



U.S. Small Business
Administration



**Small Business Innovation Research (SBIR) and
Small Business Technology Transfer (STTR) Program**

Policy Directive Appendix

Effective: October 1, 2020

Appendix I: Instructions for SBIR and STTR Program Solicitation

Preparation

a. General. Subsections 9(j) and 9(p) of the Act (15 U.S.C. 638(j)) require simplified, standardized and timely SBIR/STTR solicitations and for SBIR/STTR Participating Agencies to utilize a “uniform process” minimizing the regulatory burden of participation. Therefore, the following instructions purposely depart from normal Government solicitation formats and requirements. SBIR/STTR solicitations must be prepared and issued as Program Solicitations in accordance with the following instructions.

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

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

1. Program Description
2. Certifications
3. Proposal Preparation Instructions and Requirements
4. Method of Selection and Evaluation Criteria

5. Considerations
6. Submission of Proposals
7. Scientific and Technical Information Sources
8. Submission Forms
9. Research Topics

d. Cover Sheet. The cover sheet of an SBIR/STTR Program Solicitation must clearly identify the solicitation as an SBIR/STTR solicitation, identify the agency releasing the solicitation, specify date(s) on which contract proposals or grant applications are due under the solicitation, and state the solicitation number or year.

e. Instructions for Preparation of SBIR or STTR Program Solicitation – Sections 1-9

§ 1. Program Description.

(a) Summarize in narrative form the request for proposals and the objectives of the SBIR or STTR program.

(b) Describe in narrative form the agency's SBIR or STTR program including a description of the three phases. Note in your description whether the solicitation is for Phase I or Phase II proposals. Also note in each solicitation for Phase I that all Awardees may apply for a Phase II award and provide guidance on the procedure for doing so.

(c) Describe program eligibility.

(d) List the name, address and telephone number of agency contacts for general information on the SBIR or STTR Program Solicitation.

(e) Whenever terms are used that are unique to the SBIR or STTR program, a specific SBIR or STTR solicitation or a portion of a solicitation, define them or

refer potential offerors/Applicants to a source for the definition. At a minimum, the definitions of “Funding Agreement,” “R/R&D,” “SBC,” “SBIR/STTR Data,” and “SBIR/STTR Data Rights” must be included.

(f) Include information explaining how an individual can report fraud, waste and abuse (e.g. include the fraud hotline for the agency’s Office of Inspector General);

§ 2. Certifications.

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

(b) This section must include any certifications required concerning size, ownership and other SBIR or STTR program requirements.

(i) The agency may request the SBIR/STTR Applicant to submit a certification at the time of submission of the application or offer. The certification may require the Applicant to state that it intends to meet the size, ownership and other requirements of the SBIR or STTR program at the time of award of the Funding Agreement, if selected for award.

(ii) The agency must request the Applicant to submit a certification at the time of award and at any other time set forth in SBA’s regulations at 13 CFR 121.701-121.705. The certification will require the Applicant to state that it meets the size, ownership and other requirements of the SBIR or STTR program at the time of award of the Funding Agreement.

(iii) The agency must request the Awardee to submit certifications during

the Funding Agreement life cycle. A Phase I Funding Agreement must state that the Awardee shall submit a new certification that it is in compliance with specific SBIR or STTR program requirements at the time of final payment or disbursement. A Phase II Funding Agreement must state that the Awardee shall submit a new certification that it is in compliance with specific SBIR or STTR program requirements prior to receiving more than 50% of the total award amount and prior to final payment or disbursement.

(iv) Agencies may require additional certifications at other points in time during the life cycle of the Funding Agreement, such as at the time of each payment or disbursement.

(c) The agency must use the following certification at the time of award and upon notification by SBA, must check www.SBIR.gov for updated certifications prepared by SBA:

SBIR/STTR Funding Agreement Certification

All small businesses that are selected for award of an SBIR/STTR Funding Agreement must complete this certification at the time of award and any other time set forth in the Funding Agreement that is prior to performance of work under this award. This includes checking all of the boxes and having an authorized officer of the Awardee sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal Government relies on the information to determine whether the business is eligible for a Small Business Innovation Research (SBIR) program or Small Business Technology Transfer

(STTR) program award. A similar certification will be used to ensure continued compliance with specific program requirements during the life of the Funding Agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 CFR part 121), the SBIR/STTR Policy Directive and also any statutory and regulatory provisions referenced in those authorities.

If the Funding Agreement officer believes that the business may not meet certain eligibility requirements at the time of award, they are required to file a size protest with the U.S. Small Business Administration (SBA), which will determine eligibility. At that time, SBA will request further clarification and supporting documentation in order to assist in the verification of any of the information provided as part of a protest. If the Funding Agreement officer believes, after award, that the business is not meeting certain Funding Agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal Government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked unless otherwise directed):

(1) The Awardee business concern meets the ownership and control requirements set forth in 13 CFR 121.702.

(2) If a corporation – all corporate documents (namely: articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voting agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock) must evidence that the corporation meets the ownership and control requirements set forth in 13 CFR 121.702. (Check one box).

Yes N/A Explain why N/A:

(3) If a partnership -- the partnership agreement evidences that it meets the ownership and control requirements set forth in 13 CFR 121.702. (Check one box).

Yes N/A Explain why N/A:

(4) If a limited liability company – the articles of organization and any amendments, and operating agreement and amendments, evidence that it meets the ownership and control requirements set forth in 13 CFR 121.702. (Check one box).

Yes N/A Explain why N/A:

(5) The birth certificates, naturalization papers, or passports show that any individuals it relies upon to meet the eligibility requirements are U.S. citizens or permanent resident aliens in the United States. (Check one box).

Yes N/A Explain why N/A:

(6) The Awardee business concern has no more than 500 employees, including the employees of its Affiliates.

(7) SBA has not issued a size determination currently in effect finding that this business concern exceeds the 500 employee size standard.

(8) During the performance of the award, the Principal Investigator/Project Manager will spend more than one half of his/her time (based on a 40 hour workweek) as an employee of the Awardee (or Research Institution – STTR only) or has requested and received a written deviation from this requirement from the Funding Agreement officer. (Check one box).

Yes Deviation approved in writing by Funding Agreement officer: _%

(9) All Essentially Equivalent Work, or a portion of the work, proposed under this project (check applicable line):

Has not been submitted for funding to this Agency or another Federal agency.

Has been submitted for funding to this Agency or another Federal agency **but has not** been funded under any other grant, contract, subcontract or other transaction.

A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the Funding Agreement officer.

(10) During performance of award, the Awardee will perform the applicable percentage of work unless a deviation from this requirement is approved in writing by the Funding Agreement officer (check applicable line and fill in if needed):

SBIR Phase I: at least two-thirds (66 2/3%) of the research.

SBIR Phase II: at least half (50%) of the research.

STTR Phase I or Phase II: at least forty percent (40%) of the research.

Deviation approved in writing by the Funding Agreement officer (SBIR only):
__%

(11) During performance of award, the R/R&D will be performed in the United States unless a deviation is approved in writing by the Funding Agreement officer (check one box).

Yes Waiver has been granted

(12) During performance of award, the R/R&D will be performed at the Awardee's facilities by the Awardee's employees, except as otherwise indicated in the SBIR/STTR application and approved in the Funding Agreement.

(13) The SBIR Awardee has registered itself on SBA's database as majority-owned by venture capital operating companies, hedge funds or private equity firms (check one box).

Yes No N/A Explain why N/A: _____

(14) The SBIR Awardee is a Covered Small Business Concern (a Small Business Concern that: (a) 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 an SBIR solicitation; and (b) on the date of the SBIR award, which is made more than 9 months after the closing date of the solicitation, is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms). (Check one box).

Yes No

(15) I will notify this Agency immediately if all or a portion of the work authorized and funded under this award is subsequently funded by another Federal Agency.

(16) [*For STTR only*] The Small Business Concern, and not a partnering Research Institution, is exercising management direction and control of the performance of the STTR Funding Agreement.

Yes No

(17) I understand that the information submitted may be given to Federal, State, and local agencies for determining violations of law and other purposes.

(18) I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern that the information provided in this certification, the application, and all other information submitted in connection with this application, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. 1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. 3729 et seq.); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. 3801 et seq.); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR subpart 9.4 or 2 CFR part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

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|---|----------------------|
| <i>Signature</i> | <i>Date</i> __/__/__ |
| <i>Print Name (First, Middle, Last)</i> | |
| <i>Title</i> | |
| <i>Business Name</i> | |

(d) The agency must use the following certification during the life cycle of the Funding Agreement in accordance with subsection 8(j) of the SBIR/STTR Policy Directive and paragraph 2(b)(iii) of this Appendix and upon notification by SBA, must check www.SBIR.gov for updated certifications prepared by SBA:

SBIR/STTR Funding Agreement Certification – Life Cycle Certification

All SBIR/STTR Phase I and Phase II Awardees must complete this certification at all times set forth in the Funding Agreement (see § 8(j) of the SBIR/STTR Policy Directive). This includes checking all of the boxes (unless otherwise directed) and having an authorized officer of the Awardee sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal Government relies on the information to ensure compliance with specific program requirements during the life of the Funding Agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, the SBIR/STTR Policy Directive, and also any statutory and regulatory provisions referenced in those authorities.

If the Funding Agreement officer believes that the business is not meeting certain Funding Agreement requirements, the agency may request further clarification and

supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal Government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked except where otherwise directed):

(1) The Principal Investigator/Project Manager spent more than one half of his/her time (based on a 40 hour workweek) as an employee of the Awardee (or Research Institution – STTR only) or the Awardee has requested and received a written deviation from this requirement from the Funding Agreement officer.

Yes No Deviation approved in writing by Funding Agreement officer: _%

(2) All Essentially Equivalent Work, or a portion of the work, performed under this project (check the applicable line):

Has not been submitted for funding to this Agency or another Federal Agency.

Has been submitted for funding to this Agency or another Federal agency **but has not** been funded under any other grant, contract, subcontract or other transaction.

A portion has been funded by another grant, contract, or subcontract as described in detail in the proposal and approved in writing by the Funding Agreement officer.

(3) Upon completion of the award, the Awardee will have performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the Funding Agreement officer (check the applicable line and fill in if needed):

- SBIR Phase I: at least two-thirds (66 2/3%) of the research.
- SBIR Phase II: at least half (50%) of the research.
- STTR Phase I or Phase II: at least forty percent (40%) of the research.
- Deviation approved in writing by the Funding Agreement officer (SBIR only):

__%

(4) The work is completed and the small business Awardee has performed the applicable percentage of work, unless a deviation from this requirement is approved in writing by the Funding Agreement officer (check the applicable line and fill in if needed):

- SBIR Phase I: at least two-thirds (66 2/3%) of the research.
- SBIR Phase II: at least half (50%) of the research.
- STTR Phase I or Phase II: at least forty percent (40%) of the research.
- Deviation approved in writing by the Funding Agreement officer: __%
- N/A because work is not completed

(5) [*For STTR only*] The Small Business Concern, and not a partnering Research Institution, is exercising management direction and control of the performance of the STTR Funding Agreement.

- Yes
- No

(6) The R/R&D is performed in the United States unless a deviation is approved in writing by the Funding Agreement officer.

Yes No Waiver has been granted

(7) The R/R&D is performed at the Awardee's facilities by the Awardee's employees, except as otherwise indicated in the SBIR/STTR application and approved in the Funding Agreement.

Yes No

(8) I will notify this Agency immediately if all or a portion of the work authorized and funded under this award is subsequently funded by another Federal Agency.

(9) I understand that the information submitted may be given to Federal, State, and local agencies for determining violations of law and other purposes.

(10) I am an officer of the Awardee business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am representing on my own behalf, and on behalf of the business concern, that the information provided in this certification, the application, and all other information submitted in connection with the award, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. 1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. 3729 et seq.); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. 3801 et seq.); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR subpart 9.4 or 2

CFR part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

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| <i>Signature</i> | <i>Date</i> __/__/__ |
| <i>Print Name (First, Middle, Last)</i> | |
| <i>Title</i> | |
| <i>Business Name</i> | |

(e) [SBIR only] The agency must require any SBC that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms to submit the following certification with its SBIR application:

Certification for SBIR Applicants that are Majority-Owned by Multiple Venture Capital Operating Companies, Hedge Fund or Private Equity Firms

Any small business that is majority-owned by multiple venture operating companies (VCOCs), hedge funds, or private equity firms and is submitting an application for an SBIR Funding Agreement must complete this certification prior to submitting an application. This includes checking all of the boxes and having an authorized officer of the Applicant sign and date the certification each time it is requested.

Please read carefully the following certification statements. The Federal Government relies on the information to determine whether the business is eligible for a Small Business Innovation Research (SBIR) program award and meets the specific program requirements during the life of the Funding

Agreement. The definitions for the terms used in this certification are set forth in the Small Business Act, SBA regulations (13 CFR part 121), the SBIR/STTR Policy Directive and also any statutory and regulatory provisions referenced in those authorities.

If the Funding Agreement officer believes that the business may not meet certain eligibility requirements at the time of award, he/she is required to file a size protest with the U.S. Small Business Administration (SBA), which will determine eligibility. At that time, SBA will request further clarification and supporting documentation in order to assist in the verification of any of the information provided as part of a protest. If the Funding Agreement officer believes, after award, that the business is not meeting certain Funding Agreement requirements, the agency may request further clarification and supporting documentation in order to assist in the verification of any of the information provided.

Even if correct information has been included in other materials submitted to the Federal Government, any action taken with respect to this certification does not affect the Government's right to pursue criminal, civil or administrative remedies for incorrect or incomplete information given in the certification. Each person signing this certification may be prosecuted if they have provided false information.

The undersigned has reviewed, verified and certifies that (all boxes must be checked):

- (1) The Applicant is NOT more than 50% owned by a single VCOC, hedge

fund, or private equity firm.

(2) The Applicant is more than 50% owned by multiple domestic business concerns that are VCOCs, hedge funds, or private equity firms.

(3) I have registered with SBA at www.SBIR.gov as a business that is majority-owned by multiple VCOCs, hedge funds or private equity firms.

(4) I understand that the information submitted may be given to Federal, State, and local agencies for determining violations of law and other purposes.

(5) All the statements and information provided in this form and any documents submitted are true, accurate, and complete. If assistance was obtained in completing this form and the supporting documentation, I have personally reviewed the information and it is true and accurate. I understand that, in general, these statements are made for the purpose of determining eligibility for an SBIR Funding Agreement and continuing eligibility.

(6) I understand that the certifications in this document are continuing in nature. Each SBIR Funding Agreement for which the small business submits an offer or application or receives an award constitutes a restatement and reaffirmation of these certifications.

(7) I understand that I may not misrepresent status as small business to: 1) obtain a contract under the Act; or 2) obtain any benefit under a provision of Federal law that references the SBIR program.

(8) I am an officer of the business concern authorized to represent it and sign this certification on its behalf. By signing this certification, I am

representing on my own behalf, and on behalf of the SBIR Applicant or Awardee, that the information provided in this certification, the application, and all other information submitted in connection with this application, is true and correct as of the date of submission. I acknowledge that any intentional or negligent misrepresentation of the information contained in this certification may result in criminal, civil or administrative sanctions, including but not limited to: (1) fines, restitution and/or imprisonment under 18 U.S.C. 1001; (2) treble damages and civil penalties under the False Claims Act (31 U.S.C. 3729 et seq.); (3) double damages and civil penalties under the Program Fraud Civil Remedies Act (31 U.S.C. 3801 et seq.); (4) civil recovery of award funds, (5) suspension and/or debarment from all Federal procurement and nonprocurement transactions (FAR subpart 9.4 or 2 CFR part 180); and (6) other administrative penalties including termination of SBIR/STTR awards.

| | |
|---|----------------------|
| <i>Signature</i> | <i>Date</i> __/__/__ |
| <i>Print Name (First, Middle, Last)</i> | |
| <i>Title</i> | |
| <i>Business Name</i> | |

§ 3. Proposal Preparation Instructions and Requirements. The purpose of this section is to inform the Applicant on what to include in the proposal and to set forth limits on what may be included. It should also provide guidance to assist Applicants, particularly those that may not have previous Government experience, in improving the quality and

acceptance of proposals.

(a) Limitations on Length of Proposal. Include at least the following information:

(1) SBIR/STTR Phase I proposals must not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments, unless stated otherwise in the agency solicitation. Pages should be of standard size (8 1/2" x 11"; 21.6 cm x 27.9 cm) and should conform to the standard formatting instructions. Margins should be 2.5 cm and type at least 10 point font.

(2) A notice that no additional attachments, appendices, or references beyond the 25-page limitation shall be considered in proposal evaluation (unless specifically solicited by an agency) and that proposals in excess of the page limitation shall not be considered for review or award.

(b) Proposal Cover Sheet. Every Applicant is required to provide a copy of its registration information printed from the Company Registry unless the information can be transmitted automatically to SBIR/STTR Participating Agencies. Every Applicant must also include at least the following information on the first page of proposals. Items 8 and 9 are for statistical purposes only.

(1) Agency and Program Solicitation Number or Year.

(2) Topic Number or Letter.

(3) Subtopic Number or Letter.

(4) Topic Area.

(5) Project Title.

(6) Name and Complete Address of SBC.

(7) Disclosure permission (by statement or checkbox), such as follows, must be

included at the discretion of the funding agency:

“Will you permit the Federal Government to disclose the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to appropriate local and State-level economic development organizations that may be interested in contacting you for further information? Yes No”

(8) Signature of a company official of the proposing Small Business Concern and that individual's typed name, title, address, telephone number, and date of signature.

(9) Signature of Principal Investigator or Project Manager within the proposing Small Business Concern and that individual's typed name, title, address, telephone number, and date of signature.

(10) Legend for proprietary information as described in the “Considerations” section of this Program Solicitation if appropriate. This may also be noted by asterisks in the margins on proposal pages.

(c) Data Collection Requirement

(1) Each Phase I and Phase II Applicant is required to provide information for SBA’s database (www.SBIR.gov). The following are examples of the data to be entered by Applicants into the database:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made.

(ii) Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(iii) Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award.

(iv) Update the information in the database for any prior Phase II award received by the SBC. The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(2) Each Phase II Awardee is required to update the appropriate information on the award in the database upon completion of the last deliverable under the Funding Agreement and is requested to voluntarily update the information in the database annually thereafter for a minimum period of 5 years.

(d) Abstract or Summary. Applicants will be required to include a one-page project summary of the proposed R/R&D including at least the following:

(1) Name and complete address of SBC.

(2) Name and title of Principal Investigator/Project Manager.

(3) Participating Agency name, Program Solicitation number, and Program Solicitation topic and subtopic.

(4) Title of project.

(5) Technical abstract limited to two hundred words.

(6) Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.

(e) Technical Content. SBIR or STTR Program Solicitations must require, as a minimum, the following to be included in proposals submitted thereunder:

- (1) Identification and Significance of the Problem or Opportunity. A clear statement of the specific technical problem or opportunity addressed.
- (2) Phase I Technical Objectives. State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.
- (3) Phase I Work Plan. Include a detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done, and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in (e)(2) immediately above. The methods planned to achieve each objective or task should be discussed in detail.
- (4) Related R/R&D. Describe significant R/R&D that is directly related to the proposal, including any conducted by the Principal Investigator/Project Manager or by the proposing SBC. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The Applicant must persuade reviewers of his or her awareness of key, recent R/R&D conducted by others in the specific topic area.
- (5) Key Individuals and Bibliography of Directly Related Work. Identify Key Individuals involved in Phase I including their directly-related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.
- (6) Relationship with Future R/R&D.
 - (i) State the anticipated results of the proposed approach if the project is

successful (Phase I and II).

(ii) Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

(7) Facilities. A detailed description, availability and location of instrumentation and physical facilities proposed for Phase I should be provided.

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

(9) Potential Post Applications. Briefly describe:

(i) Whether and by what means the proposed project appears to have potential commercial application.

(ii) Whether and by what means the proposed project appears to have potential use by the Federal Government.

(10) Similar Proposals or Awards. WARNING—While it is permissible with proposal notification to submit identical proposals or proposals containing a significant amount of Essentially Equivalent Work for consideration under numerous Federal Agency Program Solicitations, it is unlawful to enter into Funding Agreements requiring Essentially Equivalent Work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an Applicant elects to submit identical proposals or proposals containing a significant amount of Essentially Equivalent Work under other Federal Agency Program Solicitations, a statement must be included in each such proposal indicating:

(i) The name and address of the Federal Agencies to which proposals were

submitted or from which awards were received.

(ii) Date of proposal submission or date of award.

(iii) Title, number, and date of Program Solicitations under which proposals were submitted or awards received.

(iv) The specific applicable research topics for each proposal submitted or award received.

(v) Titles of research projects.

(vi) Name and title of Principal Investigator/Project Manager for each proposal submitted or award received.

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

(f) Cost Breakdown/Proposed Budget. The solicitation will require the submission of simplified cost or budget data.

§ 4. Method of Selection and Evaluation Criteria.

(a) Standard Statement. Essentially, the following statement must be included in all SBIR or STTR Program Solicitations:

“All Phase I and II proposals will be evaluated and judged on a competitive basis.

Proposals will be initially screened to determine responsiveness. Proposals passing

this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Federal Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic or subtopic.”

(b) Evaluation Criteria.

(1) The SBIR/STTR Participating Agency must develop a standardized method in its evaluation process that will consider, at a minimum, the following factors:

- (i) The technical approach and the anticipated agency and commercial benefits that may be derived from the research.
- (ii) The adequacy of the proposed effort, and its relationship to the fulfillment of requirements of the research topic or subtopics.
- (iii) The soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution.
- (iv) Qualifications of the proposed Principal Investigators/Project Managers, supporting staff, and consultants.
- (v) Evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:
 - (A) the SBC's record of commercializing SBIR or other research,
 - (B) the existence of Phase II funding commitments from private sector or non-SBIR funding sources,
 - (C) the existence of Phase III follow-on commitments for the subject of the research, and,

(D) the presence of other indicators of the commercial potential of the idea.

(2) The factors in (b)(1) above and other appropriate evaluation criteria, if any, must be specified in the “Method of Selection” section of SBIR Program Solicitations.

(c) Peer Review. The Program Solicitation must indicate if the SBIR/STTR Participating Agency contemplates that as a part of the SBIR/STTR proposal evaluation, it will use external peer review.

(d) Release of Proposal Review Information. After final award decisions have been announced, the technical evaluations of the Applicant's proposal may be provided to the Applicant. The identity of the reviewer must not be disclosed.

§ 5. Considerations. This section must include, as a minimum, the following information:

(a) Awards. Indicate the estimated number and type of awards anticipated under the particular SBIR/STTR Program Solicitation in question, including:

(1) Approximate number of Phase I awards expected to be made.

(2) Type of Funding Agreement, that is, contract, grant, or cooperative agreement.

(3) Whether fee or profit will be allowed.

(4) Cost basis of Funding Agreement, for example, fixed-price, cost reimbursement, or cost-plus-fixed fee.

(5) Information on the approximate average dollar value of awards for Phase I and Phase II.

(b) Reports. Describe the frequency and nature of reports that will be required under Phase I Funding Agreements. Interim reports should be brief letter reports.

(c) Payment Schedule. Specify the method and frequency of progress and final payment under Phase I and II Funding Agreements.

(d) Innovations, SBIR/STTR Data Rights, Inventions and Patents.

(1) Proprietary Information in Proposals. The following statement must be included in all SBIR/STTR Program Solicitations:

“Information contained in unsuccessful proposals will remain the property of the Applicant. The Federal Government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements. If proprietary information is provided by an Applicant in a proposal, which constitutes a trade secret, commercial or financial information, , it will be treated in confidence, to the extent permitted by law, provided that the proposal is clearly marked by the Applicant as follows:

(A) The following legend must appear on the title page of the proposal:

This proposal contains information that shall not be disclosed outside the Federal Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal, unless authorized by law The Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract if award is made as a result of the submission of this proposal. .
. The information subject to these restrictions are contained on all pages of the proposal except for pages *[insert page numbers or other identification of pages that contain no restricted information.]*

(End of Legend); and

(B) The following legend must appear on each page of the proposal that contains information the Applicant wishes to protect:

Use or disclosure of information contained on this sheet is subject to the restriction on the title page of this proposal.

(2) Alternative To Minimize Proprietary Information. Agencies may elect to instruct Applicants to limit proprietary information to only that absolutely essential to their proposal.

(3) SBIR/STTR Data Rights Clause. Participating Agencies must include a clause in their SBIR and STTR Program Solicitations and resulting Funding Agreements that reflects the following necessary elements:

SBIR/STTR Data Rights Clause

(a) Definitions.

(1) Computer Software. 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.

(2) Data. All recorded information, regardless of the form or method of recording or the media on which it may be recorded. The term does not include information incidental to contract or grant administration, such as financial, administrative, cost or pricing or management information.

(3) Form, Fit, and Function Data. Data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For Computer Software it means data identifying source, functional characteristics, and performance

requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(4) Government Purpose. Any activity in which the United States Government is a party, including cooperative agreements with international or multi-national 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 or Computer Software for commercial purposes or authorize others to do so.

(5) Operations, Maintenance, Installation, or Training Purposes (OMIT) Data. Data that is necessary for operation, maintenance, installation, or training purposes (but not including detailed manufacturing or process data).

(6) SBIR/STTR Computer Software Rights. The Federal Government's rights during the SBIR/STTR Protection Period in specific types of SBIR/STTR Data that are Computer Software.

(A) The Federal Government may use, modify, reproduce, release, perform, display, or disclose SBIR/STTR Data that are Computer Software within the Government. The Federal Government may exercise SBIR/STTR Computer Software Rights within the Government for:

- (1) Use in Federal Government computers;
- (2) Modification, adaptation, or combination with other Computer Software, provided that the Data incorporated into any derivative software are subject to the rights in § 3(ee) of the SBIR/STTR Policy Directive and

that the derivative software is marked as containing SBIR/STTR Data;

(3) Archive or backup; or

(4) Distribution of a computer program to another Federal agency, without further permission of the Awardee, if the Awardee is notified of the distribution and the identity of the recipient prior to the distribution, and a copy of the SBIR/STTR Computer Software Rights included in the Funding Agreement is provided to the recipient.

(B) The Federal Government shall not release, disclose, or permit access to SBIR/STTR Data that is Computer Software for commercial, manufacturing, or procurement purposes without the written permission of the Awardee. The Federal Government shall not release, disclose, or permit access to SBIR/STTR Data outside the Government without the written permission of the Awardee unless:

(i) The non-Governmental entity has entered into a non-disclosure agreement with the Government that complies with the terms for such agreements outlined in § 8 of the SBIR/STTR Policy Directive; and

(ii) The release or disclosure is—

(I) To a Federal Government support service contractor or their subcontractor for purposes of supporting Government internal use or activities, including evaluation, diagnosis and correction of deficiencies, and adaptation, combination, or integration with other Computer Software provided that SBIR/STTR Data incorporated into any derivative software are subject to the rights in § 3(ee) of

the SBIR/STTR Policy Directive; or

(II) Necessary to support certain narrowly-tailored essential Government activities for which law or regulation permits access of a non-Government entity to a contractors' data developed exclusively at private expense, non-SBIR/STTR Data, such as for emergency repair and overhaul.

(7) SBIR/STTR Data. All Data developed or generated in the performance of an SBIR or STTR award, including Technical Data and Computer Software developed or generated in the performance of an SBIR or STTR award. The term does not include information incidental to contract or grant administration, such as financial, administrative, cost or pricing or management information.

(8) SBIR/STTR Data Rights. The Federal Government's license rights in properly marked SBIR/STTR Data during the SBIR/STTR Protection Period are as follows: SBIR/STTR Technical Data Rights in SBIR/STTR Data that are Technical Data or any other type of Data other than Computer Software; and SBIR/STTR Computer Software Rights in SBIR/STTR Data that is Computer Software. Upon expiration of the protection period for SBIR/STTR Data, the Federal Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government Purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. The Federal Government receives Unlimited Rights in Form Fit, and Function Data, OMIT Data, and all unmarked SBIR/STTR Data.

(9) SBIR/STTR Protection Period. The period of time during which the Federal

Government is obligated to protect SBIR/STTR Data against unauthorized use and disclosure in accordance with SBIR/STTR Data Rights. The SBIR/STTR Protection Period begins at award of an SBIR/STTR Funding Agreement and ends not less than twenty years from that date (See § 8(b)(4) of the SBIR/STTR Policy Directive).

(10) SBIR/STTR Technical Data Rights. The Federal Government's rights during the SBIR/STTR Protection Period in SBIR/STTR Data that are Technical Data or any other type of Data other than Computer Software.

(A) The Federal Government may, use, modify, reproduce, perform, display, release, or disclose SBIR/STTR Data that are Technical Data within the Government; however, the Government shall not use, release, or disclose the data for procurement, manufacturing, or commercial purposes; or release or disclose the SBIR/STTR Data outside the Government except as permitted by paragraph (B) below or by written permission of the Awardee.

(B) SBIR/STTR Data that are Technical Data may be released outside the Federal Government without any additional written permission of the Awardee only if the non-Governmental entity or foreign government has entered into a non-disclosure agreement with the Federal Government that complies with the terms for such agreements outlined in § 8 of the SBIR/STTR Policy Directive and the release is:

- (i) Necessary to support certain narrowly-tailored essential Government activities for which law or regulation permits access of a non-Government entity to a contractors' data developed exclusively at private expense, non-SBIR/STTR Data, such as for emergency repair and overhaul;
- (ii) To a Government support services contractor in the performance of a

Government support services contract for internal Government use or activities, including evaluation, diagnosis or modification, provided that SBIR/STTR Technical Data incorporated into any derivative Data are subject to the rights in § 3(ii) of the SBIR/STTR Policy Directive, and the release is not for commercial purposes or manufacture;

(iii) To a foreign government for purposes of information and evaluation if required to serve the interests of the U.S. Government; or

(iv) To non-Government entities or individuals for purposes of evaluation.

(11) Technical Data. Recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including Computer Software Documentation and Computer Databases). The term does not include Computer Software or financial, administrative, cost or pricing, or management information, or other data incidental to contract or grant administration. The term includes recorded Data of a scientific or technical nature that is included in Computer Databases.

(12) Unlimited Rights. The Government's rights to access, use, modify, prepare derivative works, reproduce, release, perform, display, disclose, or distribute Data in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) Allocation of SBIR/STTR Data Rights.

(1) An SBC retains ownership of all SBIR/STTR Data it develops or generates in the performance of an SBIR/STTR award. The SBC retains all rights in SBIR/STTR Data that are not granted to the Federal Government in accordance with the SBIR/STTR Policy Directive. These rights of the SBC do not expire.

- (2) During the SBIR/STTR Protection Period, the Federal Government receives SBIR/STTR Technical Data Rights in appropriately marked SBIR/STTR Data that is Technical Data or any other type of Data other than Computer Software; and SBIR/STTR Computer Software Rights in appropriately marked SBIR/STTR Data that is Computer Software.
- (3) After the protection period, the Federal Government may use, and authorize others to use on its behalf, for Government Purposes, SBIR/STTR Data that was protected during the SBIR/STTR Protection Period. Awards issued by the U.S. Department of Energy are subject to Unlimited Rights after the expiration of the SBIR/STTR Protection Period.
- (4) The Federal Government receives Unlimited Rights in Form Fit, and Function Data, OMIT Data, and all unmarked SBIR/STTR Data
- (c) Identification and Delivery of SBIR/STTR Data. Any SBIR/STTR Data delivered by the Awardee, and in which the Awardee intends to limit the Federal Government's rights to SBIR/STTR Data Rights, must be delivered with restrictive markings. The Federal Government assumes no liability for the access, use, modification, reproduction, release, performance, display, disclosure, or distribution of SBIR/STTR Data without markings. The Awardee or its subcontractors or suppliers shall conspicuously and legibly mark all such SBIR/STTR Data with the appropriate legend.
- (1) The authorized legend shall be placed on each page of the SBIR/STTR Data. If only portions of a page are subject to the asserted restrictions, the SBIR/STTR Awardee shall identify the restricted portions (e.g., by circling or underscoring with a note or other appropriate identifier). With respect to SBIR/STTR Data embodied in

Computer Software, the legend shall be placed on: (1) the printed material or media containing the Computer Software; or (2) the transmittal document or storage container. The legend shall read as follows:

“SBIR/STTR DATA RIGHTS

| | |
|-----------------------------|--|
| Funding Agreement No. | |
| Award Date | |
| SBIR/STTR Protection Period | |
| SBIR/STTR Awardee | |
| SBIR/STTR Awardee Address | |

This is SBIR/STTR Data (or is Computer Software or a Prototype that embodies or includes SBIR/STTR Data) to which the SBIR/STTR Awardee has SBIR/STTR Data Rights and to which the Federal Government has received SBIR/STTR Technical Data Rights (or SBIR/STTR Computer Software Rights) during the SBIR/STTR Protection Period and rights of use for Government Purposes after the SBIR/STTR Protection Period, as those terms are defined in the SBIR/STTR Funding Agreement. Awards issued by the U.S. Department of Energy are subject to Unlimited Rights after the SBIR/STTR Protection Period, as that term is defined in the SBIR/STTR Funding Agreement. Any reproduction of SBIR/STTR Data or portions of such data marked with this legend must also reproduce the markings.”

(End of Legend)

(2) Data submitted without correct or appropriate markings may be corrected within 6 months from the date the data is delivered.

(d) Relation to patents. Nothing regarding SBIR/STTR Data Rights in this clause shall imply a license to or imply a requirement to license to the Federal Government any patent to a Subject Invention (as defined under the Bayh-Dole Act implemented at 37 CFR 401) made under an SBIR/STTR award.

(End of Clause)

(4) Copyrights. Include an appropriate statement concerning copyrights and publications addressing national security considerations, if any, and the appropriate acknowledgement and disclaimer statement.

(5) Invention Reporting. Include requirements for reporting inventions. Include appropriate information concerning the reporting of inventions, for example:

“SBIR/STTR Awardees must report inventions to the awarding agency within 2 months of the inventor's report to the Awardee.”

Note: Many federal agencies require electronic reporting of inventions and patents made with Federal funds through the Interagency Invention Reporting System (iEdison) that is maintained and managed by NIH. The iEdison System is used to satisfy all invention reporting requirements mandated by an SBIR/STTR award. Access to iEdison is through a secure interactive Internet site, <http://www.iedison.gov>. All Federal Agencies are encouraged to use the iEdison System. In addition to fulfilling reporting requirements, iEdison notifies the user of future time sensitive deadlines with enough lead-time to avoid the possibility of loss of invention or patent ownership or rights.

(e) Cost Sharing. Include a statement essentially as follows:

“Cost sharing is permitted for proposals under this Program Solicitation; however, cost sharing is not required. Cost sharing will not be an evaluation factor in consideration of your Phase I proposal.”

(f) Profit or Fee. Include a statement on the payment of profit or fee on awards made under the SBIR/STTR Program Solicitation.

(g) Joint Ventures or Limited Partnerships. Include essentially the following language:

“Joint Ventures and limited partnerships are eligible provided the entity created qualifies as a Small Business Concern as defined in this Program Solicitation.”

(h) Research and Analytical Work. Include essentially the following statement:

SBIR:

(1) “For Phase I a minimum of two-thirds of the research and/or analytical effort must be performed by the proposing Small Business Concern unless otherwise approved in writing by the Funding Agreement officer after consultation with the agency SBIR program manager/coordinator.

(2) For Phase II a minimum of one-half of the research and/or analytical effort must be performed by the proposing Small Business Concern unless otherwise approved in writing by the Funding Agreement officer after consultation with the agency SBIR program manager/coordinator.”

STTR:

“For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the Small Business Concern, and not less than 30 percent of the R/R&D work must be performed by a partnering Research Institution, as defined in this Program Solicitation.”

(i) Awardee Commitments. To meet the legislative requirement that SBIR/STTR Program Solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in SBIR/STTR Funding Agreements must not be included in full or by reference in SBIR/STTR Program Solicitations. Rather, Applicants must be advised that they will be required to make certain legal commitments at the time of execution of Funding Agreements resulting from SBIR/STTR Program Solicitations. Essentially, the following statement must be included in the “Considerations” section of SBIR/STTR Program Solicitations:

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

(j) Summary Statements. The following are illustrative of the type of summary

statements to be included immediately following the statement in subparagraph (i). These statements are examples only and may vary depending upon the type of Funding Agreement used.

- (1) Standards of Work. Work performed under the Funding Agreement must conform to high professional standards.
- (2) Inspection. Work performed under the Funding Agreement is subject to Government inspection and evaluation at all times.
- (3) Examination of Records. The Comptroller General (or a duly authorized representative) must have the right to examine any pertinent records of the Awardee involving transactions related to this Funding Agreement.
- (4) Default. The Federal Government may terminate the Funding Agreement if the contractor fails to perform the work contracted.
- (5) Termination for Convenience. The Funding Agreement may be terminated at any time by the Federal Government if it deems termination to be in its best interest, in which case the Awardee will be compensated for work performed and for reasonable termination costs.
- (6) Disputes. Any dispute concerning the Funding Agreement that cannot be resolved by agreement must be decided by the contracting officer with right of appeal.
- (7) Contract Work Hours. The Awardee may not require an employee to work more than 8 hours a day or 40 hours a week unless the employee is compensated accordingly (for example, overtime pay).
- (8) Equal Opportunity. The Awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

- (9) Equal Opportunity for Veterans. The Awardee will not discriminate against any employee or application for employment because he or she is a disabled veteran or veteran of the Vietnam era.
- (10) Equal Opportunity for People with Disabilities. The Awardee will not discriminate against any employee or applicant for employment because he or she is physically or intellectually disabled.
- (11) Officials Not To Benefit. No Federal Government official may benefit personally from the SBIR/STTR Funding Agreement.
- (12) Covenant Against Contingent Fees. No person or agency has been employed to solicit or secure the Funding Agreement upon an understanding for compensation except bona fide employees or commercial agencies maintained by the Awardee for the purpose of securing business.
- (13) Gratuities. The Funding Agreement may be terminated by the Federal Government if any gratuities have been offered to any representative of the Government to secure the award.
- (14) Patent Infringement. The Awardee must report each notice or claim of patent infringement based on the performance of the Funding Agreement.
- (15) American Made Equipment and Products. When purchasing equipment or a product under the SBIR/STTR Funding Agreement, purchase only American-made items whenever possible.
- (k) Additional Information. Information pertinent to an understanding of the administration requirements of SBIR/STTR proposals and Funding Agreements not included elsewhere must be included in this section. As a minimum, statements

essentially as follows must be included under “Additional Information” in SBIR/STTR Program Solicitations:

(1) This Program Solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting SBIR/STTR Funding Agreement, the terms of the Funding Agreement are controlling.

(2) Before award of an SBIR/STTR Funding Agreement, the Federal Government may request the Applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the Applicant.

(3) The Federal Government is not responsible for any monies expended by the Applicant before award of any Funding Agreement.

(4) This Program Solicitation is not an offer by the Federal Government and does not obligate the Government to make any specific number of awards. Also, awards under the SBIR/STTR program are contingent upon the availability of funds.

(5) The SBIR/STTR program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals must not be accepted under the SBIR/STTR program in either Phase I or Phase II.

(6) If an award is made pursuant to a proposal submitted under this SBIR/STTR Program Solicitation, a representative of the contractor or grantee or party to a cooperative agreement will be required to certify that the concern has not previously been, nor is currently being, paid for Essentially Equivalent Work by any Federal Agency.

§ 6. Submission of Proposals.

(a) This section must clearly specify the closing date on which all proposals are due to be received.

(b) This section must specify the number of copies of the proposal that are to be submitted.

(c) This section must clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.

(d) This section may include other instructions such as the following:

(1) Bindings. Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

(2) Packaging. All copies of a proposal should be sent in the same package.

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

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

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