

**Small Business Administration
Office of Investment and Innovation**

Small Business Innovation Research (SBIR) Program

Policy Directive

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**SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM
POLICY DIRECTIVE**

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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 SBA as a result of public comment or experience. With this directive, SBA fulfills the statutory requirement to simplify and standardize the program proposal, selection, contracting, compliance, and audit procedures for the SBIR program to the extent practicable, while allowing the SBIR agencies flexibility in the operation of their individual SBIR Program. Wherever possible, SBA has attempted to reduce the paperwork and regulatory compliance burden on SBCs applying to and participating in the SBIR program, while still meeting the statutory reporting and data collection requirements.

(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 small businesses (SDBs), and by women-owned small businesses (WOSBs), 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 SBA concerning the SBIR Program.

2. Summary of Statutory Provisions

(a) The Small Business Innovation Research Program is codified at §9 of the Small Business Act, 15 U.S.C. §638. The SBIR Program is authorized until September 30, 2017, or as otherwise provided in law subsequent to that date.

(b) Each Federal agency with an extramural budget for R/R&D in excess of \$100,000,000 must participate in the SBIR Program and reserve the following minimum percentages of their extramural R/R&D budgets for awards to small business concerns for R/R&D:

- (1) not less than 2.5% of such budget in each of fiscal years 1997 through 2011;
- (2) not less than 2.6% of such budget in fiscal year 2012;
- (3) not less than 2.7% of such budget in fiscal year 2013;
- (4) not less than 2.8% of such budget in fiscal year 2014;
- (5) not less than 2.9% of such budget in fiscal year 2015;
- (6) not less than 3.0% of such budget in fiscal year 2016; and
- (7) not less than 3.2% of such budget in fiscal year 2017 and each fiscal year after.

A Federal agency may exceed these minimum percentages.

(c) In general, each SBIR agency must make these awards for R/R&D through the following uniform, three-phase process:

(1) Phase I awards to determine, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential.

(2) Phase II awards to further develop work from Phase I that meets particular program needs and exhibits potential for commercial application.

(3) Phase III awards where commercial applications of SBIR-funded R/R&D are funded by non-Federal sources of capital; or where products, services or further research intended for use by the Federal Government are funded by follow-on non-SBIR Federal Funding Agreements.

(d) SBIR agencies must report to SBA on the calculation of the agency's extramural budget within four months of enactment of each agency's annual Appropriations Act.

(e) The Act explains that agencies are authorized and directed to cooperate with SBA in order to carry out and accomplish the purpose of the SBIR Program. As a result, each SBIR agency shall provide information to SBA in order for SBA to monitor and analyze 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. For more information on the agency's reporting requirements, including the frequency for specific reporting requirements, see §10 of the Policy Directive.

(f) SBA establishes databases to collect and maintain, in a common format, information that is necessary to assist SBCs and assess the SBIR Program.

(g) SBA implements the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of SBCs, to the extent that FAST is authorized by law.

(h) 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. 3101, et seq.) must be read in conjunction with the procurement notice publication requirements of §8(e) of the Small Business Act (15 U.S.C. 637(e)). The following notice publication requirements of §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 Government wide point of entry (GPE) for access by interested sources. See FAR 5.201. The GPE, located at www.fbo.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, an agency must not 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 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.

(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? (available at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=03878acee7c064a02cac0d870e00ef43;rgn=div6;view=text;node=13%3A1.0.1.1.17.1;idno=13;cc=ecfr>). 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 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% 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. (Also see §7(i) of this Policy Directive for additional exemptions related to national security.)

(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.

(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 (available at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?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.

(bb) Socially and Economically Disadvantaged Individual. See 13 C.F.R. §§ 124.103 & 124.104.

(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.

(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 SBC (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.

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. Agencies must issue SBIR awards pursuant to competitive and merit-based selection procedures. Agencies may not use investment of venture capital or investment from hedge funds or private equity firms as a criterion for an SBIR award. Although matching funds are not required for Phase I or Phase II awards, agencies may require a small business to have matching funds for certain special awards (e.g., to reduce the gap between a Phase II and Phase III award). 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, unless an exception applies:

(a) Phase I. Phase I involves a solicitation of contract proposals or grant applications 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 SBIR 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 with respect to market or technological risk or critical agency requirements.

(3) Agency benchmarks for progress towards commercialization. Each agency must determine whether an applicant for a Phase I award that has won multiple prior SBIR awards meets the agency's benchmark requirements for progress towards commercialization before making a new Phase I award to that applicant. For the purpose of this requirement, applicants are assessed using their prior Phase I and Phase II SBIR and STTR awards across all SBIR agencies.

(i) Agencies must apply two benchmark rates addressing an applicant's progress towards commercialization – the Phase II Transition Rate Benchmark and the Commercialization Rate Benchmark.

(A) The Phase II Transition Rate Benchmark sets the minimum required number of Phase

II awards the applicant must have received for a given number of Phase I awards received during the specified period. This Transition Rate Benchmark applies only to Phase I applicants that have received more than 20 Phase I awards over the time period used by the agency for the benchmark determination.

(B) The agency Commercialization Rate Benchmark sets the minimum Phase III commercialization results that a Phase I applicant must have realized from its prior Phase II awards in order to be eligible to receive a new Phase I award from that agency. This benchmark requirement applies only to Phase I applicants that have received more than 15 Phase II awards over the time period used by the agency for the benchmark determination.

(ii) Consequence. If an awardee fails to meet either of the benchmarks, that awardee is not eligible for an SBIR Phase I award (and any Phase II award issued pursuant to paragraph (b)(1)(ii) below) for a period of one year from the time of the determination.

(iii) Timing of the determination and consequence period. The SBIR awardee Phase II transition rates and commercialization rates are calculated using the data in SBA's TechNet database. For the purpose of these benchmark requirements, awardee firms are assessed once a year, on June 1st, using their prior SBIR and STTR awards across all agencies. SBA makes this tabulation of awardee transition rates and commercialization rates available to the agencies. Each SBIR agency uses this tabulation to determine which companies do not meet that agency's benchmark rates and are therefore ineligible to receive new Phase I awards from that agency during the one-year period beginning on June 1st and ending on May 31st. SBA notifies these ineligible firms of the determination and the one year restriction on Phase I awards. Agencies must notify SBA of any applications denied because of the failure to meet the benchmarks.

(iv) Phase II Transition Rate Benchmark. Each agency must establish an SBA-approved Phase II Transition Rate Benchmark and applicable time period. The benchmark rates and time periods are posted at www.sbir.gov. Agencies must seek approval for any subsequent changes from SBA.

(A) The agency Phase II Transition Rate Benchmark establishes the number of Phase II awards a small business concern must have received for a given number of Phase I awards received over the past 5, 10 or 15 fiscal years, excluding the most recently completed fiscal year. Each agency selects both the rate to be applied and the length of time that the agency will use to evaluate whether a small business concern has met the Transition Rate Benchmark. The period over which Phase I awards are counted excludes the most recently completed fiscal year. The time period over which Phase II awards are counted includes the most recently completed fiscal year and excludes the first year of the time period evaluated for Phase I awards.

Example: On August 1, 2014, an SBC submits an application to an agency using a Transition Rate Benchmark of 0.25 and a 5-year time period. The June 1, 2014 TechNet Company Registry tabulation shows that the SBC received 24 Phase I awards during FY08-FY12. Since this SBC has received 20 or more Phase I awards during the 5-year period, the SBC is required to meet the Transition Rate Benchmark. The SBC received 8 Phase II awards in FY09-FY13 and therefore has a 5-year Phase II transition rate of 8/24 or 0.33 (# of Phase II awards in FY09-FY13 / # of Phase I awards in FY08-FY12). Because the SBC meets or exceeds the agency Transition Rate Benchmark, it is considered for award through the usual proposal evaluation

process.

Example 2: On September 1, 2014, an SBC is interested in applying for a Phase I award, knows it has received a number of Phase I awards in recent years, but is unsure if it is meeting the required Phase II transition rate. The company official logs onto the Company Registry at SBIR.gov to check its status and sees a flag saying it did not meet the required benchmark transition rate of 0.25 on June 1, 2014 and is therefore ineligible for a Phase I award through May 31, 2015. The company checks its records and sees that it received 30 Phase I awards during FY08-FY12 and 6 Phase II awards during FY09-FY13. Its transition rate is therefore 6/30 or 0.20 which is under the required rate of 0.25. The SBC does not apply for a new Phase I award through May 31, 2015 because it knows its application would be rejected.

Example 3: On September 1, 2014, an SBC official interested in applying for a Phase I award logs onto the Company Registry at SBIR.gov and sees the flag saying it did not meet the required benchmark transition rate of 0.25 on June 1, 2014 and is not eligible for a Phase I award through May 31, 2015. However, when the company checks its own records, it sees that it received 8 Phase II awards during FY09-FY13, not the 6 awards showing on the website. Its transition rate is therefore 8/30 or 0.26 which is above the required rate of 0.25. The company official therefore goes to SBIR.gov, clicks on the “Dispute Transition Rate” button, and enters the information about the discrepancy. SBA uses the information provided by the company and, working with the relevant agencies, identifies that two Phase II awards from FY09 had been inadvertently omitted. SBA updates and corrects the database and informs the firm that it is indeed eligible to receive SBIR Phase I awards.

(B) An SBC that has received more than 20 Phase I awards in the relevant time period can view its Phase II transition rate on the Company Registry page at SBIR.gov. Generally, the award data used to calculate an SBC’s transition rate will be complete by the end of March each year. An SBC may view its SBIR/STTR award information on the Company Registry at any time. If an awardee believes its Phase II transition rate is calculated using incomplete award information, the awardee may dispute the rate using the link provided on the Company Registry, provide the additional award information, and request a reconsideration of its transition rate. Requests for reconsideration of a firm’s transition rate received by SBA from April 1st through April 30th of each year will be considered for the June 1st transition rate assessment.

(C) Agencies must set the Phase II Transition Rate Benchmark as appropriate for their programs and industry sectors. When setting the Transition Rate Benchmark, agencies should consider that Phase I is designed and intended to explore high-risk, early-stage research ideas and, as a result, not all Phase I awards are expected to result in a Phase II award.

(v) Commercialization Rate Benchmark. By October 1, 2013, each agency will establish an SBA-approved Commercialization Rate Benchmark that establishes the level of Phase III commercialization results an SBC must have received from work it performed under prior Phase II awards, over the prior 5, 10 or 15 fiscal years, excluding the most recently completed two fiscal years. Agencies may define this benchmark:

(A) in financial terms, such as by using the ratio of the dollar value of revenues and additional investment resulting from prior Phase II awards relative to the dollar value of the Phase II awards received over the time period;

(B) in terms of the share of Phase II awards received over the time period that have resulted in the introduction of a product to market; or

(C) by other means such as using a commercialization scoring system that rates awardees on their past commercialization success.

(vi) Agencies must submit their Transition Rate Benchmark, Commercialization Rate Benchmark, and time periods to SBA for approval. SBA will publish the benchmarks and time periods, seek public comment, and maintain a table of the current requirements on www.sbir.gov. The benchmarks and time periods become effective when SBA posts the approved measures on www.sbir.gov. Agencies must submit any changes to the benchmarks or time periods to SBA for prior approval.

(vii) SBA maintains a system that records all Phase I, Phase II and Government Phase III awards, and other commercialization information; and calculates the Phase II transition rates for all Phase I awardees and the commercialization rates for all Phase II awardees.

(viii) If an applicant fails to meet an agency's benchmark, its name will appear on the list of companies made available to the agencies on June 1 of each year. An agency may not make a Phase I award to an applicant that does not meet the agency's benchmark.

(ix) If an awardee believes its determination was made in error, it may provide SBA with the pertinent award information and request a reassessment. To do so, awardees may use the link on the Company Registry at www.sbir.gov.

(4) Agencies may require the submission of a Phase II proposal as a deliverable item under Phase I.

(b) Phase II.

(1) The object of Phase II is to continue the R/R&D effort from the completed Phase I. Unless an exception set forth in paragraphs (i) or (ii) below applies, only SBIR Phase I awardees are eligible to participate in Phase II.

(i) A Federal agency may issue an SBIR Phase II award to an STTR Phase I awardee to further develop the work performed under the STTR Phase I award. The agency must base its decision upon the results of work performed under the Phase I award and the scientific and technical merit, and commercial potential of the Phase II proposal. The STTR Phase I awardee must meet the eligibility and program requirements of the SBIR Program in order to receive the SBIR Phase II award.

(ii) During fiscal years (FY) 2012 through 2017, the National Institutes of Health (NIH), Department of Defense (DoD) and the Department of Education (DoEd) may issue a Phase II award to a small business concern that did not receive a Phase I award for that R/R&D. Prior to such an award, the heads of those agencies, or designees, must issue a written determination that the small business has demonstrated the scientific and technical merit and feasibility of the ideas that appear to have commercial potential. The determination must be submitted to SBA prior to issuing the Phase II award.

(2) Funding must be based upon the results of work performed under a Phase I award and the scientific and technical merit, feasibility 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.

(3) 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.

(4) Agencies may not use an invitation, pre-screening, or pre-selection process for eligibility for Phase II. Agencies must note in each solicitation that all Phase I awardees may apply for a Phase II award and provide guidance on the procedure for doing so.

(5) A Phase II awardee may receive one additional, sequential Phase II award to continue the work of an initial Phase II award. The additional, sequential Phase II award has the same guideline amounts and limits as an initial Phase II award.

(6) Agencies may offer special SBIR awards, such as Phase IIB awards, that supplement or extend Phase II awards. For example, some agencies administer Phase IIB awards that differ from the base Phase II in that they require third party matching of the SBIR funds. Each such supplemental award must be linked to a base Phase II award (the initial Phase II, or the second sequential Phase II award). Any SBIR funds used for such special or supplementary awards are aggregated with the amount of the base Phase II to determine the size of that Phase II award. Therefore, while there is no limit on the number of such special/supplementary awards, there is a limit on the total amount of SBIR funds that can be administered through them -- the amounts of these awards count towards the size of the initial Phase II or the sequential Phase II, each of which has a guideline amount of \$1 million and a limit of \$1.5 million. (Note that Phase IIB awards under the NIH SBIR program are administered as second, sequential Phase II awards, not supplemental awards. As such, they are base Phase II awards and subject to the Phase II guideline amounts and limits of \$1 million and \$1.5 million).

(7) A concern that has received a Phase I award from an agency may receive a subsequent Phase II award from another agency if each agency makes a written determination that the topics of the relevant awards are the same and both agencies report the awards to the SBA including a reference to the related Phase I award and initial Phase II award if applicable.

(8) Agencies may issue Phase II awards for testing and evaluation of products, services, or technologies for use in technical or weapons systems.

(c) Phase III. SBIR Phase III refers to work that derives from, extends, or completes an effort made 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 (including testing and evaluation of products, services or technologies for use in technical or weapons systems) 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 private agreements an SBIR firm may make in the commercialization of its technology, except for a subcontract to a Federal contract that may be a Phase III.);

(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 merit-based selection procedures, 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. If an SBIR awardee receives a funding agreement (whether competed, sole sourced or a subcontract) for work that derives from, extends, or completes efforts made under prior SBIR funding agreements, then the funding agreement for the new work must have all SBIR Phase III status and data rights.

(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 completes efforts made under prior SBIR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 3303(b).

(4) Phase III work may be for products, production, services, R/R&D, or any such combination.

(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. 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. A subcontract to a Federally-funded prime contract may be a Phase III award.

(6) The small business size limits for Phase I and Phase II awards do not apply to Phase III awards.

(7) To the greatest extent practicable, 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, shall issue Phase III awards relating to technology, including sole source awards, to the SBIR awardee that developed the technology. Agencies shall document how they provided this preference to the SBIR awardee that developed the technology. In fact, the Act requires SBA report all instances in which an agency pursues research, development, or production of a technology developed by an SBIR awardee, with a business concern or entity other than the one that developed the SBIR technology. (See §4(c)(8) immediately below for agency notification to SBA prior to award of such a funding agreement and §10(h)(4) regarding agency reporting of the issuance of such award.) SBA will report such instances, including those discovered independently by SBA, to Congress.

(8) 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 under an SBIR award, with an entity other than that SBIR awardee, must notify SBA in writing prior to such an award. This notification must

include, at a minimum:

- (i) The reasons why the follow-on funding agreement with the SBIR awardee is not practicable;
- (ii) the identity of the entity with which the agency intends to make an award to perform research, development, or production; and
- (iii) a description of the type of funding award under which the research, development, or production will be obtained. SBA may appeal an agency decision to pursue Phase III work with a business concern other than the SBIR awardee that developed the technology 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 funding agreement 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 funding agreement officer must suspend further action on the acquisition until the head of the contracting activity issues a written decision on the appeal. The funding agreement officer may proceed with award if he or she determines in writing that the award must be made to protect the public interest. The funding agreement 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. During this period, the agency should consult with SBA and review any case-specific information SBA believes to be pertinent.

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. Agencies may decide to issue joint solicitations. 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, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416. Phone: (202) 205-6450. Fax: (202) 205-7754. E-mail: technology@sba.gov. Internet site: www.SBIR.gov.

(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. SBIR agencies may elect to publish multiple program solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.