



Department of the Navy (DON) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase III Guidebook

The Guidebook is approved for public distribution, and will be posted and maintained on the DON SBIR/STTR website, www.navysbir.com, as a searchable PDF. A limited number of hard copies will be printed.

SBIR/STTR Phase III Guidance is intended to be utilized by Program Managers (PMs) and Deputy Program Managers (DPMs); Procuring and Administrative Contracting Officers (KOs); and Small Business professionals to realize mission objectives, program requirements, and small business goals.

This document serves as a compendium of and desk reference to known authorities and instructions related to Phase III SBIR/STTR efforts. It is not intended as formal DON guidance.

Best regards,

A handwritten signature in black ink, appearing to read "Robert L. Smith".

Robert L. Smith
Director, Dept. of the Navy SBIR/STTR Programs

Version 2.0

MARCH 2020

EXECUTIVE SUMMARY

The results of the Federal SBIR/STTR programs address the Government's ongoing need for rapid technology innovation in an ever-changing global environment. Small business concerns (SBCs) can play a unique role in this process because they possess the ability and agility to move faster to respond to Government calls for solutions.

“Winning teams capitalize on all the unique talents of their players and our success in meeting the National Defense Strategy (NDS) relies on our ability to continue to include Small Businesses as key members of our Department of the Navy (DON) team. Small Businesses are an incredible source for innovation, adaptability, pivot speed, and resilience whether in a prime contractor or subcontractor role. To that end, I expect Acquisition Commands and Program Executive Offices (PEOs) to place a priority on improving utilization of Small Business in accomplishing the Department of the Navy's mission.”

*--Assistant Secretary of the Navy (Research, Development and Acquisition) Memorandum
“Small Business Utilization for a Strategic Advantage” of 6 August 2018*

The DON SBIR/STTR Phase III Guidebook serves many purposes. Its main purpose is to inform those professionals, both in the Government and private sector, about achieving the ultimate goal of the SBIR/STTR programs – the transition of SBIR/STTR-developed technologies into Government programs and/or the private marketplace. Transitioning SBIR/STTR-developed technologies, which include “hands-on” products as well as services, ensures the best use of the considerable resources invested by the Federal Government into SBIR/STTR research and development (R&D). Transitioning these innovative technologies also assists with the realization of mission objectives, program requirements, and small business goals.

This Guidebook increases awareness, understanding, and compliance with Government requirements on the part of SBCs, PMs/DPMs, acquisition personnel, KOs, Program Executive Offices (PEOs), and prime contractors. External internet links provide users with a conduit to the most up-to-date information, including changes to the programs and any relevant documentation, including statutes, regulations, and policies. The Guidebook is posted and maintained on the DON SBIR/STTR website, www.navysbir.com.

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INTRODUCTION

a. Statutory Origins of SBIR and STTR Programs

Federal Small Business Innovation Research (SBIR) Program

- Established in 1982 by Public Law (P.L.) 97-219; reauthorized for continuation of SBIR/STTR programs through 30 September 2022.
- Requires Federal agencies with extramural R&D budgets that exceed \$100 million to allocate a percentage of their R&D budget to these programs.
- Created as a competitive three-phased process to solicit proposals for Research/Research and Development (R/R&D), production, services, or any combination to meet stated agency needs or missions; and to award funding agreements to qualifying SBCs.

Federal Small Business Technology Transfer (STTR) Program

- Established in 1992 by P.L. 102-564; reauthorized for continuation through 30 September 2022.
- Requires Federal agencies with extramural R&D budgets that exceed \$1 billion to reserve 0.45% of the extramural research budget for STTR awards to SBCs.
- Created as a parallel program to SBIR with the added requirement that SBCs partner with colleges/universities, Federally Funded Research and Development Centers (FFRDCs) or qualified non-profit research institutions on cooperative R/R&D.

b. Statutes and Policies Governing Phase III

- 15 USC §638 (codification of Small Business Act section on SBIR/STTR)
- National Defense Authorization Act for Fiscal Year 2019 (NDAA): Added incentive requirement in all DoD contracts >\$100M for use of SBIR/STTR technologies. (<https://www.congress.gov/bill/115th-congress/house-bill/5515/text>)
- Department of Defense Instruction (DoDI) 5000.02: Establishes goals for applying SBIR and STTR technologies in Programs of Record (PoRs) and incentivizes primes to meet these goals. (<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500002p.pdf?ver=2020-01-23-144114-093>)

c. Federal Participants

Participating Federal Agencies	
Department of Agriculture (USDA)	Department of Homeland Security (DHS)
Department of Commerce (DOC)	Department of Transportation (DOT)
Department of Defense (DoD)	Environmental Protection Agency (EPA)

Department of Education (ED)	National Aeronautics & Space Administration (NASA)
Department of Energy (DOE)	National Science Foundation (NSF)
Department of Health & Human Services (HHS)	

Participating DoD Services and Components	
Department of the Air Force (DAF)	Defense Microelectronics Activity (DMEA)
Department of the Army (DA)	Defense Threat Reduction Agency (DTRA)
Department of the Navy (DON)	Joint Science and Technology Office for Chemical and Biological Defense (CBD)
Missile Defense Agency (MDA)	Office of the Secretary of Defense - ManTech (OSD/ManTech)
Defense Advanced Research Projects Agency (DARPA)	National Geospatial-Intelligence Agency (NGA)
Defense Health Agency (DHA)	U.S. Special Operations Command (SOCOM)
Defense Logistics Agency (DLA)	

d. Overarching Federal SBIR/STTR Program Mission and Goals

Federal SBIR/STTR Programs Mission

- Support scientific excellence and technological innovation through the investment of Federal research funds in critical American priorities to build a strong national economy...one small business at a time.

Overarching Federal SBIR Program Goals

- Stimulate technological innovation.
- Meet Federal R&D needs.
- Foster and encourage participation in innovation and entrepreneurship by women and socially or economically disadvantaged persons.
- Increase private-sector commercialization of innovations derived from Federal R&D funding.

Overarching Federal STTR Program Goals

- Stimulate technological innovation.
- Foster technology transfer through cooperative R&D between small businesses and research institutions.
- Increase private sector commercialization of innovations derived from federal R&D.

e. The DON SBIR/STTR Program Mission and Participating DON Systems Commands

DON SBIR and STTR Program Mission

- Deliver innovative technology solutions to the Naval warfighter by applying the agility, dedication, and ingenuity of small business entrepreneurs to the R&D needs of the DON.

Participating DON Systems Commands	
Marine Corps Systems Command (MCSC)	Naval Supply Command (NAVSUP)
Naval Air Systems Command (NAVAIR)	Naval Information Warfare Command (NAVWAR)
Naval Facilities Engineering Center (NAVFAC)	Office of Naval Research (ONR)
Naval Sea Systems Command (NAVSEA)	Strategic Systems Programs (SSP)

OVERVIEW

f. The SBIR/STTR Programs and How They Operate within the DoD

What is SBIR/STTR?

Three-phased programs designed to involve SBCs in federally-sponsored R/R&D, maintaining the benefits of such development through commercialization

- In DoD, this includes annual issuance of three SBIR Broad Agency Announcements (BAAs) and three separate but simultaneous STTR BAAs that:
 - contain technical topics describing Federal Government agency areas of interest and/or need;
 - solicit proposals from SBCs detailing their ideas for solutions to the problems; and
 - involve competitive selection for contract awards to the most promising proposers.

Typical SBIR/STTR Award Structure			
	Phase I	Phase II	Phase III
Funding*			
Base	\$140K	\$750K-\$1M	Unlimited
Option	\$100K	\$1.6M balance	Non-SBIR/STTR
Period of Performance			
Base	6 months	12-24 months	Government – 5 years
Option	6 months	6-12 months	Industry – No limit

*as of March 2020. Subject to change; refer to the latest SBIR and STTR BAAs posted on the Defense SBIR/STTR Innovation Portal (DSIP) at dodsbirsttr.mil

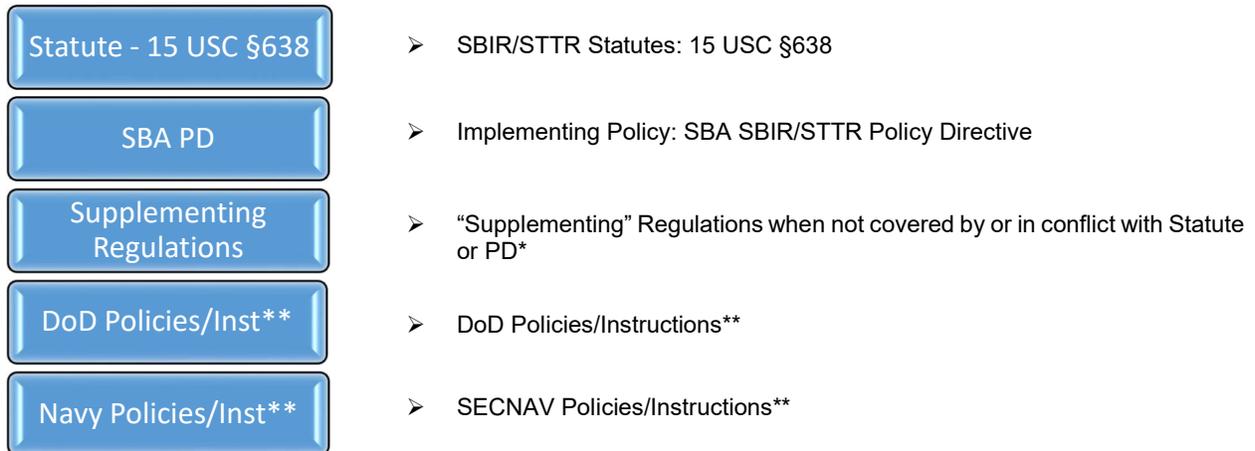
Qualifications for Participating Small Business Concerns

- 500 or fewer employees including affiliates.
- For profit.
- Greater than 50% U.S.-owned by individuals and independently operated (with some exceptions).

- Place of business/workspace in the U.S. (with few exceptions).

Note: STTR requires a subcontract with a research institution.

Precedence of Governing SBIR/STTR Statute, Policy, and Regulation



*i.e., Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), Navy Marine Corps Acquisition Regulation Supplement (NMCARS)

**Note: DON is considered a Federal agency separate from DoD under 15 USC §638 and may have responsibilities and policies outside of those set forth by DoD. See Appendix I for definition of “Federal agency”.

g. Small Business Administration (SBA) Roles and Relationship to Participating Agencies

- Serves as the coordinating agency for the SBIR/STTR programs Federal-wide.
- Directs the agencies' implementation of SBIR/STTR, reviews their progress, and reports annually to Congress on the operation of the two programs.
- Acts as the official information repository for SBIR/STTR programs Federal-wide.
- Fulfills a statutory obligation to provide guidance to participating Federal agencies by issuing a PD). (See Appendix 4 for web links to the current PD).

Who decides the rules for SBIR/STTR Phase I/II/III?

Congress sets out the general rules in statutes; in the case of SBIR/STTR, 15 USC §638, including paragraphs (j) and (p), require the SBA to issue PDs for the general conduct of the SBIR/STTR programs by all participating agencies including procedures for the following:

- Broad Agency Announcements (and/or solicitations).
- Funding processes, which include receipt and review of proposals and selections for award; protection of proprietary data; transfer of title to Government property; cost sharing; and cost principles and payments.

- Intellectual property protections (data rights and software).
- Exemptions/exceptions from other regulations.
- Data collection and reporting.
- Restrictions on award values and number of awards.
- Restrictions, waiver submissions and approvals required for funding use.

SUGGESTIONS FOR PMs/DPMs/KOs

h. Approaches for Utilizing SBIR/STTR Technologies to Meet Program Objectives

What are some benefits of Phase III?

- Provides a powerful tool for PMs, DPMs, and KOs to address key affordability, innovation, and other DON strategic asset objectives.
- Allows flexibility in “bridging the gap” between prototype development and Operational Test & Evaluation (OT&E).
- Meets DON development and innovation requirements across the full spectrum of mission needs from technology innovation through sustainment.
- Permits awards to SBCs that have outgrown the small business size standard (500 or fewer employees); to a novated awardee; or to a successor in interest such as a large acquiring company.
- Can be funded by procurement, Operations and Management (O&M), construction, research, or any other type of agency funds (except SBIR/STTR Program funds).
- Can be any type of contract, including a subcontract, and may be competitive or non-competitive.
- Dramatically reduces time to award by using non-competitive procedures.
- Does not require a Justification & Approval (J&A).
- Does not require advanced publication or notice. **(SBA PD 2(j)(4)(iii))**

Examples of SBIR/STTR Benefits to Acquisition Programs			
ISSUE	SPECIFIC PROBLEM	SBIR/STTR SOLUTION	RESULTS
Technology transition to new system or platform	Needs ability to rapidly test, evaluate and qualify for new system or platform	Provides authority to contract work quickly across budget activities	Accelerated transition to warfighter
Excessive O&M Costs	Numerous core fluids in single platform	Develops a single fluid that meets multiple system/ platform needs	Reduction in O&M Costs related to logistics and training
Continually rising costs	Single source supplier	Develops and qualifies a second source	Reduced product costs and broader supply base

i. Setting Goals for Use of SBIR/STTR Participation in Acquisition Strategies/Plans

When should/must Phase III be included in acquisition strategies/plans and acquisition programs beyond just identification of specific technologies?

- [15 USC §638\(y\)\(4\)](#): “For any contract with a value of not less than \$100,000,000, the Secretary of Defense is authorized to—
(A) establish goals for the transition of Phase III technologies in subcontracting plans; and
(B) require a prime contractor on such a contract to report the number and dollar amount of contracts entered into by that prime contractor for Phase III SBIR or STTR projects.”
- In accordance with DoDI 5000.02T, Operation of the Defense Acquisition System, Enclosure 1 – Acquisition Program Categories and Compliance Requirements, 3. Acquisition Program Information Requirements at Milestones and Other Decision Points, Table 3. Milestone and Phase Information Requirements – Acquisition Strategy (AS) (<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500002T.PDF?ver=2020-01-23-144112-220>)
 - SMALL BUSINESS INNOVATION RESEARCH (SBIR)/SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM TECHNOLOGIES: STATUTORY. Program managers will establish goals for applying SBIR and STTR technologies in programs of record and incentivize primes to meet those goals. For contracts with a value at or above \$100 million, program managers will establish goals for the transition of Phase III technologies in subcontracting plans and require primes to report the number and dollar amount of Phase III SBIR or STTR contracts. Not required at Milestone B.

How can PMs/DPMs take advantage of the benefits of Phase III?

- Incorporate SBIR/STTR into acquisition plan (AP) and strategies.
- Include considerations for SBIR/STTR Phase III awards in intellectual property (IP) plans and strategies.
- Use Specially Negotiated Licenses where appropriate (reference [DoDI 5010.44](#)) (<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/501044p.PDF?ver=2019-10-16-144448-070>)
- Reach back to Previously Developed Technologies (<https://www.navybir.com/reachback.htm>)
 - Ahead of Its Time Tech (i.e., DON program was canceled or delayed and now it is ready)
 - Alternative Uses (i.e., technology may/may not have gone to Phase III before; now it is taking a different path)
 - Further Development (i.e., technology may have only gone to Phase I or gotten through an initial stage of Phase II but there is more work to be done before it can be moved into or assessed by a program)

- Somebody Else's Stuff (i.e., maybe another DoD component or a civilian agency has something of use)

How do PMs/DPMs find available SBIR/STTR technologies?

- Find available SBIR/STTR technologies by accessing the DON's public SBIR/STTR search database (<http://www.navysbirsearch.com>) that:
 - allows user searches on all Navy SBIR/STTR awards and success stories; and
 - utilizes unique pattern-recognition technologies to draw out concepts from data by looking for the idea or concept defined by given words, not necessarily the words themselves, so that the conceptual search retrieves the most relevant content.

How do PMs/DPMs document the results of a review of potential Phase III SBIR/STTR technologies?

- Perform searches based on specific criteria/keywords; and then create a list of results, websites/databases utilized, and date(s) of search(es).
 - If no results, use alternate/additional search criteria/keywords to broaden search(es).
 - If results are excessive, use criteria to narrow field (e.g., SBC/topic didn't receive Phase II funding; last reported SBIR/STTR funding or commercialization > 10 years).
- Perform market or other survey methods (e.g., contact SBCs for details of their technologies) to justify omission in research results unless failure to meet mission requirements is obvious.
- Report instances where a Phase III award is not made to Congress. (**15 USC §638(j)(3)(C)**)
- Submit to SBA the justification information prior to any awards being made. (**SBA PD 4(c)(7)**)

When must a Phase III be awarded?

15 USC §638(j)(2)(c) requires "to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by an SBC under an SBIR program enters into follow-on, non-SBIR funding agreements with the SBC for such research, development, or production."

SBA PD 4(c)(7) requires that "Agencies or their Government-owned, contractor-operated (GOCO) facilities, Federally-funded research and development centers (FFRDCs), or Government prime contractors that pursue R/R&D or production of technology developed under the SBIR/STTR program shall issue Phase III awards relating to the technology, including sole source awards, to the Awardee that developed the technology under an SBIR/STTR award, to the greatest extent practicable, consistent with an Agency's mission and optimal small business participation."

What are the steps to meeting "to the greatest extent practicable" requirement?

- Review available SBIR/STTR technologies and perform due diligence.
- Document results of review including sources, timing, and search criteria.

- Determine whether all potentially applicable technologies are included in acquisition strategies/plans.
- Prepare justifications of failure to meet mission acquisition requirements (may require market surveys). [Note: Justification must be approved and submitted to SBA prior to any awards.]

j. Establishing Incentives for Incorporating SBIR/STTR in Programs of Record and Subcontracting Plans

What kind of incentives are used to incorporate SBIR/STTR Phase III technologies into Programs of Record (PoRs) and Subcontracting Plans?

- Required development of second sources for expensive, sole source or obsolete items.
- Share in savings programs for development of new third-party sources.
- Standard cost and performance incentives tied to improvement of critical items associated with either achievement of Phase III goals or incorporation of Phase III technologies that improve overall program cost/performance.

NOTE: Virginia Class submarines used these incentives to save significant program costs that more than offset the costs of the incentives.

k. Additional Phase III Support Using Non-SBIR/STTR Resources

- **Small Business Support Programs:** Numerous programs exist to support SBCs in both their formation, development and growth; in the non-technical or financial aspects of their business; and in some cases solving technical problems (e.g., SBA loan guarantees, Mentor Protégé Program, state and local government economic development grants). Many are offered by the SBA or state and local economic development organizations. Good places to find lists of such resources include SBIR.gov, and the websites of Small Business Technology Development Centers (SBTDC) or the Chamber of Commerce.
- **Manufacturing Development Programs:** Many Federal/DoD Government-funded and -sponsored programs are available to provide manufacturing assistance by SBCs including the Manufacturing Extension Partnership Program, managed by the National Institute of Standards and Technology (<https://www.nist.gov/mep>), an organization with a presence in all 50 states and Puerto Rico to support small and medium-sized manufacturers; and DoD Manufacturing Technology (<https://www.dodmantech.com/>), a collection of specialized manufacturing- and industrial-based policies, programs, and projects that support the DoD mission and share information about DoD-funded research into manufacturing-related processes and products.
- **Use of Government Property:** The Government may transfer title to property provided by the Federal Agency to the SBC if the transfer would be more cost effective than recovery of the property by the Agency. (**15 USC 638 (j)(1)(B)(vi)** and **SBA PD 8(e)**)

- **Continued Use of Government Equipment:** The Government is required to continue to allow an SBC to maintain possession for a minimum of 2 years, as a directed bailment, of any Government equipment provided as part of its Phase III award. (**15 USC 638 (j)(2)(B)** and **SBA PD 8(f)**)

GUIDANCE FOR KOs AND HEADS OF CONTRACTING ACTIVITY (HCAs) ON PHASE III AWARDS

I. Eligibility and Verification of Award

What are the statutory definitions of Phase III?

15 USC §638(e)(4)(C): “work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR/STTR program.”

SBA PD 4(c): “work that derives from, extends, or completes an effort made under prior SBIR/STTR Funding Agreements, but is funded by sources other than the SBIR/STTR programs. Phase III work is typically oriented towards Commercialization of SBIR/STTR research or technology, including through further R/R&D work.”

- *"Derives from" work that traces back to SBIR/STTR efforts performed under prior funding agreements*
- *"Extends" the work into other applications not researched or performed in prior SBIR/STTR efforts*
- *"Completes" commercialization of the prior SBIR/STTR research into a commercial product or application*

How do PMs/DPMs validate data rights assertions to determine that an award is eligible for Phase III?

If any technology at any tier is subject to valid SBIR/STTR data rights assertions by the performing or providing SBC, then the award is a Phase III. The process for determining the validity of Phase III assertions is generally:

1. Is the technology for which data rights are asserted necessary or likely to be included in the work performed?
2. Can the data rights assertions be traced back to a specific SBIR/STTR Phase I or Phase II award?
3. Are the asserted data rights protections for the technology valid (i.e., is the data unavailable to the Government from another unrestricted source)?
4. Was the data asserted as SBIR/STTR data to be delivered with data rights restrictive markings?
5. Is the SBC that is asserting the data rights restrictions the owner or “Successor in Interest” of the IP?

How is a Successor in Interest determined?

- Novation of Award: An SBC transfers all rights and responsibilities for a particular contract to another company; therefore, if the contract is completed or has not been awarded, an award cannot be “novated” and all rights, if any exist, remain with the original SBC.
- Purchase/Acquisition of an SBC: The terms of the acquisition define what is included so these must be disclosed to determine “who” has rights to various assets including existing data rights/IP, contracts, and other assets. If nothing is withheld, then SBIR data rights go to the purchaser.
- Sale of “Exclusive” Rights to Manufacture: This sale does not transfer all data rights in the technology and is not a Successor in Interest.
- Licensing: Licensees (exclusive or non-exclusive) do not transfer all data rights in the technology and are not Successors in Interest.

m. Phase III Preference and Statutory Requirement for Award

What is the Special Acquisition Requirement for Phase III provided by SBA PD 4(c)(7)?

This special acquisition requirement is often referred to as “to the greatest extent practicable.” This award requirement mandates that the Government make a Phase III award to the SBIR/STTR awardee that developed the technology. Achievement of this mandate can occur through several different avenues:

- Can be awarded via a competitive or statutory authorized non-competitive process.
- Cannot include SBIR/STTR funding in a Phase III contract unless:
 - work is funded on a separate Delivery Order or Contract Line Item with its own Statement of Work and contract deliverables;
 - no SBIR/STTR funding is applied to the Phase III Delivery Order, Contract Line Item, Statement of Work or Deliverables; and
 - all of the Phase III work meets the definition of what constitutes Phase III work.

How do PMs/DPMs determine if the “to the greatest extent practicable” mandate applies to a program/project?

The following steps must be followed to determine if the requirements apply:

1. Did the prime or subcontractor assert SBIR/STTR data rights to any technology within the proposal? If included in the proposal, then the mandate applies.
2. Were any of the program’s/project’s technologies previously developed using SBIR/STTR funds? If so, then the mandate applies.
3. Was a search of SBIR/STTR databases, for example the DoD and agency SBIR/STTR websites or SBIR.gov, conducted to determine if technology has been funded that could satisfy program/project needs? If a technology is found that could possibly satisfy those needs, follow the steps below to determine if the mandate applies:
 - a. Contact the SBC to determine the current status of the technology and details of the technological capabilities; and to determine its interest in performing the work.

- b. Determine if the technology is currently able to meet program/project needs and document any deficiencies making reference to specific requirements for the program/project. If the SBC is willing to perform the work and the technology is capable of meeting program/project needs, even if some additional work may be required, then the mandate applies.
4. Were the results of a review of potential Phase III SBIR/STTR technologies documented by:
 - a. describing the searches performed including the specific criteria/keywords used, list of results, the websites/databases utilized, and date(s) of search(es);
 - b. listing the alternate/additional search criteria/keywords and resources used to broaden search(es) if no results were obtained;
 - c. documenting the criteria that were used to narrow field (e.g., (1) SBC/topic didn't receive Phase II funding; (2) last reported SBIR/STTR funding or commercialization > 10 years) if results are excessive;
 - d. creating a table of potentially relevant technologies (i.e., those that could meet program requirements), including SBC name, topic number, project title, whether or not the technologies are included in AS/AP, and justification as to why the technologies cannot meet established mission acquisition requirements;
 - e. performing market survey or other survey methods (e.g., contact SBCs for details of technologies) to justify omission in research results; and
 - f. preparing a report to Congress via SBA of instances where a Phase III award is not to be made (**15 USC §638(j)(3)(C)** requirement)?
5. Could a competitive BAA, under which the identified SBIR/STTR technology is allowed to compete as a prime or subcontractor depending on the technology and acquisition being pursued, be issued?
 - a. In the case of the SBIR/STTR technology eligible for a prime award, the Government must consider whether or not certain factors can be evaluated to provide more favorable treatment to the SBIR/STTR SBC. For example, if the factor that prevented the original mandated acceptance of the technology was schedule, could a factor be used to encourage a manufacturing partnership with the SBIR/STTR SBC to accelerate deliveries?
 - b. In the case where the SBIR/STTR technology SBC is eligible as a subcontractor and improved performance is a factor, could an incentive (positive and/or negative) be used to induce primes to incorporate SBIR/STTR technologies and thereby encourage innovation in other areas to increase utility of the considered or other SBIR/STTR technologies?

What are instances when the mandate may not apply?

- If the technology is not clearly capable of meeting ALL of the technology needs of the program/project.
- If the technology would not meet other previously established requirements of the program/project, for example improved performance, cost, or schedule that are documented in the program/project records.

In cases where the mandate may not apply, programs/projects may conduct a Request for Information (RFI) or sources sought to determine what others have capabilities to meet the program's/project's requirements and compare those against the capabilities of the SBIR/STTR SBC. Based on the market research, a final determination can be made as to whether or not a sole source award can be made to the SBIR/STTR SBC that developed the technology (i.e. if the SBIR/STTR technology better meets the requirements than any other, then the SBIR technology must be used for any award).

In all cases where Phase III technologies may apply and are considered but not awarded, **documentation must be provided to SBA prior to contract award as noted in Step 4f above.** The SBA has five business days to review the documentation and file a Notice of Intent to Appeal with the decision to the KO. During such appeal, there must be an immediate suspension of work. For further information on the Appeals process, see SBA PD 4(c)(7)(v). Regardless of whether or not SBA appeals the decision, all cases in which the agency decides not to award to the original SBIR/STTR technology developer will be provided to Congress.

Can competition be held if a technology is found that meets acquisition program needs?

Yes, competition can be held; however, as part of the justification for conducting a competition, the following steps are required:

- “To the greatest extent practicable” special acquisition mandates must be met.
- The value placed on “additional” considerations in any “best value” competition (e.g., reduced costs, increased capabilities, faster delivery schedules) must be articulated to show how they are to be fairly assessed in a way that does not specifically prejudice the SBIR/STTR awardee.
- Observance of SBIR/STTR data rights must not be violated in the conduct of the competition or any resulting awards.

n. Phase III Award Characteristics

What characteristics are distinctive of Phase III contracts?

- Phase III contracts can result from one or more SBIR/STTR topics and Phase I/II awards from one or more Federal agencies but must be reported in the Federal Procurement Data System (FPDS) using a Phase III designation (reference to the Topic Number representing the majority of the technology and other Topic Numbers with contributing technology should be listed in the award as a best practice).
- There can be multiple ongoing Phase III awards for the same or similar products, services, or processes from the same or multiple agencies at the same time provided the SBC is not paid more than once for the same work or actual product, service or process delivery.
- There is no limit on the funding amount, type of funds, or duration of Phase III awards except for rules imposed by the actual funds appropriated/obligated under the award.
- Government-sourced Phase III awards may be issued by any authorized Government awarding officials (e.g., KO, Grants Officer) within the scope of their authorities.

- SBA PD 2(j)(4)(iii) eliminates all public notice requirements of FAR 5.3 for Phase III.
- SBA PD 4(c)(7) mandates non-competitive award on a sole source basis of Phase III contracts to the SBIR/STTR SBC that developed the technology (see sections on Special Acquisition Requirements and Greatest Extent Practicable for more details).
- Even if the award is a result of the competitive process, it qualifies as a Phase III and SBIR data rights must be included/added to any resulting award whether the prime or a subcontractor at any tier.

What are the requirements and restrictions related to Phase III?*

SBA PD 4(c) provides detailed requirements and restrictions for Phase III that include:

- meeting the definition of Phase III work (i.e., must derive, extend, or complete work performed under Phase I/II);
- Having no limit on the number, duration, type, or dollar value of Phase III awards;
- Providing no limit on the time that may elapse between a Phase I or Phase II award and a Phase III award (i.e., going directly from Phase I to Phase III without issuing a Phase II is possible);
- Requiring no small business size limits; and
- Conducting competition requirements as part of Phase I and Phase II awards to satisfy all requirements for competition and so, in accordance with 15 U.S.C. §638(r)(4), requiring no further justification.

What is NOT a Phase III?

- Award that does not fall within the scope of the original SBIR/STTR topic (i.e., “derives from, extends or completes work previously ...”) even if included on the Phase III contract.
- Award to an SBC that is not the owner of the IP (i.e., “Successor in Interest”) and is not for a purchaser or reseller (distributor) of the Phase III products or services unless it is a licensed manufacturer providing a subcontracted component of a contracted deliverable (e.g., buying from Amazon or Home Depot does not count).
- Award that includes a mix of SBIR/STTR and non-SBIR/STTR funds without a separation of the work to separate line items or delivery orders, and includes clearly distinguishable statements of work and deliverables.
- Award that, through statutorily compliant procedures (i.e., based on voluntarily waiver or ineligibility), does not include SBIR/STTR data rights protections.

o. Phase III Award Terms

Phase III is a SBIR/STTR award and must follow the rules for SBIR/STTR data rights protections.

- Awards must include standard SBIR/STTR data rights provisions (for DoD this is DFARS clause 252.227-7018).
- Standard SBIR/STTR data rights provisions are required to be included in any sub-awards issued by the recipient.

- Awards cannot be conditional on the waiving of any SBIR/STTR data rights at any level (prime or sub-award).
- Modification of any standard SBIR/STTR data rights provisions can only be made after award and cannot be the result of any coercion on the part of the Government or a prime contractor.

* Phase III work is any work funded with non-SBIR/STTR funds that meets the Phase III definition. While the PD only covers work funded directly by the Government or to sub-awards on Government non-SBIR/STTR funded awards (i.e., commercial contracts and sales not funded via Government award (prime or sub-award)), Phase III awards are not subject to these requirements or protections.

What are data rights adds/flow-downs?

- Prime contractors (primes) may get an SBIR/STTR data rights clause added after award when they:
 - Acquire the SBIR/STTR SBC performing under contract.
 - Provide an optional flow-down provision to subcontractor(s).
- Primes must provide a flow-down clause to subcontractors after award whenever they are notified of Phase III content unless the Government KO disapproves the subcontract.
- Primes must require their subcontractors to flow down SBIR/STTR data rights provisions to other subcontractors when the lower tier subcontract is SBIR/STTR to the extent the subcontractor is identifiable by the prime.

What is the protection period for SBIR/STTR data rights?

- The SBA SBIR PD indicates that the SBIR/STTR protection period begins with award of an SBIR/STTR Funding Agreement and ends twenty years, or longer at the discretion of the Participating Agency, from the date of award of an SBIR/STTR Funding Agreement (either Phase I, Phase II, or Federally-funded SBIR/STTR Phase III) unless subsequent to the award, the agency and the SBC negotiate for some other protection period for the SBIR/STTR data.

**Note: The class deviation clause at <https://www.acq.osd.mil/dpap/policy/policyvault/USA000244-20-DPC.pdf> shall be used in lieu of DFARS 252.227.7018.*

Can Phase III/non-SBIR funding be added to a Phase II contract?

Yes. Non-SBIR/STTR funds can be added to a Phase II contract to accomplish additional work; but a Phase III contract is preferred in this case so that DON receives credit for the Phase III award. When adding to an existing Phase II contract, the Phase III work must be on a separate Statement of Work with its own contract line item/delivery order and deliverables. Otherwise, it will be considered cost matching and not cost sharing or Phase III.

Can Phase III work be added to an existing Phase II contract?

Yes. However, if the new work would significantly increase the value of the contract or is not within the scope of the tasks proposed under the competitive Phase II contract (i.e., must be within the scope of the topic and contract), a new contract may be required by the KO.

Must a Phase III contract be approved by the DON SBIR/STTR Program Office?

No. The DON SBIR/STTR Program Office does not approve Phase III contracts although the relevant SBIR/STTR Program (i.e., a DON Systems Command (SYSCOM)) responsible for the topic/Phase I/Phase II should be informed of the procurement, and may provide advice and support, including verification and eligibility for Phase III.

What are the different statutorily defined “types of funds” within the SBIR/STTR program budgets?

- SBIR and STTR funds that are available for awarding Phase I and II awards only; none of these funds may be used to award Phase III.
- SBIR/STTR program budgets may be further distributed to create some additional categories of funds to support the activities of the overall Phase I/II SBIR/STTR programs:
 - *Commercialization Readiness Program (CRP)*: 15 USC §638(y) allows DoD agencies to use up to 1% of their SBIR budgets to support Phase II projects designated by the Head of the Agency or Military Services as meeting “high priority needs” and having likely transition potential; none of the funds may be used for actual funding of projects.
 - *Assistance for Administrative, Oversight, and Contract Processing Costs Pilot Program Authorization (3% Admin Funds)*; 15 USC §638(mm) allows those agencies required to have an SBIR program to use, until 30 September 2022, up to 3% of their SBIR funds for certain delineated areas associated with operation of the SBIR/STTR programs.

What additional “types of funding” terms may be used in SBIR/STTR programs?

- *Cost Matching* - denotes that, when non-SBIR/STTR funds are applied to a project during Phase I and/or II, they may be added to the existing contract award and do not qualify as Phase III due to their lack of segregation from the existing Phase I and/or II work.
- *Cost sharing* - the process by which the one SBC obligated to perform the work absorbs some of the expense or the actual cost of performance. Depending on the terms of the agreement, these costs may be borne by the actual performer or a third-party, but they must have been actual costs that would be incurred in performance of the work. Therefore, lower profit rates, favorable loan rates, tax incentives, and “availability of professional advisors in mentoring programs” are not acceptable examples of cost sharing. Some non-financial contributions that might be allowed are: established fair market rental for use of existing equipment; replacement pricing for current on-hand supplies and materials; and market price of existing commercial items. (Note: The term *cost sharing* is often used interchangeably and incorrectly with the term *cost matching*)

APPENDIX 1: DEFINITIONS

Definitions – Part 1

Source: DFARS 252.227-7013

<https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7013>

(1) “Computer data base” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) “Computer program” means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) “Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(4) “Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) "Covered Government support contractor" means a contractor (other than a litigation support contractor covered by [252.204-7014](#)) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(<https://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm#252.204-7014>)

(<https://www.govinfo.gov/content/pkg/CFR-2014-title48-vol3/pdf/CFR-2014-title48-vol3-sec252-227-7025.pdf>)

(6) “Detailed manufacturing or process data” means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) “Developed” means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state

APPENDIX 1: DEFINITIONS

of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(8) “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.

(10) “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) “Form, fit, and function data” means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(13) “Government purpose rights” means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(14) “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 authorize the technical

APPENDIX 1: DEFINITIONS

data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

- (i) The reproduction, release, disclosure, or use is—
 - (A) Necessary for emergency repair and overhaul; or
 - (B) A release or disclosure to—
 - (1) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or
 - (2) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;
- (ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
- (iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) “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.

(16) “Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

Definitions – Part 2

Source: SBIR/STTR Policy Directive May 2, 2019 (pages 56-67)

https://www.sbir.gov/sites/default/files/SBIR-STTR_Policy_Directive_2019.pdf

(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 qualifies as an SBC at all pertinent times and that submits a contract proposal or a grant application for a funding agreement under the SBIR Program.

APPENDIX 1: DEFINITIONS

(d) Affiliate. This term has the same meaning as set forth in 13 CFR part 121–Small Business Size Regulations, §121.103, What is affiliation? (https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=13%3A1.0.1.1.17#se13.1.121_1103) Further information about SBA's affiliation rules and a guide on affiliation is available at www.SBIR.gov and www.SBA.gov/size.

(e) Awardee. The organizational entity that receives an SBIR Phase I, Phase II, or Phase III award.

(f) Commercialization. The process of developing products, processes, technologies, or services and the production and delivery (whether by the originating party or others) of the products, processes, technologies, or services for sale to or use by the Federal 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) Covered Small Business Concern. A small business concern that:

(1) was not majority-owned by multiple venture capital operating companies (VCOCs), hedge funds, or private equity firms on the date on which it submitted an application in response to a solicitation under the SBIR program; and

(2) is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms on the date of the SBIR award.

(i) Eligible State. A State: (1) where the total value of SBIR and 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% of the amount of assistance provided.

(j) Essentially Equivalent Work. Work that is substantially the same research, which is proposed for funding in more than one contract proposal or grant application submitted to the same Federal agency or submitted to two or more different Federal agencies for review and funding consideration; or work where a specific research objective and the research design for accomplishing the objective are the same or closely related to another proposal or award, regardless of the funding source.

(k) 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.

APPENDIX 1: DEFINITIONS

- (l) Feasibility. The practical extent to which a project can be performed successfully.
- (m) Federal Agency. An executive agency as defined in 5 U.S.C. §105, and a military department as defined in 5 U.S.C. 102 (Department of the Army, Department of the Navy, Department of the Air Force), except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, §3.4(f), or its successor orders.
- (n) Federal Laboratory. As defined in 15 U.S.C. §3703, means any laboratory, any federally funded research and development center, or any center established under 15 U.S.C. §§ 3705 & 3707 that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor.
- (o) 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.
- (p) Funding Agreement Officer. A contracting officer, a grants officer, or a cooperative agreement officer.
- (q) 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.
- (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: (1) patents; (2) trademarks; (3) copyrights; (4) trade secrets; (5) SBIR technical data (as defined in this section); (6) ideas; (7) designs; (8) know-how; (9) business; (10) technical and research methods; (11) other types of intangible business assets; and (12) all types of intangible assets either proposed or generated by an SBC as a result of its participation in the SBIR Program.
- (t) Joint Venture. See 13 C.F.R. §121.103(h).
- (u) Key Individual. The Principal Investigator/Project Manager and any other person named as a “key” employee in a proposal submitted in response to a program solicitation.
- (v) 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.

APPENDIX 1: DEFINITIONS

(w) Program Solicitation. A formal solicitation for proposals issued by a Federal agency that 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.

(x) Prototype. A model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.

(y) 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.

(z) Small Business Concern. A concern that meets the requirements set forth in 13 C.F.R. §121.702.

(<http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr;sid=03878acee7c064a02cac0d870e00ef43;rgn=div8;view=text;node=13%3A1.0.1.1.17.1.273.45;idno=13;cc=ecfr>)

(aa) Socially and Economically Disadvantaged SBC (SDB). See 13 CFR part 124, Subpart B. (<https://www.govinfo.gov/content/pkg/CFR-2015-title13-vol1/xml/CFR-2015-title13-vol1-part124-subpartB.xml>)

(bb) Socially and Economically Disadvantaged Individual. See 13 C.F.R. §§ 124.103 & 124.104. (<https://www.govinfo.gov/content/pkg/CFR-2012-title13-vol1/pdf/CFR-2012-title13-vol1-sec124-103.pdf>)

(<https://www.govinfo.gov/content/pkg/CFR-2012-title13-vol1/pdf/CFR-2012-title13-vol1-sec124-104.pdf>)

(cc) SBIR Participants. Business concerns that have received SBIR awards or that have submitted SBIR proposals/applications.

(dd) SBIR Technical Data. All data generated during the performance of an SBIR award.

(ee) SBIR Technical Data Rights. The rights an SBIR awardee 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.

APPENDIX 1: DEFINITIONS

(ff) 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.

(gg) 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 Agriculture and Food Research Initiative (AFRI) of the Department of Agriculture.

(hh) 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.

(ii) Women-Owned Small Business (WOSB). An SBC that is at least 51% owned by one or more women, or in the case of any publicly owned business, at least 51% of the stock is owned by women, and women control the management and daily business operations.

Definitions – Part 3

Commercialization Readiness Program (CRP). 15 USC §638(y) allows DoD agencies to use up to 1% of the SBIR budget to support Phase II projects designated by the Head of the Agency or Military Services as meeting “high priority needs” and having likely transition potential; none of the funds may be used for actual funding of projects.

Assistance for Administrative, Oversight, and Contract Processing Costs Pilot Program Authorization (3% Admin Funds). 15 USC §638(mm) allows those agencies required to have an SBIR program to use, until 30 September 2022, up to 3% of their SBIR funds for certain delineated areas associated with operation of the SBIR/STTR programs.

Cost Matching. A term used to denote that, when non-SBIR/STTR funds are applied to a project during Phase I/II, they may be added to the existing contract award and do not qualify as Phase III due to their lack of segregation from the existing Phase I/II work.

Cost Sharing. Often incorrectly used interchangeably with the term cost matching. The process by which the one SBC obligated to perform the work absorbs some of the expense or the actual

APPENDIX 1: DEFINITIONS

cost of performance. Depending on the terms of the agreement, these costs may be borne by the actual performer or a third-party, but they must have been actual costs that would be incurred in performance of the work. Therefore, lower profit rates, favorable loan rates, tax incentives, and “availability of professional advisors in mentoring programs” are not acceptable examples of cost sharing. Some non-financial contributions that might be allowed are: established fair market rental for use of existing equipment; replacement pricing for current on-hand supplies and materials; and market price of existing commercial items.

Discretionary Technical and Business Assistance (TABA). Funds, when approved, that may be provided to Phase I and Phase II awardees to assist with developing their abilities to commercialize their technologies. This can be as basic as assistance with developing their initial business plan and setting up business and accounting systems to protecting IP; establishing new manufacturing facilities; and licensing new vendors for Government and commercial versions of developed technologies. Like the other “statutory portions” of the SBIR/STTR budgets, these funds are authorized as a part of each award or collectively awarded under a contract by the agency to support multiple SBCs. While TABA funds are not authorized for Phase III, Phase I and/or II TABA funds can impact Phase III as some of the most common elements are intellectual property protections, accounting system assistance, and market planning.

APPENDIX 2: ACRONYMS

A

AP	Acquisition Plan
AS	Acquisition Strategy
ASN(RDA)	Assistant Secretary of the Navy (Research, Development and Acquisition)

B

B	Billion
BAA	Broad Agency Announcement

C

CFR	Code of Federal Regulations
CPAF	Cost Plus Award Fee
CPAT	Cost Plus Award Term
CPIF	Cost Plus Incentive Fee

D

DFARS	Defense FAR Supplement
DoD	Department of Defense
DoDI	Department of Defense Instruction
DON	Department of Navy
DPM	Deputy Program Manager

F

FAR	Federal Acquisition Regulation
FFRDC	Federally Funded Research and Development Center
FY	Fiscal Year

HCA

Head of Contracting Activity

I

IP	Intellectual Property
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J

J&A	Justification and Approval
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K

KO	Contracting Officer
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M

M	Million
MCSC	Marine Corps Systems Command

N

NAVAIR	Naval Air Systems Command
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APPENDIX 2: ACRONYMS

NAVFAC	Naval Facilities Engineering Command
NAVSEA	Naval Sea Systems Command
NAVSUP	Naval Supply Systems Command
NAVWAR	Naval Information Warfare Command
NDAAs	National Defense Authorization Act

O

O&M	Operations and Management
ONR	Office of Naval Research
OSD	Office of the Secretary of Defense

P

PD	Policy Directive
PEO	Program Executive Office
P.L.	Public Law
PM	Program Manager
PoR	Program of Record

R

R/R&D	Research/Research and Development
RDT&E	Research, Development, Technology and Engineering
RFP	Request for Proposal

S

SBA	Small Business Administration
SBC	Small Business Concern
SBP	Small Business Program
SSP	Strategic Systems Programs
SBIR	Small Business Innovation Research
STTR	Small Business Technology Transfer
SYSCOM	Systems Command

T

T&E	Test and Evaluation
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V

VCOC	Venture Capital Operating Company
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APPENDIX 3: FREQUENTLY ASKED QUESTIONS

What is Phase III?

Phase III is work that derives from, extends, or logically concludes efforts performed under SBIR but is funded by sources other than the SBIR Program (e.g. Government program funds or private sector funding). The success of the Navy SBIR Program is measured by companies' progress to Phase III and transitioning their SBIR efforts into products, tools, or services that benefit the Navy acquisition community.

One important strength of the SBIR program is that once an SBC company has received a Phase I award, follow-on Phase III awards can be awarded in a non-competitive process since the competitive process took place under Phase I.

Does a Phase III award require a Justification & Approval (J&A)?

No. J&A is not required if a non-competitive award is made. Reference must be made to the authorities in 15 USC 638(r)(4), the topic number, and the related Phase I or Phase II contract number must be referenced in the contract file.

Are there limits on number, types and value of Phase III awards?

No. NAICS code size limits are applicable to Phase III, and no limits on company or contract size, contract duration, type/color of money or number of Phase III awards on a topic, or time between awards. In cases of "successor in interest" or novation, an original awardee may be required to relinquish its rights and interests in an SBIR/STTR project in favor of another applicant as a condition for that applicant's eligibility to participate in the SBIR/STTR programs for a particular project.

Can a SBIR/STTR Phase III contract be awarded to an SBC that has outgrown either the small business size standard or which has been acquired by a large business?

Yes. A Phase III contract may be awarded to an SBC that has outgrown the small business size standard, to a novated awardee or to a successor in interest such as an acquiring company. (**SBA PD 6(a)(5)**) There are no NAICS code size limits applicable to Phase III, and no limits on company or contract size, contract duration, type/color of money or number of Phase III awards on a topic, or time between awards.

How do I get a Phase III award processed and what type of funding is required?

Subcontracts on Government-funded prime contracts with the funding determined by the work assigned to the Prime contracts even if the SBIR/STTR subcontractors are continuing some RDT&E funds from a non-government entity either as purchases/sales, in-kind contributions, or in some cases investments (e.g., joint venture efforts).

Direct funding from a non-SBIR/STTR government budget appropriate for the Phase III effort

- For further RDT&E = RDT&E funding (normally)
- For acquisition of products = acquisition funding
- For multiple efforts or stages of efforts = different funds (probably)

APPENDIX 3: FREQUENTLY ASKED QUESTIONS

How long does it take to award a Phase III contract?

Depends on the contracting shop. It should take no longer than any other award and in some cases, should be faster than other awards.

Do SBIR/STTR eligibility requirements apply to Phase III?

No. The company does not have to meet the 500 employee or small business NAICS code, US-owned and -operated, performance within the US, percentage of work (except for actually meeting the definition of Phase III work), or Principal Investigator employment restrictions that determine eligibility for Phase I/II.

What are the guidelines for deciding what to do under the “to the greatest extent practicable” requirement?

- There is no statutory time limit for the issuance of a Phase III contract. However, most associate the “to the greatest extent practicable” requirement to the period of exclusive SBIR/STTR data rights protections.
- Both the SBA SBIR PD and DFARS 252.227.7018 (DEVIATION 2020-O0007 at <https://www.acq.osd.mil/dpap/policy/policyvault/USA000244-20-DPC.pdf>) indicate a 20-year data rights period.
- If the existing SBIR/STTR technology meets all of the requirements established for the program or project, then the Phase III award must be issued so long as the SBC is available and able to do the work.
- If the existing SBIR/STTR technology cannot meet all of the established requirements for the program or project, then a market survey may be conducted to validate the requirements and availability of existing capable vendors and a competition conducted.
- If a decision is made not to award a non-competitive Phase III and a competitive or non-competitive award is to be made to a company other than the Phase III company that developed the technology, then the procedures for notification to SBA prior to award set forth in **SBA PD 4(c)(7)** must be followed.

How are data rights assertions validated?

If any technology at any tier is subject to valid SBIR/STTR data rights assertions by the performing or providing SBC, then the award is a Phase III. The process for determining the validity of Phase III assertions is generally:

1. Is the technology for which data rights are asserted necessary or likely to be included in the work performed?
2. Can the data rights assertions be traced back to a specific SBIR/STTR Phase I or Phase II award?
3. Are the data rights protections asserted for the technology valid (i.e., is the data unavailable to the Government from another unrestricted source)?
4. Was the data (asserted as SBIR/STTR data) delivered with data rights restrictive markings?
5. Is the contractor asserting the data rights restrictions the owner of the IP?

APPENDIX 3: FREQUENTLY ASKED QUESTIONS

Do data rights apply to all Phase III awards even those resulting from full and open competition?

Yes. SBA PD 4(c)(2) indicates that SBIR/STTR data rights apply even if the work in the contract is awarded as the result of competition.

What if subcontracts, the prime contract, or the BAA do not include the SBIR/STTR data rights clause?

Phase III data rights exist down through all subcontract levels per SBA PD 8(b)(2). While it is not mandatory that the SBIR/STTR data rights clause be added to the Prime contract post-award prior to a subcontract that includes the SBIR/STTR data rights clause, it should be added after award of the subcontract to indicate the presence of Phase III technology. Per SBA PD 8(b)(2), SBIR/STTR data rights protections must be given to all sub-awards and the contract should at some point indicate that this award includes a Phase III subcontract and the specific Topic Number(s) from which the data rights are derived.

Does the SBC still own the exclusive data rights if there is a gap of more than five years between Phase II or III awards?

Yes. A gap in awards (beyond 5 years) does not invalidate data rights. However, if the data is found to be “in the public domain”, continued use of data without restrictions obtained prior to a new award may be authorized (i.e., you can’t put the genie back in the bottle if it has already been openly shared without restrictions).

What data rights issues must be addressed in a Phase III contract?

Data rights issues will vary. In some cases, the Phase III contract will be for the procurement of a commercial version of the SBIR product. In that case, the data rights provisions used in commercial contracts could apply. (See FAR 12.122, Technical Data Rights provisions under commercial contracts.)

The most recent Congressional reauthorization of the SBIR/STTR program includes provisions clarifying that Congress intends to have the special “Rights in Data – SBIR Program” clause at FAR 52.227-20 apply to all three phases of the program. This is also addressed in the SBA PD, which clearly indicates that SBIR/STTR data rights apply to Phase IIIs as well as the first two phases of the program.

How does an SBC extend its data rights from Phase I to Phase II to Phase III?

Through use of its assertions clause.

What actions do SBCs need to take, for example, to update their legends?

SBCs are primarily responsible for ensuring that their data rights are correctly reported and maintained. SBIR/STTR SBCs should always ensure that any delivered data or software is correctly marked, IAW DFARS 252.227-7018 and that records are maintained sufficient to justify the validity of any restrictive markings on data, computer software, or computer software documentation delivered under the contract. SBCs should assert their data rights from previous

APPENDIX 3: FREQUENTLY ASKED QUESTIONS

SBIR/STTR efforts when proposing follow-on efforts. This will incorporate those data rights into the new award, which will extend the data rights for five years under the new contract.

The required contractor SBIR Data Rights marking for delivered SBIR data is:

SBIR DATA RIGHTS

Contract No. [insert number here]

Contractor Name [insert name here]

Contractor Address [insert address here]

Expiration of SBIR Data Rights Period

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

APPENDIX 4: INDEX

STATUTES/POLICIES

15 United States Code §638

(<https://www.govinfo.gov/content/pkg/USCODE-2011-title15/html/USCODE-2011-title15-chap14A-sec638.htm>)

Small Business Innovation Development Act of 1982 (P.L. 97-219)

Established SBIR to strengthen the role of innovative small business concerns in Federally-funded research and development

(<https://www.govtrack.us/congress/bills/97/s881/text>)

Small Business Research and Development Enhancement Act of 1992 (P.L. 102-564)

(<https://www.congress.gov/bill/102nd-congress/senate-bill/2941>)

Small Business Administration SBIR/STTR Policy Directive (May 2, 2019)

(https://www.sbir.gov/sites/default/files/SBIR-STTR_Policy_Directive_2019.pdf)

REGULATIONS

Federal Acquisition Regulation (FAR): *Establishes uniform procurement policies for all federal government agency acquisitions.*

(<http://farsite.hill.af.mil/>)

Defense Federal Acquisition Regulation Supplement (DFARS): *Establishes uniform DOD policies and procedures implementing and supplementing the FAR.*

(<http://farsite.hill.af.mil/vmdfara.htm>)

Navy Marine Corps Acquisition Regulation Supplement (NMCARS): *Establishes uniform DON policies/procedures implementing and supplementing the FAR and the DFARS.*

(<http://farsite.hill.af.mil/vmnapsa.htm>)

INSTRUCTIONS

Department of Defense Instruction (DoDI) 5000.02

- *Reissues the interim DoD Instruction 5000.02 (Reference (b)) to update established policy for the management of all acquisition programs in accordance with Reference (a), the guidelines of Office of Management and Budget Circular A-11 (Reference (c)), and References (d) through (ce)-(cw).*
- *Authorizes Milestone Decision Authorities (MDAs) to tailor the regulatory requirements and acquisition procedures in this instruction to more efficiently achieve program objectives, consistent with statutory requirements and Reference (a).*
- *Assigns, reinforces, and prescribes procedures for acquisition responsibilities related to cybersecurity in the Defense Acquisition System.*

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- *Incorporates and cancels Directive-type Memorandum 17-001 (Reference (c)).*
(<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/500002p.pdf?ver=2020-01-23-144114-093>)

SECNAV Instruction 4380.9 (23 Jul 2018)

(<https://doni.documentservices.dla.mil/Directives/04000%20Logistical%20Support%20and%20Services/04-300%20Food%20Service%20and%20Support/4380.9.pdf>)

MEMORANDA

ASN(RDA) Memo “Tapping Into Small Business in a Big Way” (12 JAN 2015)

(https://www.navysbir.com/Docs/Navy_Stackley_Small_Business_Memo-1-12-15.pdf)

GUIDES/GUIDEBOOKS

DoD Manager’s Guide to Technology Transition in an Evolutionary Acquisition Environment

Addresses cash and non-cash incentives, and cost-based incentives, which could be adapted to meet SBIR/STTR commercialization goals, with appropriate language inserted in RFP Sections L and M.

(<https://www.dau.edu/cop/stm/ layouts/15/WopiFrame.aspx?sourcedoc=/cop/stm/DAU%20Sponsored%20Documents/Managers%20Guide%20to%20Technology%20Transition%202005%20%5BHISTORICAL%5D.pdf&action=default&DefaultItemOpen=1>)

Open Systems Architecture Contract Guidebook for Program Managers

Version 1.1 focuses on cost-based incentives for development contracts, which could be adapted to meet SBIR/STTR commercialization goals. These cost-based incentives include the Cost Plus Incentive Fee (CPIF), Cost Plus Award Fee (CPAF), and Cost Plus Award Term (CPAT)

([https://www.dau.edu/cop/pm/ layouts/15/WopiFrame.aspx?sourcedoc=/cop/pm/DAU%20Sponsored%20Documents/DoD%20Open%20System%20Architecture%20\(OSA\)%20Contract%20Guidebook%20for%20Program%20Managers-version%201.1-%20June%20%202013.pdf&action=default&DefaultItemOpen=1](https://www.dau.edu/cop/pm/ layouts/15/WopiFrame.aspx?sourcedoc=/cop/pm/DAU%20Sponsored%20Documents/DoD%20Open%20System%20Architecture%20(OSA)%20Contract%20Guidebook%20for%20Program%20Managers-version%201.1-%20June%20%202013.pdf&action=default&DefaultItemOpen=1))