

**THE OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR
RESEARCH AND ENGINEERING
RESPONSE TO
HOUSE AND SENATE SMALL BUSINESS COMMITTEE
INFORMAL VIEW
July 12, 2022**

REQUEST: House Small Business Committee (HSBC) asked for written response/informal views on legislative proposals on benchmarks [HSBC and Senate Small Business Committee (SSBC) benchmarks proposals summarized below]

SSBC Proposal 1 Multiple Award Winner (MAW) Commercialization Benchmark (SSBC 1): Restricts eligibility to the SBIR/STTR programs based on the total number of SBIR/STTR awards received from inception of the SBIR/STTR program (lifetime). The benchmark is based on the percentage of the small businesses' SBIR/STTR funding divided by federal revenue derived from SBIR/STTR awards.

SSBC Proposal 2 MAW Commercialization Benchmark (SSBC 2): Restricts eligibility to the SBIR/STTR programs based on the average number of SBIR/STTR awards received over a 5-year period. The benchmark is based on the percentage of the average SBIR/STTR funds over a 5-year period divided by average gross revenue over the same 5-year period.

Representative Velazquez MAW Performance Benchmarks (HSBC 1): Restricts eligibility based on enhanced requirements associated with the existing Phase I to Phase II transition rate and the Phase III commercialization benchmarks.

RESPONSE:

HSBC and SSBC requested OUSD(R&E) comments on benchmarking proposals that would be attached to the SBIR/STTR reauthorization. These benchmarking requirements present significant concerns for the Department. A program extension is the preferred approach to enable DoD, U.S. Small Business Administration (SBA), and other agencies to fully assess potential program changes. **OUSD(R&E) is extremely concerned that the program has not yet been reauthorized, as the program and the small businesses that participate in the program are a vital part of the DoD R&D enterprise. SBIR and STTR provide a unique and critical funding source to develop some of the most important technologies for the DoD. The Department is concerned that any gaps or delays in reauthorization will cause irreparable harm to the small business community and have an adverse impact on national security.**

The Department, as well as the SBA and other agencies, respectfully disagree with the argument that multiple awards represent a significant problem and that having multiple awards "crowds out" or limits competition. All SBIR/STTR awards are competitively awarded efforts with multiple awards addressing multiple topics. While a company can receive multiple awards, those awards are not for the same topic. **In addition, the Department is concerned about the impact to the Department's small business innovation base and its ability to meet warfighter needs if current**

SBIR/STTR projects are terminated due to benchmarks that go too far. In addition, the Department is also concerned about the additional technology infrastructure and staffing that will be necessary to enable increased levels of reporting and oversight necessitated by proposed new benchmarks. Should new benchmarks be implemented, the Department and SBA strongly believe the responsible path forward is to implement any new benchmarks using a pilot approach where new benchmarks could be phased in with sufficient time to understand the full consequences and impact on small businesses, Department, SBA and other agency resources, as well as critical national security missions of the approach.

Important terms have been defined differently across the proposals., the Department has used the following definitions in driving commonality in interpretation between proposals:

- **Multiple Award Winners (MAWs):** MAWs are defined as those small businesses receiving 50+ SBIR/STTR awards since SBIR/STTR program inception.
- **Commercialization:** The process of developing products, processes, technologies, or services and the production and delivery (whether by the originating party or others) of the products, processes, technologies, or services for sale to or use by the Federal government or commercial markets. (ref: Small Business Administration SBIR/STTR Policy Directive, dated October 1, 2020, paragraph 3. Definitions. Subparagraph (f) Commercialization)

Finally, out of the three proposals, DoD cautiously recommends moving forward on a 2-year pilot basis, HSBC 1 for the following reasons:

- This proposal is comparable, with respect to implementation, to current benchmarks and would cause the least disruption to execution of the SBIR/STTR program.
- The impact is more reasonable and allows for the Department to continue to invest in those riskier, challenging research and development activities and prototypes that DoD needs to test and learn from in order to advance mission-critical technologies. The Department, working with SBA, has concluded that 10% of the small businesses would trigger limits associated with these benchmarks, all of which do business with DoD. Tier 2 Phase I to Phase II transition benchmark for firms with more than 50 awards would impact approximately 21 firms and the Tier 2 Commercialization benchmark for firms with more than 50 awards would impact approximately 152 firms.
- This proposal includes an exception/waiver process that allows an agency to adjust the benchmarks if warranted over time. The Department, however, is concerned with including detailed specificity on benchmarks in statute as this limits the ability to adjust benchmarks in the future.
- This proposal also would allow a phased approach to implementing new benchmarks.
- **The Department strongly non-concurs with the other two proposals, SSBC 1 and SSBC 2, as they would have drastic impact on the Department's SBIR/STTR program.**
 - **SSBC1 would impact 47% (16,543 out of 35,011) of DoD awards between FY10-FY21, which would limit the ability for these companies to participate within the program.**
 - Commercialization defined solely by Phase III federal contracts would grossly underestimate post-SBIR/STTR commercialization revenues. Furthermore, program

commercialization success is not limited to federal contracting. Companies commercialize their R&D work through both federal and non-federal follow-on funding, which should all be counted as “Phase III” per 15 USC 638. For example, companies who commercialize their SBIR/STTR funded work as suppliers to Prime Defense Contractors would not be included in this total.

- The revenue focus is a misleading benchmark as many of the most innovative technologies require years of research and development and prototypes prior to generating revenue from federal and non-federal sources. From the Department’s perspective, revenue is not a benchmark for enabling critical innovation necessary to America’s national security.
- SSBC 2 would most severely impact the DoD, with 95% of the small businesses impacted being DoD performers. The most immediate impact would be that 347 small business, including companies that have received Phase III funding would be immediately excluded from participating in the program.
- These proposed benchmarks will be resource intensive and time-consuming for the Department that will require growth in program funding or result in less funding for innovative small businesses. The proposed benchmarks are also onerous for the small businesses to implement and would result in delays in the selection process while agencies wait for determination as to whether or not the firm meets the benchmark and can receive an award.
- Emphasis on commercialization, through the DoD Commercialization Readiness Program for technologies developed with SBIR funding was not put into statute until 2006, establishing these benchmarks would be tantamount to retroactive application/enforcement of benchmarking. Also, note that existing benchmarks were established in 2011 authorization.