of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to awardees under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.
10. Provide an annual report on the STTR Program to SBA. See Section 10 of this Policy Directive.
11. Report at least annually to SBA's Office of Technology all instances in which an agency pursued research, development, production, or any such combination of a technology developed by an SBC using an award made under the STTR Program of that agency, where the agency determined that it was not

practicable to enter into a follow-on non- STTR Program funding agreement with that concern. The report shall include, at a minimum:

- i. The reasons why the follow-on funding agreement with the concern was not practicable;
 - ii. The identity of the entity with which the agency contracted to perform the research, development, or production; and
 - iii. A description of the type of funding agreement under which the research, development, or production was obtained.
12. Include in its annual performance plan required by 31 U.S.C. 1115(a) and (b) a section on its STTR Program, and submit such section to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.
13. Adopt the model agreement to be developed by SBA for use in the STTR Program that allocates between SBCs and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.
14. Develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that Federally-funded research and development centers that participate in STTR agreements:
 - i. Are free from organizational conflicts of interests relative to the STTR Program;
 - ii. Do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and
 - iii. Use outside peer review as appropriate.
15. Implement an outreach program to research institutions and SBCs for the purpose of enhancing its STTR Program, in conjunction with any such outreach done for purposes of the Small Business Innovation Research (SBIR) Program.

b. Interagency actions

1. Joint funding. An STTR project may be financed by more than one Federal agency. Joint funding is not required but can be an effective arrangement for some projects.
2. Phase II awards. An STTR Phase II award may be issued by a Federal agency other than the one that made the Phase I award. The Phase I and Phase II

agencies should document their files appropriately, providing clear rationale for the transfer of the Phase II proposal to, and award by, the funding Federal agency.

3. Timely notification of awards. In order to avoid duplicate funding of an STTR project, agencies shall promptly search the Tech-Net Database System for awards for essentially equivalent work. Discussion among agencies receiving similar proposals is strongly encouraged before an STTR award is made.
4. Participation by women-owned SBCs, socially and economically disadvantaged SBCs, veteran-owned SBCs, disabled veteran-owned SBCs and HUBZone SBCs in the STTR Program. In order to meet statutory requirements for greater inclusion, SBA and the Federal participating agencies will conduct outreach efforts to find and place innovative women-owned SBCs and socially and economically disadvantaged SBCs in the STTR Program information system. These SBCs will be required to compete for STTR awards on the same basis as all other SBCs. However, participating agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified women-owned SBCs and socially and economically disadvantaged SBCs to participate in the STTR Program. In addition, agencies are encouraged to conduct outreach efforts to find and place veteran-owned, disabled veteran-owned, and HUBZone SBCs in the STTR program.

c. Limitation of participation and use of funds

1. An agency must not use any of its STTR budget for the purpose of funding administrative costs of the program, including costs associated with program operations, employee salaries, and other associated expenses, or, in the case of a SBC or a research institution, costs associated with employee salaries and other associated expenses, including administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the Federal Acquisition Regulation).
2. A Federal agency must not issue an STTR funding agreement that includes a provision for subcontracting any portion of that agreement back to the issuing agency, to any other Federal Government agency, or to other units of the Federal Government. SBA may issue a case-by-case waiver to this provision after review of an agency's written justification that includes the following information:
 - i. An explanation of why the STTR research project requires the use of the Federal facility or personnel, including data that verifies the absence of non-Federal facilities or personnel capable of supporting the research effort.
 - ii. Why the Agency will not and cannot fund the use of the Federal facility or personnel for the STTR project with non-STTR money.

- iii. The concurrence of the SBC's chief business official to use the Federal facility or personnel.
 - iv. Only those labs that are organized as an FFRDC and approved by the National Science Foundation are eligible to participate in the STTR Program without the use of the waiver provision.
3. No agency, at its own discretion, may unilaterally cease participation in the STTR Program. R/R&D agency budgets may cause fluctuations and trends that must be reviewed in light of STTR Program purposes. An agency may be considered by SBA for a phased withdrawal from participation in the STTR Program over a period of time sufficient in duration to minimize any adverse impact on SBCs. However, the SBA decision concerning such a withdrawal will be made on a case-by-case basis and will depend on significant changes to extramural R/R&D 3-year forecasts as found in the annual Budget of the United States Government and National Science Foundation breakdowns of total R/R&D obligations as published in the Federal Funds for Research and Development. Any withdrawal of an STTR Federal participating agency from the STTR Program will be accomplished in a standardized and orderly manner in compliance with these statutorily mandated procedures.
 4. Federal agencies not otherwise qualified for the STTR Program may participate on a voluntary basis. Federal agencies seeking to participate in the STTR Program must first submit their written requests to SBA. Voluntary participation requires the written approval of SBA.
 5. Agencies may not make available, for the purpose of meeting the required percentage of expenditure on SBCs for the STTR Program (see section 2(d) of this Policy Directive) an amount of its extramural budget for basic research that exceeds those percentages.
 6. Funding agreements with SBCs for R/R&D that result from competitive or single source selections other than an STTR Program shall not be considered to meet any portion of the percentage requirements of section 2(d) set forth in this Policy Directive.

10. Annual Report to the Small Business Administration

The Act requires a "simplified, standardized and timely annual report" from the STTR agencies. The following paragraphs explain more about this requirement, including the due date, the kinds of information to be included, and the number of copies to be submitted to SBA.

a. Annual Report Due Date and Number of Copies

Reporting must be on an annual basis and will be for the period ending September 30 of each fiscal year. A single, hard copy report is due to SBA by March 15 of each year. For example, the report for FY 2002 (October 1, 2001-September 30, 2002)

must be submitted to SBA by March 15, 2003. SBA encourages agencies to submit their annual report before the March 15 due date. The report should be sent to the address noted in section 5(b). However, if agencies choose to send an electronic version, it should be sent to technology@sba.gov.

b. Annual Report Content

1. Agency total fiscal year, extramural R/R&D total obligations as reported to the National Science Foundation pursuant to the annual Budget of the United States Government.
2. STTR Program total fiscal year dollars derived by applying the statutory percentage to the agency's extramural R/R&D total obligations.
3. STTR Program fiscal year dollars obligated through STTR Program funding agreements for Phase I and Phase II.
4. Number of topics and subtopics contained in each program solicitation.
5. Number of proposals received by the agency for each topic and subtopic in each program solicitation. Identify the number of proposals received from, and the number and total amount of awards to, HUBZone SBCs.
6. For both Phase I and Phase II, the awardee's name and address, solicitation topic and subtopic, solicitation number, project title, and total dollar amount of funding agreement. Identify women-owned SBCs, economically and socially disadvantaged SBCs, HUBZone SBCs, and Phase II awardees with follow-on funding commitments.
7. Justification for the award of any funding agreement exceeding \$100,000 for Phase I or \$750,000 for Phase II.
8. The number of awardees for whom the Phase I process exceeded 6 months starting from the closing date of the STTR solicitation to award of the funding agreement.
9. For an agency Phase III award using non-STTR Federal funds to continue a Phase II project, the agency must provide the name, address, project title, and dollar amount obligated.
10. Justification for awards made under a topic or subtopic where the agency received only one proposal. Agencies must also provide the awardee's name and address, the topic or subtopic, and dollar amount of award. Information must be collected quarterly but updated in the agency's annual report.
11. If applicable, report the number of National Critical Technology topic or subtopic funding agreements issued, including an identification of the specific

critical technology topics, and the percentage by number and dollar amount of the agency's total STTR awards to such National Critical Technologies topics.

12. Report all instances in which an agency pursued R/R&D, services, production, or any such combination of a technology developed by an STTR awardee and determined that it was not practicable to enter into a follow-on funding agreement with non-STTR funds with that concern. See section 9(a)(11) for minimum reporting requirements.
13. Report participation by research institutions that fall under the following educational categories: HBCU, HSI, NHSI, TSI or ANSI pursuant to the collaborative agreement with SBC. Include the dollar amount received by the specific research institution.

11. Responsibilities of SBA

- a. SBA's Office of Technology will annually obtain available information on the current critical technologies from the National Critical Technologies panel (or its successor) and the Secretary of Defense and provide such information to the STTR agencies.
- b. SBA will request this information in June of each year. The data received will be submitted to each of the participating Federal agencies and will also be published in the September issue of the STTR Pre-Solicitation Announcement.

c. Examples of STTR Areas to be Monitored by SBA

1. **STTR Funding Allocations**—The magnitude and source of each STTR agency's annual allocation reserved for STTR awards are critical to the success of the STTR Program. The Act defines the STTR effort (R/R&D), the source of the funds for financing the STTR Program (extramural budget), and the percentage of such funds to be reserved for the STTR Program (0.15 percent through 2003, 0.3 percent thereafter). The Act requires that SBA monitor these annual allocations.
2. **STTR Program Solicitation and Award Status**—The accomplishment of scheduled STTR events, such as the STTR Program solicitation release and the issuance of funding agreements is critical to meeting statutory mandates and to operating an effective, useful program. SBA monitors these and other operational features of the STTR Program. SBA does not plan to monitor administration of the awards except in instances where SBA assistance is requested and is related to a specific STTR project or funding agreement.
3. **Follow-on Funding Commitments**—SBA will monitor whether follow-on non-Federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.
4. **Agency Rules and Regulations**—It is essential that no policy, rule, regulation, or interpretation be promulgated by the STTR agencies that are

inconsistent with the Act or this Policy Directive. SBA's monitoring activity will include review of policies, rules, regulations, interpretations, and procedures generated to facilitate intra- or interagency STTR Program implementation.

- d. SBA develops, participates in, and, when appropriate and feasible, sponsors seminars for innovative women-owned SBCs and socially and economically disadvantaged SBCs to inform them of the STTR Program and Federal and commercial assistance and services available for STTR Program participants.
- e. **Standardized Collection of Data**—"Technology Resources Access Network" (Tech-Net) Database System Overview.
 1. SBA's Office of Technology, as program manager for the STTR and the SBIR Programs, is required to collect and report to the Congress, information regarding awards made to SBCs by each Federal agency participating in these programs.
 2. The Office of Technology maintains an internal database of awards and uses the system to report on technology and demographical statistics regarding the STTR and the SBIR Programs. The system also stores the 200-word technical abstract for each STTR and SBIR award that is prepared by the awardee summarizing the research effort that has been supported by the Federal Government. The system also provides the Office of Technology with the ability to perform keyword searches in many areas, including any part of the name, address, and technical abstract of the awardee. The system produces many reports that are used in the conduct of audits performed by the General Accountability Office (GAO) and to expose potential duplication of research and development efforts funded by the STTR agencies.
 3. The Office of Technology, in a joint effort with SBA's Office of the Chief Information Officer, has redesigned the Office of Technology's internal awards database system to operate on the Internet. The Internet system is titled the "Technology Resources Access Network," or Tech-Net.
 4. Tech-Net offers a vast array of user-friendly capabilities, and is accessible by the public at no charge. Tech-Net allows for the online submission of STTR/SBIR awards data from all STTR agencies. Tech-Net also allows any end-user to perform keyword searches and create formatted reports of STTR/SBIR awards information. Tech-Net will allow for potential research partners to view research and development efforts that are ongoing in the STTR and the SBIR Programs, increasing the investment opportunities of the STTR/SBIR SBCs in the high tech arena. Tech-Net serves as an excellent marketing tool for the small, high tech business community, allowing investors to view first-hand the technical capabilities of STTR/SBIR awardees. This will ultimately produce investments, partnerships, and strategic alliances resulting in commercialization of STTR/SBIR research.

5. Tech-Net also houses legislatively mandated information on all STTR and SBIR awards, as well as confidential outcome and output information that will be relevant to measuring the effectiveness and success of the programs.
6. Awardees can update their information and add project commercialization and sales data with user names and passwords. Username and passwords will be assigned only to awardees to provide access to their respective awards information maintained in the Tech-Net system. Award and commercialization data maintained in the Tech-Net database can be changed only by the awardee, SBA, or the awarding STTR/SBIR Federal agency.
7. Project commercialization and sales data can only be viewed by Congress, the General Accountability Office (GAO), agencies participating in the STTR and the SBIR Programs, Office of Management and Budget (OMB), Office of Science and Technology Policy (OSTP), Office of Federal Procurement Policy (OFPP), and other authorized persons (for example, authorized contractors) who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.
8. To use the Tech-Net database system, visit the Web site <http://technet.sba.gov>. Online help is available.
9. **Public Tech-Net Database**— (See Appendix II for Data Fields). The public Tech-Net database is a searchable, up-to-date, electronic database that includes:
 - i. The name, size, location, funding agreement number, and identification number assigned by the Administrator of each SBC that has received an STTR or SBIR Phase I or Phase II award from a Federal agency;
 - ii. A description of each STTR or SBIR Phase I or Phase II award received by the SBC including:
 - A. An abstract of the project funded by the award, excluding any proprietary information so identified by the awardee;
 - B. The Federal agency making the award; and
 - C. The date and amount of the award.
 - iii. An identification of any business concern or subsidiary established for the commercial application of a product or service for which an STTR or SBIR award is made; and
 - iv. Information regarding mentors and Mentoring networks, as required in the Federal and State Technology (FAST) Partnership Program

established under Section 35(d) of the Act and described on the SBA's Internet site at <http://www.sba.gov/sbir/indexfast.html>.

- v. With respect to assistance under the STTR Program (as required under section 9(k)(1) of the Act):
 - A. Whether the SBC or the research institution initiated their collaboration on each assisted STTR project;
 - B. Whether the SBC or the research institution originated any technology relating to the assisted STTR project;
 - C. The length of time it took to negotiate any licensing agreement between the SBC and the research institution under each assisted STTR project; and
 - D. The percentage allocated between the SBC and the research institution of the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project.
 - E. The educational category of the research institution such as NHSI, HSI, HBCU, TCU or ANSI.
 - F. The dollar amount awarded to the research institution identified under the one of the educational categories under E.
10. **Government Tech-Net Database**—SBA, in consultation with the Federal agencies participating in the STTR and the SBIR Programs, develops and maintains a secure database that:
- i. Contains, for each Phase II award:
 - A. Information on revenue from the sale of new products or services resulting from the research conducted under each Phase II award;
 - B. Information on additional investment from any source, other than Phase I or Phase II STTR or SBIR awards, to further the research and development conducted under each Phase II award; and
 - C. Any other information received in connection with the award that the Administrator, in conjunction with the STTR Program managers of the participating agencies, considers relevant and appropriate;

- ii. Includes any narrative information that a Phase II awardee voluntarily submits to further describe the outputs and outcomes of its awards;
- iii. Includes for each applicant that does not receive a Phase I or Phase II award:
 - A. the name, size, location, and identifying number assigned by SBA, and identification number assigned by SBA;
 - B. an abstract of the project; and
 - C. the Federal agency to which the application was made;
- iv. Includes any other data collected by or available to any Federal agency that such agency considers to be useful for STTR Program evaluation; and
- v. Is available for use solely for program evaluation purposes by the Federal Government or, in accordance with Policy Directives issued by SBA, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.

11. Data Collection for Government Tech-Net Database

- i. Each SBC applying for a Phase II award is required to update the appropriate information in the Tech-Net database for any of its prior Phase II awards. In meeting this requirement, the SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.
- ii. Each Phase II awardee is required to update the appropriate information in the Tech-Net database on that award upon completion of the last deliverable under the funding agreement. In addition, the awardee is requested to voluntarily update the appropriate information on that award in the Tech-Net database annually thereafter for a minimum period of 5 years.
- iii. Pursuant to 15 U.S.C. 638(k)(4), information provided to the Government Tech-Net Database is privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 (Government Organization and Employees); nor must it be considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).
- iv. SBA will minimize the data reporting requirements of SBCs, make updating available electronically, and provide standardized procedures.

APPENDIX I: INSTRUCTIONS FOR STTR PROGRAM SOLICITATION PREPARATION

1. General

Section 9(p) of the Small Business Act (15 U.S.C. 638(p)) requires " * * * simplified, standardized and timely STTR solicitations" and for STTR agencies to utilize a "uniform process" minimizing the regulatory burden of participation. Therefore, the following instructions purposely depart from normal Government solicitation formats and requirements. STTR solicitations must be prepared and issued as program solicitations in accordance with the following instructions.

2. Limitation in Size of Solicitation

In the interest of meeting the requirement for simplified and standardized solicitations, while also recognizing that the Internet has become the main vehicle for distribution, each agency should structure its entire STTR solicitation to produce the least number of pages (electronic and printed), consistent with the procurement/assistance standard operating procedures and statutory requirements of the participating Federal agencies.

3. Format

STTR Program solicitations must be prepared in a simple, standardized, easy-to-read, and easy-to-understand format. It must include a cover sheet, a table of contents, and the following sections in the order listed:

1. Program Description
2. Definitions
3. Proposal Preparation Instructions and Requirements
4. Method of Selection and Evaluation Criteria
5. Considerations
6. Submission of Proposals
7. Scientific and Technical Information Sources
8. Submission Forms and Certifications
9. Research Topics

4. Cover Sheet

The cover sheet of an STTR Program solicitation must clearly identify the solicitation as a STTR solicitation, identify the agency releasing the solicitation, specify date(s) on

which contract proposals or grant applications (proposals) are due under the solicitation, and state the solicitation number or year.

INSTRUCTIONS FOR PREPARATION OF STTR PROGRAM SOLICITATION SECTIONS 1 THROUGH 9

1. Program Description

- a. Summarize in narrative form the invitation to submit proposals and the objectives of the STTR Program.
- b. Describe in narrative form the agency's STTR Program, including a description of the three phases. Note in your description that the solicitation is for Phase I proposals only.
- c. Describe program eligibility, as follows:
- d. Eligibility. Each concern submitting a proposal must qualify as a SBC for R/R&D purposes at the time of award. The SBC will submit a proposal for "cooperative research and development" with a non-profit "research institution" (terms as defined in this Policy Directive). Also, for both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, for example, a supply or material or other item or project requirement that is not available in the United States, agencies may allow that particular portion of the research or R&D work to be performed or obtained in a country outside of the United States. Approval by the funding agreement officer for each such specific condition must be in writing. Phase II proposals may be submitted only by Phase I awardees.
- e. List the name, address and telephone number of agency contacts for general information on the STTR Program solicitation.

2. Definitions

Whenever terms are used that are unique to the STTR Program, a specific STTR solicitation or a portion of a solicitation, they will be defined in a separate section entitled "Definitions." At a minimum, the definitions of "R/R&D," "cooperative research and development," "funding agreement," "research institution," "SBC," "STTR technical data," "STTR technical data rights," "subcontract," and "women-owned SBC," as stated in this Policy Directive, must be included.

3. Proposal Preparation Instructions and Requirements

The purpose of this section is to inform the applicant on what to include in the proposal and to set forth limits on what may be included. It should also provide guidance to assist applicants, particularly to firms that may not have previous Government experience, in improving the quality and acceptance of proposals.

- a. **Limitations on Length of Proposal**—Include at least the following information:

1. STTR Phase I proposals must not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments, unless stated otherwise in the agency solicitation. Pages should be of standard size (8\1/2\" x 11" 21.6 cm x 27.9 cm) and should conform to the standard formatting instructions which are provided in this section. Margins should be 2.5 cm and the type at least 10 point font. A SBC, before receiving an STTR award, must negotiate a written agreement between the SBC and the single, partnering research institution, as discussed in section 8(c) of this Policy Directive. While an agency may require this agreement to be submitted at the time of the proposal (or at a later date), it is not considered to be part of the proposal and is not subject to the page limitation.
 2. A notice that no additional attachments, appendices, or references beyond the 25-page limitation shall be considered in proposal evaluation (unless specifically solicited by an agency) and that proposals in excess of the page limitation shall not be considered for review or award.
- b. **Proposal Cover Sheet**—Every applicant is required to include at least the following information on the first page of proposals. Items 8 and 9 are for statistical purposes only.
1. Agency and Solicitation Number or Year.
 2. Topic Number or Letter.
 3. Subtopic Number or Letter.
 4. Topic Area.
 5. Project Title.
 6. Name and Complete Address of Firm.
 7. Small Business Certifications (by statement or checkbox) as follows:
 - a. "The above concern certifies that it is an SBC and meets the definition as stated in this solicitation or that it will meet that definition at time of award."
 - b. "The above concern certifies that at least 40 percent of the work under this project will be performed by the SBC and at least 30 percent of the work under this project will be performed by the research institution."
 8. Socially and Economically Disadvantaged SBC Certification (by statement or checkbox) as follows:

"The above concern certifies that it (does/does not) qualify as a socially and economically disadvantaged SBC as defined in this solicitation."

9. Women-owned SBC Certification (by statement or checkbox) as follows: "The above concern certifies that it (does/does not) qualify as a women-owned SBC as defined in this solicitation."
10. An information statement regarding duplicate research as follows: "The applicant and/or Principal Investigator (has/has not) submitted proposals for essentially equivalent work under other Federal program solicitations or (has/has not) received other Federal awards for essentially equivalent work." (Identify proposals/awards in Section 3(e)10, "Similar Proposals and Awards.")
11. Disclosure permission (by statement or checkbox), such as follows, may be included at the discretion of the funding agency: "Will you permit the Government to disclose the title and technical abstract page of your final project, plus the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to concerns that may be interested in contacting you for further information? (Yes/No)"
12. Signature of a company official of the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.
13. Signature of Principal Investigator or Project Manager and that individual's typed name, title, address, telephone number, and date of signature.
14. Legend for proprietary information as described in the "Considerations" section of this program solicitation if appropriate. May also be noted by asterisks in the margins on proposal pages.

c. Data Collection Requirement

1. Each Phase II applicant is required to provide information for the Tech-Net Database System (<http://technet.sba.gov>). The following are examples of the data to be entered by applicants into Tech-Net:
 - i. Any business concern or subsidiary established for the commercial application of a product or service for which an STTR award is made.
 - ii. Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;
 - iii. Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award.
 - iv. Update the information in the Tech-Net database for any prior Phase II award received by the SBC. The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

2. Each Phase II awardee is required to update the appropriate information on the award in the Tech-Net database upon completion of the last deliverable under the funding agreement and is requested to voluntarily update the information in the Tech-Net database annually thereafter for a minimum period of 5 years.
- d. **Abstract or Summary**—Applicants will be required to include a one-page project summary of the final R/R&D including at least the following:
1. Name and address of SBC.
 2. Name and title of principal investigator or project manager.
 3. Agency name, solicitation number, solicitation topic, and subtopic.
 4. Title of project.
 5. Technical abstract limited to two hundred words.
 6. Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.
- e. **Technical Content**—STTR Program solicitations must require as a minimum the following to be included in proposals submitted thereunder:
1. **Identification and Significance of the Problem or Opportunity**—A clear statement of the specific technical problem or opportunity addressed.
 2. **Phase I Technical Objectives**—State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the final approach.
 3. **Phase I Work Plan**—Include a detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done, and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in (e)(2) immediately above. The methods planned to achieve each objective or task should be discussed in detail.
 4. **Related R/R&D**—Describe significant R/R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing SBC. Describe how it relates to the final effort, and any planned coordination with outside sources. The applicant must persuade reviewers of his or her awareness of key, recent R/R&D conducted by others in the specific topic area.
 5. **Key Personnel and Bibliography of Directly Related Work**—Identify key personnel involved in Phase I including their directly related education, experience, and bibliographic information. Where curriculum vitae are extensive,

summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.

6. Relationship with Future R/R&D

- i. State the anticipated results of the final approach if the project is successful (Phase I and II).
- ii. Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

7. **Facilities**—A detailed description, availability and location of instrumentation and physical facilities final for Phase I should be provided.

8. **Consultants**—Involvement of consultants in the planning and research stages of the project is permitted. If such involvement is intended, it should be described in detail.

9. **Potential Post Applications**—Briefly describe:

- i. Whether and by what means the final project appears to have potential commercial application.
- ii. Whether and by what means the final project appears to have potential use by the Federal Government.

10. **Similar Proposals or Awards**—**WARNING**—While it is permissible with proposal notification to submit identical proposals or proposals containing a significant amount of essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:

- i. The name and address of the agencies to which proposals were submitted or from which awards were received.
- ii. Date of proposal submission or date of award.
- iii. Title, number, and date of solicitations under which proposals were submitted or awards received.
- iv. The specific applicable research topics for each proposal submitted or award received.
- v. Titles of research projects.

- vi. (vi) Name and title of principal investigator or project manager for each proposal submitted or award received.
- f. **Cost Breakdown/Final Budget**—The solicitation will require the submission of simplified cost or budget data.

4. Method of Selection and Evaluation Criteria

- a. **Standard Statement**—Essentially the following statement must be included in all STTR Program solicitations:

"All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the final approaches to the same topic or subtopic."

b. **Evaluation Criteria**

1. The STTR agency must develop a standardized method in its evaluation process that will consider, at a minimum, the following factors:
 - i. The technical approach and the anticipated agency and commercial benefits that may be derived from the research.
 - ii. The adequacy of the final effort and its relationship to the fulfillment of requirements of the research topic or subtopics.
 - iii. The soundness and technical merit of the final approach and its incremental progress toward topic or subtopic solution.
 - iv. Qualifications of the final principal/key investigators, supporting staff, and consultants.
 - v. Evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:
 - A. The SBC's record of commercializing STTR or other research,
 - B. The existence of second phase funding commitments from private sector or non-STTR funding sources,

- C. The existence of third phase follow-on commitments for the subject of the research, and,
 - D. The presence of other indicators of the commercial potential of the idea.
2. The factors in (b)(1) above and other appropriate evaluation criteria, if any, must be specified in the "Method of Selection" section of STTR Program solicitations.
- c. **Peer Review**—The program solicitation must indicate if the STTR agency contemplates that as a part of the STTR proposal evaluation, it will use external peer review.
 - d. **Release of Proposal Review Information**—After final award decisions have been announced, the technical evaluations of the applicant's proposal may be provided to the applicant. The identity of the reviewer must not be disclosed.

5. Considerations

This section must include, as a minimum, the following information:

- a. **Awards**—Indicate the estimated number and type of awards anticipated under the particular STTR Program solicitation in question, including:
 - i. Approximate number of Phase I awards expected to be made.
 - ii. Type of funding agreement, that is, contract, grant or cooperative agreement.
 - iii. Whether fee or profit will be allowed.
 - iv. Cost basis of funding agreement, for example, firm-fixed-price, cost reimbursement, or cost-plus-fixed fee.
 - v. Information on the approximate average dollar value of awards for Phase I and Phase II.
- b. **Reports**—Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.
- c. **Payment Schedule**—Specify the method and frequency of progress and final payment under Phase I and II agreements.
- d. **Innovations, Inventions and Patents**
 - 1. **Limited Rights Information and Data**
 - 1. **Proprietary Information**—Essentially the following statement must be included in all STTR solicitations:

Information contained in unsuccessful proposals will remain the property of the applicant. The Government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements. If proprietary information is provided by an applicant in a proposal, which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law. This information must be clearly marked by the applicant with the term "confidential proprietary information" and the following legend must appear on the title page of the proposal:

These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal. If a funding agreement is awarded to this applicant as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages — of this proposal." Any other legend may be unacceptable to the Government and may constitute grounds for removing the proposal from further consideration, without assuming any liability for inadvertent disclosure. The Government will limit dissemination of such information to within official channels.

2. **Alternative To Minimize Proprietary Information**—Agencies may elect to instruct applicants to:
 - A. Limit proprietary information to only that absolutely essential to their proposal.
 - B. Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.
3. **Rights in Data Developed Under STTR Funding Agreements**—Agencies should insert essentially the following statement in their STTR Program solicitations to notify SBCs of the necessity to mark STTR technical data before delivering it to the Agency:

To preserve the STTR data rights of the awardee, the legend (or statements) used in the STTR Data Rights clause included in the STTR award must be affixed to any submissions of technical data developed under that STTR award. If no Data Rights clause is included in the STTR award, the following legend, at a minimum, should be affixed to any data submissions under that award.

These STTR data are furnished with STTR rights under Funding Agreement No. _____ (and subcontract No. _____ if appropriate), Awardee Name _____, Address, Expiration Period of STTR Data Rights _____. The Government may not use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend for (chose four (4) or five (5) years). After expiration of the (4- or 5-year period), the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties, except that any such data that is also protected and referenced under a subsequent STTR award shall remain protected through the protection period of that subsequent STTR award. Reproductions of these data or software must include this legend.

4. **Copyrights**—Include an appropriate statement concerning copyrights and publications; for example:

With prior written permission of the funding agreement officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal Government and requires that each publication contain an appropriate acknowledgement and disclaimer statement.

5. **Patents**—Include an appropriate statement concerning patents. For example:

Small business concerns normally may retain the principal worldwide patent rights to any invention developed with Government support. The Government receives a royalty-free license for Federal Government use, reserves the right to require the patent holder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the Government will not make public any information disclosing a Government-supported invention for a minimum 4-year period (that may be extended by subsequent STTR funding agreements) to allow the awardee a reasonable time to pursue a patent.

6. **Invention Reporting**—Include requirements for reporting inventions. Include appropriate information concerning the reporting of inventions, for example:

STTR awardees must report inventions to the awarding agency within 2 months of the inventor's report to the awardee. The reporting of inventions may be accomplished by submitting paper documentation, including fax.

Note: Some agencies provide electronic reporting of inventions through the NIH Edison Invention Reporting System (Edison System). Use of the Edison System satisfies all invention reporting requirements mandated by 37 CFR

Part 401, with particular emphasis on the Standard Patent Rights Clauses, 37 CFR 401.14. Access to the system is through a secure interactive Internet site, <http://www.iedison.gov>, to ensure that all information submitted is protected. All agencies are encouraged to use the Edison System. In addition to fulfilling reporting requirements, the Edison System notifies the user of future time sensitive deadlines with enough lead-time to avoid the possibility of loss of patent rights due to administrative oversight.

- e. **Cost-Sharing**—Include a statement essentially as follows:

Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal.

- f. **Profit or Fee**—Include a statement on the payment of profit or fee on awards made under the STTR Program solicitation.

- g. **Joint Ventures or Limited Partnerships**—Include essentially the following language:

Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern as defined in this program solicitation.

- h. **Research and Analytical Work**—Include essentially the following statement:

1. For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the SBC, and not less than 30 percent of the R/R&D work must be performed by the single, partnering research institution, as defined in this solicitation.

- i. **Awardee Commitments**—To meet the legislative requirement that STTR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in STTR funding agreements must not be included in full or by reference in STTR Program solicitations. Rather, applicants must be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from STTR Program solicitations. Essentially, the following statement must be included in the "Considerations" section of STTR Program solicitations:

Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list is not a complete list of clauses to be included in Phase I funding agreements, and is not the specific wording of such clauses. Copies of complete terms and conditions are available upon request.

- j. **Summary Statements**

The following are illustrative of the type of summary statements to be included immediately following the statement in subparagraph (i). These statements are examples only and may vary depending upon the type of funding agreement used.

1. **Standards of Work**—Work performed under the funding agreement must conform to high professional standards.
2. **Inspection**—Work performed under the funding agreement is subject to Government inspection and evaluation at all times.
3. **Examination of Records**—The Comptroller General (or a duly authorized representative) must have the right to examine any pertinent records of the awardee involving transactions related to this funding agreement.
4. **Default**—The Government may terminate the funding agreement if the contractor fails to perform the work contracted.
5. **Termination for Convenience**—The funding agreement may be terminated at any time by the Government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.
6. **Disputes**—Any dispute concerning the funding agreement that cannot be resolved by agreement must be decided by the contracting officer with right of appeal.
7. **Contract Work Hours**—The awardee may not require an employee to work more than 8 hours a day or 40 hours a week unless the employee is compensated accordingly (for example, overtime pay).
8. **Equal Opportunity**—The awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
9. **Affirmative Action for Veterans**—The awardee will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era.
10. **Affirmative Action for Handicapped**—The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.
11. **Officials Not To Benefit**—No Government official must benefit personally from the STTR funding agreement.
12. **Covenant Against Contingent Fees**—No person or agency has been employed to solicit or secure the funding agreement upon an understanding

for compensation except bona fide employees or commercial agencies maintained by the awardee for the purpose of securing business.

13. **Gratuities**—The funding agreement may be terminated by the Government if any gratuities have been offered to any representative of the Government to secure the award.
 14. **Patent Infringement**—The awardee shall report each notice or claim of patent infringement based on the performance of the funding agreement.
 15. **American Made Equipment and Products**—When purchasing equipment or a product under the STTR funding agreement, purchase only American-made items whenever possible.
- k. **Additional Information**—Information pertinent to an understanding of the administration requirements of STTR proposals and funding agreements not included elsewhere must be included in this section. As a minimum, statements essentially as follows must be included under "Additional Information" in STTR Program solicitations:
1. This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting STTR funding agreement, the terms of the funding agreement are controlling.
 2. Before award of an STTR funding agreement, the Government may request the applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the applicant.
 3. The Government is not responsible for any monies expended by the applicant before award of any funding agreement.
 4. This program solicitation is not an offer by the Government and does not obligate the Government to make any specific number of awards. Also, awards under the STTR Program are contingent upon the availability of funds.
 5. The STTR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals must not be accepted under the STTR Program in either Phase I or Phase II.
 6. If an award is made pursuant to a proposal submitted under this STTR Program solicitation, a representative of the contractor or grantee or party to a cooperative agreement will be required to certify that the concern has not previously been, nor is currently being, paid for essentially equivalent work by any Federal agency.

6. Submission of Proposals

- a. This section must clearly specify the closing date on which all proposals are due to be received.
- b. This section must specify the number of copies of the proposal that are to be submitted.
- c. This section must clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.
- d. This section may include other instructions such as the following:
 1. **Bindings**—Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.
 2. **Packaging**—All copies of a proposal should be sent in the same package.

7. Scientific and Technical Information Sources

Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available shall be included in a separate section of the solicitation entitled "Scientific and Technical Information Sources."

8. Research Topics

Describe sufficiently the R/R&D topics and subtopics for which proposals are being solicited to inform the applicant of technical details of what is desired. Allow flexibility in order to obtain the greatest degree of creativity and innovation consistent with the overall objectives of the STTR Program.

9. Submission Forms and Certifications

Multiple copies of proposal preparation forms necessary to the contracting and granting process may be required. This section may include Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals.

This section may also include certifying forms required by legislation, regulation or standard operating procedures, to be submitted by the applicant to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

APPENDIX II: TECH-NET: DATA FIELDS AND QUESTIONNAIRE

- a. The following are the data collection fields for the Public (Awards) Database as described in Section 11(e)(9) of this Policy Directive for all STTR/SBIR annual data submissions to the SBA.

TECHNET Public (Awards) Database

General Information—Agency submissions must be complete and timely. Each of the 61 fields must be represented in your submission as shown in the tables above. If a particular field such as 37, "RI Category" is not applicable, it must still be included in your submission even though it will be empty. such as contain data even if the data is "blank". When applicable, data field 34 "RI Category" will be filled automatically once the proper name of the college or university is entered in field 37, "RI Name." If data field 34 is not applicable, TechNet will detect the "blank" and auto-fill this field appropriately. Each agency must ensure that data submissions to the SBA include all of the data fields above, even if they are empty.

The collection of this information, which is mandated by statute, [see, 15 U.S.C. 638(k)] will be used to conduct program reviews and audits and to report to Congress on technology and demographical statistics for the STTR/SBIR programs. Information such as Employee Identification and Tax Identification numbers and the data related to special categories for RI including the dollar amounts subcontracted or subgranted to these institutions by the small business concern that was awarded a Phase I or Phase II STTR contract or grant will be considered privileged and confidential, and therefore exempt from disclosure under the Freedom of Information Act. Data in the following fields will also be kept confidential: Project Initiator; Technology Used; time to establish license agreement; STTR proceeds distribution to SBC; STTR proceeds distribution to RI. This information will be available only to authorized persons within the reporting firm and to those Federal officials with specific clearance.

b. Codes

Code Program Identification Code (Field 1)

0. STTR (Small Business Technology Transfer Program)
1. SBIR (Small Business Innovation Research Program)
2. ATP (Advanced Technology Program)

Code Research Institution Types (Field 33)

1. Nonprofit college or university
2. Domestic nonprofit research organization

3. Federally funded research and development center (FFDRC)

Code RI Category (Field 34)

1. Alaskan Native-Serving Institution (ANSI)
2. Hispanic-Serving Institution (HSI)
3. Historically Black College or University (HBCU)
4. Tribal College or University (TCU)
5. Native Hawaiian-Serving Institution

(1) Program Identification Code

0. STTR (Small Business Technology Transfer)
1. SBIR (Small Business Innovation Research)

(2) Agency Codes

1. DOD (Department of Defense)
2. DOE (Department of Energy)
3. NASA (National Aeronautics and Space Administration)
4. HHS (Health and Human Services)
5. NSF (National Science Foundation)
6. DOT (Department of Transportation)
7. EPA (Environmental Protection Agency)
8. ED (Department of Education)
9. DOA (Department of Agriculture)
10. DOC (Department of Commerce)
11. NIST (National Institute of Standards and Technology)

(3) Branch Codes

1. AF (Department of the Air Force)
2. ARMY (Department of the Army)

3. MDA (Missile Defense Agency)
4. DARP (Defense Advanced Research Projects Agency)
5. DSWA (Defense Special Weapons Agency)
6. NAVY (Department of the Navy)
7. OSD (Office of the Secretary of Defense)
8. SOCO (Special Operations Command)
9. NIMA (National Imaging and Mapping Agency)

You are not required to respond to a collection of information unless it displays a currently valid OMB control number. The reporting burden for the collection of this information is 30 minutes per response. Comments on this burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd Street S.W., Washington, DC 20416, and Desk Officer for Small Business Administration Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. PLEASE DO NOT SEND YOUR COMPLETED FORMS TO OMB.

- c. The following is the information collection questionnaire for the Government (Commercialization) Database as described in section 11(e)(10) of this Policy Directive.

TECHNET SBIR/STTR Commercialization Database

About the TechNet SBIR/STTR Commercialization Database

The SBIR/STTR Commercialization Database is a secure, on-line reporting system mandated by Congress to collect and maintain information on the economic impact of the SBIR and STTR programs. Information will be entered directly by program awardees and applicants. Analysis of the information in the Commercialization Database will be used to improve the administration of and assess the merits of the program.

The Commercialization Database will be an integral part of the SBIR and STTR application process. Any firm applying for a Phase I or II award will be required at the time of application to complete and update the relevant information in the Commercialization Database on all previous Phase II awards received by that firm. Proposals will not be accepted until this information is completed. Firms finishing a Phase II project are required to complete and update the information in the Commercialization Database at the termination of the award period. Failure to submit the information may affect an applicant's ability to receive an award.

SBIR and STTR awardees will be requested to voluntarily update the information in this database annually for a minimum period of 5 years following the completion of the Phase II project. However, this on-line reporting system will provide firms the opportunity to

update the information at any time. Relevant information previously provided to any of the funding agencies by your firm will be placed in the Commercialization Database, reducing redundant reporting.

The TechNet SBIR/STTR Commercialization Database will include the records of all applicants for Phase I and Phase II awards, including those that did not receive awards. These records include the name, size, location, and identifying number of the firm; the abstract of the project; and the Federal agency to which the application was submitted.

Pursuant to 15 U.S.C. 638(k)(4), information provided for this database is privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 (Government Organization and Employees) and is not considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).

You are not required to respond to a collection of information unless it displays a currently valid OMB control number. The estimated burden for collection of this information is 1 hour per response. Comments on this burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd Street SW., Washington, DC 20416, and Desk Officer for Small Business Administration Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. Please do not send your completed forms to OMB.

Confidential On-Line Reporting System

Note: Reporting is for prior Phase II awards only. The reports must be completed when applying for either a Phase I or Phase II award, and upon completion of a Phase II project. Subsequent reports or updates are requested but voluntary.

Select one:

1. Applying for a Phase I award, and reporting/updating information on prior Phase II awards. (Required with all SBIR/STTR applications). ——
2. Applying for a Phase II award, and reporting/updating information on prior Phase II awards. (Required with all SBIR/STTR applications).——
3. Reporting on a Phase II project at the time of completion. (Required) ——
4. Filing a follow-up report on a Phase II project. (Voluntary) ——

The following table lists previous Phase II awards your firm has received. It contains information from SBIR/STTR program offices. Please review and update or correct the information in the table.

Table of the Applicant's Prior Phase II Awards

Directions:

1. Add new project entry for each Phase II award your firm has had to-date
 2. Update firm information.
 3. Enter firm point of contact.
 4. (optional) Add a brief narrative on your firm's commercialization track record.
 5. View commercialization report, print, sign and attach copy to your proposal.
 6. (This page will be accessed by clicking on the words "sales", "additional investment" or "accounting instructions".)
-

Definition of Terms:

Sales

- "Sales" includes cash revenue from the sale of new products or non-R&D services embodying the specific technology developed under this Phase II project.
 - Count only such revenue accruing to your firm and not to other entities, except in the following circumstance. If your firm sold or licensed the technological know-how developed under Phase II to another entity, also count as sales the cash revenue accruing to the other entity from its sale of new products or non-R&D services embodying the Phase II technology.
 - If the new product/service embodying the Phase II technology is a component of a larger product/service (e.g., an improved coating on an existing optical lens product), count only the sales attributable to the component rather than the larger product/service.
- "Sales" does not include:
 - SBIR/STTR contracts or grants (Phase I or II), or revenue from any other R&D activities, including follow-on R&D contracts or grants. "R&D activities" include any activities directed toward reducing the technical risk of the technology.
 - Revenue from the sale or license of technological know-how.
 - Revenue from your firm's sales to an affiliate [a link to the regulation on affiliation] of your firm.

Additional Investment

"Additional Investment" includes investment by any source other than the Federal SBIR/STTR program in activities that further the development and/or commercialization

of the specific technology developed under the Phase II project. Examples of such activities include:

- Additional R&D on the Phase II technology;
- Manufacturing/production start-up;
- Purchase of plant and equipment for manufacturing/production;
- Protection of intellectual property;
- Obtaining certifications;
- Marketing start-up and marketing; and
- Training of workforce to manufacture or sell new products embodying the Phase II technology.

These may be activities funded and conducted by your firm or by other entities.

Accounting Instructions

1. Do not count the same item as both "sales" and "additional investment," and do not include Phase I or Phase II SBIR/STTR awards in either category.
2. If two or more Phase II projects contributed to a single new product that has generated sales revenue and/or additional investment, apportion the sales and investment among the contributing projects without double-counting. Example: Phase II projects A and B lead to a new software product that has generated sales of \$10 million to the Army and \$12 million to retail software stores. For both projects A and B, enter \$5 million for sales to DoD and \$6 million for sales to the private sector.
3. Count only sales and investment to date, and not projected sales and investment. For sales to or investment by the government, count only the amount of government funding that has been obligated to date and not the total award amount.
4. For purposes of this report, your "firm" includes all affiliates.

FIRM LEVEL INFORMATION

Company Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Federal Tax ID: _____

DUNS: _____ NAICS Codes: _____

Company point of contact: _____

Company point of contact E-mail: _____

Company point of contact Phone number: _____

Company point of contact Fax number: _____

Company web site address: _____

Please create a password for your firm so that you may access this site in the future. Passwords are case sensitive.

Password: _____ (Verify) : _____

The year your company was founded: _____

How many SBIR and/or STTR awards has your firm received from the Federal Government?
(The answer will not affect your ability to obtain an award).

Phase I: _____ Year of your firm's first Phase I Award?: _____

Phase II: _____ Year of your firm's first Phase II Award?: _____

Phase III: _____ Year of your firm's first Phase III Award?: _____

Number of firm employees (including all affiliates):

At the time of your firm's first Phase II Award: _____

Currently: _____

How many patents or copyrights have resulted, at least in part, from your firm's SBIR and STTR awards? No. of patents: _____ No. of copyrights: _____

Has your firm completed an Initial Public Offering ("IPO") of stock since receiving its first Phase II award that was the result, in part, of technology your firm developed under the SBIR or STTR program? Yes _____ No _____ If Yes, please give year and an estimate of the total value of the IPO. Year: _____ Value: \$ _____

Has your firm, or part of your firm, been acquired at least partly as a result of the work your firm conducted under an SBIR or STTR award? Yes _____ No _____ Yes, please give year and an estimate of the total value of the acquisition. Year: _____ Value: \$ _____

*For the purpose of this report, your "firm" includes all affiliates.

SBIR/STTR PROJECT COMMERCIALIZATION REPORT

Phase II award (contract or grant number): _____

Agency sponsoring the Phase II: _____

Year of award: _____

SBIR: _____ STTR: _____

Briefly describe the commercial application: _____

Sales (cumulative revenues to-date) realized by your firm that resulted from the research conducted under this SBIR/STTR award: _____

To Federal government sources or prime contractors with the Federal Government. (Do not include Phase I or II awards) (\$M): _____

To private sector customers (\$M): _____

Other customers (\$M): _____

Additional investment (cumulative to-date) from:

Federal Government or prime contractors with the Federal Government (\$M): _____

Private sector (\$M): _____

Other sources (\$M): _____

Sources of capital investment your firm has raised to further the research or technology developed under this award (enter the approximate share funded by each source):

Your firm: _____%

Federal Gov. or prime contractors: _____%

State or local government sources: _____%

Venture capital: _____%

Angel capital: _____%

Banks: _____%

Commercial partner: _____%

Other, please specify: _____%

In which of the following areas, if any, would your firm be most interested in receiving assistance to help you successfully commercialize the technology developed under this award?
[Please check all that apply]

Knowledge of market: _____

Business development skills: _____

Raising venture capital investment: _____

Finding "angel" investors: _____

Finding business mentors: _____

Finding a commercial partner: _____

Other: _____

None of the above: _____

Please give a brief narrative of the commercial, economic, other impacts this award has had on your firm (optional).

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