

into by the prime contractor for Phase III SBIR projects.

15. Revise section 12(b)(6) to read as follows:

(6) The Secretary of Defense shall:

(i) set a goal to increase the number of SBIR Phase II contracts that lead to technology transition into programs of record of fielded systems;

(ii) use incentives in effect as of December 31, 2011 or create new incentives to encourage agency program managers and prime contractors to meet the goal set forth in paragraph (6)(i) above; and

(iii) submit the following to SBA, as part of the annual report:

(A) the number and percentage of Phase II SBIR contracts awarded by DoD that led to technology transition into programs of record or fielded systems;

(B) information on the status of each project that received funding through the Commercialization Program and the efforts to transition these projects into programs of record or fielded systems; and

(C) a description of each incentive that has been used by DoD, the effectiveness of the incentive with respect to meeting DoD's goal to increase the number of SBIR Phase II contracts that lead to technology transition into programs of record of fielded systems, and measures taken to ensure that such incentives do not act to shift the focus of SBIR Phase II awards away from relatively high-risk innovation projects.

16. Revise paragraph 1(a) of the Appendix I: Instructions for Preparation of SBIR Program Solicitation to read as follows:

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

17. In Appendix I, in the SBIR Funding Agreement Certification and the SBIR Funding Agreement Certification—Life Cycle Certification, revise the checkbox addressing potential duplicative funding to read as follows:

It will notify the Federal agency immediately if all or a portion of the work authorized and funded under this award is subsequently funded by another Federal agency.

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SMALL BUSINESS ADMINISTRATION

13 CFR Chapter I

RIN 3245-AF45

Small Business Technology Transfer Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Notice of amendments to final policy directive.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Small Business Technology Transfer (STTR) Program Policy Directive in response to public comments SBA received on the final STTR and Small Business Innovation Research (SBIR) Policy Directives, published on August 6, 2012. SBA is also making several minor clarifying changes to ensure that the STTR participants clearly understand certain program requirements. Additionally, the changes to the STTR Policy Directive are made to maintain concordance with the SBIR program.

DATES: These amendments to the STTR Policy Directive are effective January 8, 2014.

FOR FURTHER INFORMATION CONTACT: Edsel Brown, Assistant Director, Office of Innovation, at (202) 401-6365 or technet@sba.gov.

SUPPLEMENTARY INFORMATION: On December 31, 2011, the President signed into law the National Defense Authorization Act for Fiscal Year 2012 (Defense Reauthorization Act), Public Law 112-81, 125-Stat. 1298. Section 5001, Division E of the Defense Reauthorization Act contains the SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act), which amended the Small Business Act and made several amendments to the STTR Program. The Reauthorization Act required SBA to issue amendments to the STTR Policy Directive and publish the amendments in the **Federal Register** within 180 days of when the Reauthorization Act was passed.

On August 6, 2012, SBA published a final STTR Policy Directive implementing the various provisions of the Reauthorization Act at 77 FR 46855. The directive made several key changes to the STTR Program relating to eligibility, the award process, program administration, and fraud, waste and abuse. Although the STTR Policy Directive is intended for use by the STTR participating agencies, SBA believed that public input on the directive from all parties involved in the program would be invaluable. Therefore, SBA sought public comments

on the final directive, and stated that it may amend the directive in response to these comments at a later time.

Response to Comments

In response to this request, SBA received comments on various parts of the directive. If SBA received comments on a section of the SBIR Policy Directive that also appears in the STTR Policy Directive, SBA clarified the relevant sections in both the SBIR and STTR Policy Directives, when appropriate, in order to maintain concordance between the programs. Several comments recommended that SBA strengthen and clarify the Policy Directive language with regard to SBIR/STTR data rights and the obligation of federal agencies to give a preference in contracting to SBIR/STTR awardees for follow-on Phase III work. SBA agrees that these areas of SBIR/STTR policy are vital to the programs and require clarification and improvement. The SBA continues to evaluate these issues and will address them in a subsequent Policy Directive revision.

Section 4(a)(3) "Agency benchmarks for progress towards commercialization" sets forth the program policy regarding an eligibility requirement for Phase I awards. SBA received comments requesting clarification of the time periods used to calculate the transition rate and commercialization rate benchmark requirements. Commenters also requested clarification about how agencies determine which firms must comply with the transition rate and commercialization rate benchmarks. In response to these comments, SBA revised and reorganized section 4(a)(3) to clarify several procedural elements about the benchmark determinations and enhance its readability.

Section 4(a)(3) clarifies the time periods used to calculate awardee rates of transition from Phase I to Phase II and provides two examples of the calculation. While the rate is calculated using Phase I awards received in the most recent 5, 10, or 15-year period (agencies choose which period they use), excluding the most recently completed fiscal year; the period used when counting the Phase II awards is lagged one year. That is, when calculating the number of Phase I awards received over a particular time period, the time period evaluated does not include the most recently completed fiscal year; however, when calculating the number of Phase II awards received, the time period evaluated does include the most recently completed fiscal year but does not include the first year of the period evaluated for Phase I awards

received. The period used to calculate Phase II awards is lagged one-year because it is unlikely that a new Phase I would transition to a Phase II within the same year. SBA also clarified that the Phase II transition benchmark requirement applies only to awardees that have received more than 20 Phase I awards over the applicable time period and that the commercialization benchmark applies only to firms that received more than 15 Phase II awards over the applicable time period.

Based on additional input from the agencies participating in the SBIR and STTR programs, SBA also revised several procedural elements of the Phase II transition benchmark requirement in section 4(a)(3) to simplify the process for small businesses and reduce the administrative burden on the agencies. Specifically, in section 4(a)(3)(iii), SBA changed the start date for the one-year ineligibility period for firms that do not meet the benchmarks. The date was changed from the date of application submission to June 1st of each year. SBA made this change for several reasons: (1) It is a clearly defined period for affected small businesses; (2) to provide sufficient time for agencies to enter fully verified award data from the prior fiscal year into the TechNet database; and (3) to eliminate the need for agencies to track multiple periods of ineligibility. SBA will use its TechNet Data system to generate the list of companies that do not meet agency Phase II transition benchmarks and provide this list to the agencies each year on June 1. Finally, SBA also added a procedure to notify awardee firms if they are on the ineligible list and to enable firms to provide feedback directly to SBA if they believe their rate was calculated using incomplete award information.

Some respondents asked if the provision in section 4(b)(5) allowing one Sequential Phase II award included supplementary awards such as Phase 2.5 or Phase IIb awards in the definition of a Phase II award. SBA relocated the language at section 4(b)(6) to new section 4(b)(8) and added new section 4(b)(6) to clarify SBA's policy on supplemental phase II awards. Section 4(b)(6) now clarifies how Phase II award amounts are calculated when supplemental awards are issued. Furthermore, section 4(b)(6) specifies that all supplementary awards, such as a Phase IIb, must be linked to either an initial Phase II or a sequential Phase II award and is added to the amount of that award for the purpose of determining the size of the Phase II award. This means that all

supplementary Phase II awards including options, enhancements, administrative supplements, and Phase IIb-type programs are considered as part of the initial Phase II or sequential Phase II from which they derive and are therefore subject to the Phase II per-award guideline amount of \$1 million and limit of \$1.5 million.

SBA repeated the language in section 9(d)(2) in new section 4(b)(7), which explains how a Phase I awardee may receive an award from one agency and also may receive a subsequent Phase II award from another agency. SBA also clarified in section 4(b)(7) that the same process applies to a second, sequential Phase II award that follows an initial Phase II award from a different agency. This policy is relevant to interagency actions, which are found at section 9 of the Policy Directive, and also to Phase II awards, which is found at section 4 of the Policy Directive.

The reauthorization legislation included a provision giving SBIR agencies the option to use a portion of their program funds to make awards to small businesses that are majority owned by multiple venture capital operating companies, hedge funds or private equity firms. SBA applied this option to the STTR program in section 6(a)(2) of the Policy Directive. SBA received comments that the option should not apply to the STTR program because the reauthorization legislation did not extend the participation of these firms to the STTR program. SBA agrees with commenter. When SBA issued the final regulations amending Title 13, Part 121, Small Business Size Regulations, Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program, on December 27, 2012 (77 FR 76215), it reviewed this issue and concluded that such firms may not participate in the STTR program. SBA has removed paragraph (a)(2) from section 6 and all other sections of the directive where this provision was applied, including section 6(b)(1)(i) and the related certification in Appendix I, Instructions for Preparation of STTR Program Solicitation, section 2(b)(i).

SBA received comments concerning section 9 of the Policy Directives that addressed measures to prevent fraud, waste and abuse in the program. The respondents commented that the administrative requirements contained in section 9 may be too stringent and may discourage small businesses from applying. SBA notes that it developed these requirements, including the procedures and requirements for certification, in consultation with the Council of Inspectors General on

Integrity and Efficiency. SBA believes that these provisions can help reduce fraud, waste and abuse in the program and does not think these provisions should be changed at this time.

SBA received comments on the Department of Defense's (DoD's) Commercialization Readiness Program, outlined in section 12(b) of the STTR Policy Directive. In response to comments that agency efforts to increase transitions to Phase III could reduce the innovative nature of SBIR awards, SBA has added that when DoD reports on its Phase II insertion incentives, it should note efforts that the agency has made to ensure that such incentives do not act to shift the focus of SBIR and STTR Phase II awards away from relatively high-risk innovation projects. SBA also amended the provisions relating to the use of SBIR funds for the DoD Commercialization Readiness Program, which is funded from SBIR funds, but may benefit both the SBIR and STTR programs. According to section 1615 of the National Defense Authorization Act for Fiscal Year 2013 (NDAA), Public Law 112-239, 126 Stat. 1632, DoD has the authority to use 1% of its SBIR funding for purposes of administering the Commercialization Readiness Program.

A number of comments asked us to change features that, because they are required by statute, we were not able to modify.

Miscellaneous Changes

The inadvertent omission of the term "extramural" before "R/R&D budgets" was corrected in section 2(b), which identifies the source of funds for the program.

Section 3 contains definitions of terms that appear throughout the Policy Directive. SBA made an editorial revision to the definition of "Awardee" in section 3(e). SBA revised the word "receiving" to "that receives."

Section 4(b)(1), which identifies the objective and nature of a Phase II award, includes a statement regarding the eligibility of successor in interest firms for STTR awards. Because this statement pertains more generally to eligibility for all STTR awards, it was removed from section 4(b)(1) and added to section 6(a) which addresses program eligibility requirements.

Section 6(a) addresses general program eligibility. SBA added the language previously found at section 4(b)(1) regarding successor in interest firms to new section 6(a)(5). Sections 6(a)(3) and (4), renumbered as sections 6(a)(2) and (3), state program requirements regarding the percentage of work performed by the SBC and the

place of employment of the principal investigator, respectively. SBA revised these sections to make a technical clarification that the STTR program does not provide small business concerns the opportunity to request a deviation from these requirements. The provision allowing for deviations in these sections was erroneously added to the STTR Policy Directive that was published in August 2012.

Section 7 addresses issues related to program funding processes. SBA revised the language in paragraph 7(d) to clarify that while duplicate or similar proposals may be submitted in response to apparently similar solicitation topics, essentially equivalent work may not be funded. In addition, SBA revised paragraph (i)(1), which says that funding agreement modifications should be kept to a minimum, to address only modifications that increase the dollar amount of awards. Paragraph (i)(1) also referred to modifications of periods of performance and scope of work. SBA clarified section 7(i)(1) to specify that the concern regarding the number of modifications made to an award pertains only to changes that increase the dollar amount of awards.

Section 8 of the Directive addresses the terms of agreement under STTR awards. SBA clarified section 8(a) by removing language stating that agencies should discourage SBCs from submitting proprietary information and revised section 8(e) to clarify that the continued use of agency-owned property applies to property acquired by the awardee under the contract.

In response to concerns regarding the cost and accountability of the continuing study by the National Academy of Sciences, SBA modified section 9(h) to clarify that the agreement required between the agencies and the National Academy of Sciences must be made in consultation with the SBA and must comprehensively address the scope and content of the work to be performed.

Section 10(h) explains the process for agencies to submit their STTR program annual reports to SBA. Paragraph (h)(4) contains a list of information that must be included in each agency's annual report. SBA clarified section 10(h)(4)(xi) to note that agencies must report all instances in which an agency pursued R/R&D, services, production, or any combination thereof of a technology developed under an STTR award with an entity other than that STTR awardee. SBA removed the unnecessary language, "and determined that it was not practicable to enter into a follow-on funding agreement with non-STTR funds with that concern," because it

unintentionally created an additional condition for this reporting requirement.

Section 10(j) contains information on the other reporting requirements for STTR participating agencies. Section 10(j)(2) discusses a system that will list any individual or small business concern that received an STTR award and that has been convicted of a fraud-related crime involving STTR funds or found civilly liable for a fraud-related violation involving STTR funds. SBA clarified this section to note that SBA will list those individuals and small business concerns of which SBA has been made aware.

Section 12(b) addresses the Commercialization Readiness Program at the Department of Defense (DoD). SBA clarified the source of funding for this program by removing the sentence in paragraph (b)(4)(ii) stating that funds for the program would come from the 3% administrative set-aside, and by clarifying that the funds shall not be subject to the limitations on the use of funds in section 9(e)(3). In addition, in section 12(b)(6)(iii)(C), SBA clarified that the DoD must include, along with its description of the incentives used for this program, information on measures taken to ensure that such incentives do not shift the focus of the STTR Phase II awards away from the relatively high-risk innovation projects they are intended to promote.

Section 12(b)(5) addresses DoD's Commercialization Readiness Program. The Policy Directive states that DoD may establish transition goals and reporting requirements for awards less than \$1,000,000,000. The amount listed in section 12(b)(5) contained a typographical error, which was corrected to \$100,000,000.

Appendix I provides instructions for the preparation of program solicitations. In Appendix I, SBA revised the certification check box regarding notification if work is subsequently funded by another Federal agency to clarify that it pertains to work funded and completed under the award rather than to the work proposed for the award.

The updated STTR Policy Directive, incorporating all changes noted here, will be posted on www.sbir.gov.

Notice of Amendments to Final Policy Directive; Small Business Technology Transfer Program

To: The Small Business Technology Transfer Program Managers

Subject: Amendments to STTR Policy Directive Published on August 6, 2012 at 77 FR 46855.

1. *Purpose.* The purpose of this notice is to inform STTR agencies of

amendments made to the recently published STTR Policy Directive.

2. *Authority.* Section 9(j)(3) of the Small Business Act (15 U.S.C. 638(j)) requires the Administrator of the U.S. Small Business Administration (SBA) to issue an STTR Program Policy Directive for the general conduct of the STTR Program.

3. *Procurement Regulations.* It is recognized that the Federal Acquisition Regulations and agency supplemental regulations may need to be modified to conform to the requirements of the final Policy Directive. SBA's Administrator or designee must review and concur with any regulatory provisions that pertain to areas of SBA responsibility. SBA's Office of Innovation coordinates such regulatory actions.

4. *Personnel Concerned.* This Policy Directive serves as guidance for all federal government personnel who are involved in the administration of the STTR Program, issuance and management of Funding Agreements or contracts pursuant to the STTR Program, and the establishment of goals for small business concerns in research or research and development acquisition or grants.

5. *Originator.* SBA's Office of Innovation and Technology.

6. *Date.* The policy directive is effective on January 8, 2014.

Dated: December 26, 2013.

Pravina Raghavan,

Deputy Associate Administrator, Office of Investment and Innovation Small Business Administration.

Dated: December 26, 2013.

Jeanne Hult,

Acting Administrator.

SBA amends the STTR Policy Directive as follows:

1. Amend section 2(b) by adding the term "extramural" before "R/R&D budgets" each place it appears.

2. Revise section 3(e) to read as follows:

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

3. Revise section 4(a)(3) to read as follows:

(3) *Agency benchmarks for progress towards commercialization.* Each agency must determine whether an applicant for a Phase I award that has won multiple prior STTR 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 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 STTR 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/STTR 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/STTR agency uses this tabulation to determine which companies do not meet that agency's benchmark rates and are therefore ineligible to receive new Phase 1 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 time 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 1: On August 1, 2014, an SBC submits a Phase I 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 Web site. 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 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 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 re-assessment. To do so, awardees may use the link on the Company Registry at www.sbir.gov.

4. Amend section 4(b) by revising paragraph (b)(1), renumbering paragraph (b)(6) as (b)(8), and inserting paragraphs (b)(6) and (b)(7) to read as follows:

(b) *Phase II.*

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

(i) A Federal agency may issue an STTR Phase II award to an SBIR Phase I awardee to further develop the work performed under the SBIR 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 SBIR Phase I awardee must meet the eligibility and program requirements of the STTR Phase II award.

. . . [paragraphs (2) through (4) are unchanged] . . .

(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 STTR 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 STTR 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 STTR 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 STTR 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) An STTR Phase II award may be issued by a Federal agency other than the one that made the Phase I award. Prior to award, the head of the Federal agency that awarded the Phase I and the head of the Federal Agency that plans to issue the Phase II award, or designee, must issue a written determination that the topics of the awards are the same. Both agencies must submit the report to the SBA. The same process applies to a second, subsequent Phase II award that follows an initial Phase II award from a different agency.

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

5. Remove section 6(a)(2).

6. Redesignate sections 6(a)(3) and (4) as sections 6(a)(2) and (3) and revise to read as follows:

(2) For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the SBC, and not less than 30 percent of the R/R&D work must be performed by the single, partnering Research Institution. An agency can measure this research or analytical effort using the total contract dollars or labor hours, and must explain to the small business in the solicitation how it will be measured.

(3) For both Phase I and Phase II, the primary employment of the principal investigator must be with the SBC or the research institution at the time of award and during the conduct of the proposed project. Primary employment means that more than one-half of the principal investigator's time is spent in the

employ of the SBC or the research institution. This precludes full-time employment with another organization aside from the SBC or the research institution. An SBC may replace the principal investigator on an STTR Phase I or Phase II award, subject to approval in writing by the funding agreement officer. For purposes of the STTR Program, personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR 121.106—Small Business Size Regulations.

7. Insert new section 6(a)(5) to read as follows:

(5) An STTR awardee may include, and STTR work may be performed by, those identified via a "novated" or "successor in interest" or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. Agencies may require the original awardee to relinquish its rights and interests in an STTR project in favor of another applicant as a condition for that applicant's eligibility to participate in the STTR Program for that project.

8. Revise section 7(d) to read as follows:

(d) *Essentially Equivalent Work.* STTR participants often submit duplicate or similar proposals to more than one soliciting agency when the announcement or solicitation appears to involve similar topics or requirements. However, "essentially equivalent work" must not be funded in the STTR or other Federal programs, unless an exception to this rule applies. Agencies must verify with the applicant that this is the case by requiring them to certify at the time of award and during the lifecycle of the award that they do not have essentially equivalent work funded by another Federal agency.

9. Revise section 7(h)(1) to read as follows:

(h) *Periods of Performance and Extensions.*

(1) In keeping with the legislative intent to make a large number of relatively small awards, modification of funding agreements to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.

10. Revise section 8(a) to read as follows:

(a) *Proprietary Information Contained in Proposals.* The standardized STTR Program solicitation will include provisions requiring the confidential

treatment of any proprietary information to the extent permitted by law. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The Government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the STTR Program, from disclosure.

11. Revise section 8(e) to read as follows:

(e) *Continued Use of Government Equipment.* Agencies must allow an STTR awardee participating in the third phase of the STTR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee or acquired by the awardee for the purpose of fulfilling the contract. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the STTR Program.

12. Revise section 9(h) to read as follows:

(h) *National Academy of Sciences Report.* The National Academy of Sciences (NAS) will conduct a study and issue reports on the SBIR and STTR programs.

(1) Prior to and during the period of study, and to ensure that the concerns of small business are appropriately considered, NAS shall consult with and consider the views of SBA's Office of Investment and Innovation and the Office of Advocacy and other interested parties, including entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns.

(2) The head of each agency with a budget of more than \$50,000,000 for its SBIR Program for fiscal year 1999 shall, in consultation with SBA, and not later than 6 months after December 31, 2011, cooperatively enter into an agreement with NAS regarding the content and performance of the study. SBA and the agencies will work with the Interagency Policy Committee in determining the parameters of the study, including the specific areas of focus and priorities for the broad topics required by statute. The agreement with NAS must set forth these parameters, specific areas of focus and priorities, and comprehensively address the scope and content of the work to be performed. This agreement

must also require the NAS to ensure there is participation by and consultation with, the small business community, the SBA, and other interested parties as described in paragraph (1).

(3) NAS shall transmit to SBA, heads of agencies entering into an agreement under this section, the Committee on Science, Space and Technology, the Committee on Small Business of the House of Representatives, and to the Committee on Small Business of the Senate a copy of the report, which includes the results and recommendations, not later than 4 years after December 31, 2011, and every subsequent four years.

13. Revise section 10(h)(4)(xi) to read as follows:

(xi) All instances in which an agency pursued R/R&D, services, production, or any combination thereof of a technology developed under an STTR award with an entity other than that STTR awardee. See section 9(a)(12) for minimum reporting requirements.

14. Revise section 10(j)(2) to read as follows:

(2) The system will include a list of any individual or small business concern that has received an STTR award and that has been convicted of a fraud-related crime involving STTR funds or found civilly liable for a fraud-related violation involving STTR funds, of which SBA has been made aware.

15. Revise section 12(b)(4) to read as follows:

(4) *Funding.*

(i) Beginning with FY 2013 and ending in FY 2015, the Secretary of Defense and each Secretary of a military department is authorized to use its SBIR funds for administration of this program in accordance with the procedures and policies set forth in section 9(e)(3) of this directive.

(ii) In addition, the Secretary of Defense and Secretary of each military department is authorized to use not more than an amount equal to 1% of its SBIR funds available to DoD or the military departments for payment of expenses incurred to administer the Commercialization Readiness Program. Such funds—

(A) shall not be subject to the limitations on the use of funds in 9(e)(2) or 9(e)(3) of this directive; and

(B) shall not be used to make Phase III awards.

16. Revise section 12(b)(5) to read as follows:

(5) *Contracts Valued at less than \$100,000,000.* For any contract awarded by DoD valued at less than \$100,000,000, the Secretary of Defense may:

(i) establish goals for the transition of Phase III technologies in subcontracting plans; and

(ii) require a prime contractor on such a contract to report the number and dollar amount of the contracts entered into by the prime contractor for Phase III STTR projects.

17. Revise section 12(b)(6) to read as follows:

(6) The Secretary of Defense shall:

(i) set a goal to increase the number of STTR Phase II contracts that lead to technology transition into programs of record of fielded systems;

(ii) use incentives in effect as of December 31, 2011 or create new incentives to encourage agency program managers and prime contractors to meet the goal set forth in paragraph (6)(i) above; and

(iii) submit the following to SBA, as part of the annual report:

(A) the number and percentage of Phase II STTR contracts awarded by DoD that led to technology transition into programs of record or fielded systems;

(B) information on the status of each project that received funding through the Commercialization Program and the efforts to transition these projects into programs of record or fielded systems; and

(C) a description of each incentive that has been used by DoD, the effectiveness of the incentive with respect to meeting DoD's goal to increase the number of STTR Phase II contracts that lead to technology transition into programs of record of fielded systems, and measures taken to ensure that such incentives do not act to shift the focus of STTR Phase II awards away from relatively high-risk innovation projects.

18. Revise paragraph 1(a) of the Appendix I: Instructions for Preparation of STTR Program Solicitation to read as follows:

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

19. In Appendix I, in the STTR Funding Agreement Certification and the STTR Funding Agreement Certification—Life Cycle Certification, revise the checkbox addressing potential duplicative funding to read as follows:

€ It will notify the Federal agency immediately if all or a portion of the work authorized and funded under this award is subsequently funded by another Federal agency.

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