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The Honorable Mazie Hirono
United States Senate
109 Hart Senate Office Building
Washington DC 20510

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

Dear Sen. Hirono,

The Small Business Technology Council (SBTC) is a non-partisan, non-profit, industry association of approximately 7,000 U.S. small businesses located in all 50 U.S. States 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.

The SBTC would like to raise with you an important issue related to the Department of Energy SBIR/STTR Phase III program. Many of SBTC's member businesses 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 happy with DOE's administration of the Phase I and II programs.

We have concerns, however, with management of Phase III within DOE, which covers work following from or continuing SBIR Phase I or II. 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))

SBTC members have told us that DOE and their associated laboratories have awarded 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. 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.



While we are encouraged that DOE has recently released guidance to clarify their Phase III policy¹, the agency needs to do more to educate and encourage program offices, contracting offices and contracting officers to utilize Phase III.

Besides lack of awareness and education, the greatest obstacle to SBIR Phase III at DOE are cost-sharing requirements. Requiring cost-sharing for Phase III makes it very difficult, if not impossible for small businesses to participate, since most small businesses simply don't have the funds or resources necessary to meet these requirements. While the law does allow an exception to cost-sharing for SBIR, which includes Phase III, DOE frequently chooses to require it as a matter of policy, particularly SBIR programs administered under DOE's National Energy Technology Laboratory (NETL). For the DOE fully engage and benefit from the nation's innovative small businesses in energy-related research and development, they must remove the barrier imposed by cost-sharing.

For the U.S. to fully realize the benefits of energy innovation, the DOE needs to instruct all appropriate institutions and agencies under the DOE, particularly the DOE contracting officials, on the utilization of Phase III, as follows:

Take full advantage of Phase III sole-source contracting.

Waive FOA matching funds for SBIR companies and small businesses, as defined by the Small Business Administration.

The SBTC is therefore requesting that you encourage DOE take action to implement Phase III policy and commensurate education enterprise-wide, across the Department, particularly its prime contractor NETL, their contracting apparatus, contracting officers and program managers. We know that fully implementing and educating this policy will benefit the DOE, the U.S. small business community and U.S. energy innovation leadership.

We standby to answer any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jere W. Glover", written in a cursive style.

Jere W. Glover
Executive Director
Small Business Technology Council

¹ <https://science.osti.gov/sbir/Phase-III-Guidance>