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April 2, 2015

*Heidi Jacobus
Robert Schmidt
Co-Chairmen*

The Honorable Dr. Ernest Moniz
Secretary of Energy
Department of Energy
1000 Independence Ave. SW
Washington DC 20585

*Jere Glover
Executive Director*

*Larry Nannis
Treasurer*

Subject: DOE Policy for Phase III of Small Business Innovation Research Program

*Kevin Burns
Greg Zacharias
New England
Regional Chairs*

Dear Mr. Secretary,

*Matt Oristano
Joseph Schwartz
Mid-Atlantic
Regional Chair*

I am writing on behalf of the Small Business Technology Council (SBTC) to request that the Department of Energy implement the Phase III requirements of the SBA SBIR/STTR Policy Directives identified by Small Business Innovation Research Act as amended, 15 USC 638.

*Ash Thakker
Southeast
Regional Chair*

The SBTC is a non-partisan, non-profit, industry association dedicated to promoting the creation and growth of research-intensive, technology-based U.S. small businesses. SBTC is a council of the National Small Business Association (NSBA), the nation's first small-business advocacy organization celebrating more than 75 years in operation.

*Mary Delahunty
Southwest
Regional Chair*

*Russ Farmer
Mountain
Regional Chair*

Many of our members regularly participate in the DOE SBIR/STTR programs and have completed successful Phase I and II SBIR and STTR programs, benefitting both DOE and their small businesses. Overall, we are pleased with DOE's administration of the Phase I and II programs.

*Michael Browne
Pacific
Regional Chair*

There appears to be an issue, however, with management of Phase III programs within DOE. Contrary to Congressional legislation and the SBA policy directive, it appears that there is no established Phase III implementation policy within DOE, or with their prime contractor laboratories utilizing DOE SBIR/STTR technologies through Phase III procurements.

*Roy Keller
State Liaison*

*Greg Zacharias
DOD Committee
Chair*

The National Defense Authorization Act of 2012 and the policy directive from the Small Business Administration, clearly address the responsibility of Federal Agencies and their prime contractors to utilize technology developed in their SBIR/STTR Phase I & II programs "to the greatest extent practicable" through Phase III program procurements.

*Paul Donovan
Michael Squillante
NIH Committee
Co-Chairs*

It appears that more than three years after the legislation, there is no such established Phase III implementation policy within DOE or their prime contractor laboratories, which is inconsistent with the above SBIR/STTR program objectives.

*Ash Thakker
Phase III Committee
Chair*

*Russ Farmer
DCAA Committee
Chair*

The law authorizing the SBIR/STTR programs states:

"To the greatest extent practicable, Federal agencies and Federal Prime Contractors shall issue Phase III awards related to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology" (Section 5108, 15 USC 638 (r)(4) Phase III awards).



Phase III is further defined as "for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program [and is funded by non-SBIR funds]." (Section 5125, 15 USC 638 (e)(4) (c))

Phase III awards are required to be reported to Congress (Section 5138, 15 USC 638 (kk))

Agencies shall report "the average amount of time the agency takes to make a final decision on proposals submitted under such programs, the average amount of time the agency takes to release funding with respect to an award under such programs, and the goals established to reduce such amounts." (Section 5126 (b), 15 USC 638 (ii))

Some of our members are reporting that DOE and their associated laboratories are awarding contracts to other firms or funding further work at DOE laboratories without consideration of Phase III legislation and policy directives. DOE and laboratory personnel in some cases appear to be unaware of the Phase III legislation, or are inadequately trained in its requirements.

Examples include a new device for ITER, funded through the Office of Fusion Sciences, and a new type of ceramic fuel cladding for nuclear power plants, developed with funding from the Office of Nuclear Energy. Successful devices and technologies for these applications were developed in DOE Phase II SBIR programs. Procurement contracts were awarded by DOE National Laboratories to other firms without consideration of the Phase III policy preferences mandated by Congress. In another example, RF sources for the accelerator upgrade at Thomas Jefferson National Accelerator Facility were procured from a large supplier without consideration for a small business that successfully developed the product in a DOE-funded SBIR program, while in yet another, a national laboratory excluded an SBIR company in a project that would make use of and further develop SBIR technology. We are concerned that this might be viewed as a duplication of efforts and inefficient use of funds.

In these cases, our members report that the DOE Offices and their National Laboratories were unaware of any DOE Phase III policies mandating award preference to the associated small businesses.

Other Federal Agencies have embraced the Congressional Policy to the benefit of both the Agency and the small business technology innovation community.

As an example, attached is a December 2008 memorandum from the Deputy Under Secretary of Defense, which sets forth the DOD Phase III policy and establishes a clear agency directive to implement the policy within the DOD's procurement system. Also attached is Assistant Secretary Stackley's January 12, 2015 memorandum encouraging the Navy to make better use of SBIR Phase III awards. Finally, we are including the Department of the Navy's "SBIR and STTR Phase III Guidebook For Program Managers, Contracting Officers And Small Business Professionals" which may provide an example that may be of use to your team as a potential best practice.



We strongly believe a similar policy and Guidebook is needed within the Department of Energy.

Additionally, some DOE policies such as cost sharing discriminate against small businesses, because small businesses don't have the access or resources necessary to compete where cost sharing is required. Attached is our white paper on cost sharing.

The 2012 SBIR Policy Directive instructed all agencies to establish SBA-approved Commercialization Rate Benchmarks with which to measure commercialization performance by SBIR-participating firms. Failure to meet the set benchmark would mean a small business could be excluded from applying for SBIR Phase I awards. Setting a clear Phase III policy, and greatly increasing the utilization of the Phase III awards, makes it much more feasible for companies to meet commercialization benchmarks.

The SBTC is therefore requesting that DOE take action to develop and implement a Phase III policy within the Department and within its prime contractor National Laboratories. We know that implementing this policy will benefit both the DOE as well as its small business community.

We also request a meeting with you or your designee at an early date to discuss this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jere W. Glover". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Jere W. Glover
Executive Director
Small Business Technology Council

1. December 2008 memorandum from the Deputy Under Secretary of Defense Finley
2. Assistant Secretary Stackley's January 12, 2015 memorandum
3. Department of the Navy's "SBIR and STTR Phase III Guidebook For Program Managers, Contracting Officers And Small Business Professionals"
4. SBTC White paper to DOE on cost sharing

cc: Maria Contreras-Sweet, Administrator, Small Business Administration
John Williams, Director of Innovation, Small Business Administration
The Honorable David Vitter, Chair, US Senate Committee on Small Business & Entrepreneurship
The Honorable Ben Cardin, Ranking Member, US Senate Committee on Small Business & Entrepreneurship
The Honorable Steve Chabot, US Senate Committee on Small Business & Entrepreneurship