



Navigating Phase III Contracting Workshop

Welcome! The workshop will get started at 1PM.



U.S. DEPARTMENT OF
ENERGY

Office of SBIR/STTR
Programs

Workshop Agenda



- | | |
|--------------------------|--|
| 1:00 PM — 1:05 PM | Welcome |
| 1:05 PM — 1:30 PM | <i>Phase III Legal Framework</i>
<i>Mike Dobbs Deputy Chief Counsel, Office of Science, DOE</i> |
| 1:30 PM — 1:45 PM | <i>Challenges in Interpreting/Executing Phase IIIs</i>
<i>Manny Oliver Director, Office of the SBIR/STTR Programs, DOE</i> |
| 1:45 PM — 2:05 PM | <i>NETL/OE Phase III – Brains4Drones</i>
<i>Stewart Cedres DOE Office of Electricity</i>
<i>Susan Rossbach Brains4Drones</i> |
| 2:05 PM — 2:30 PM | <i>ANL Phase III – RadiaBeam</i>
<i>Geoff Waldschmidt Argonne National Laboratory</i>
<i>William Schuch Argonne National Laboratory Contracting</i>
<i>Marcos Ruelas RadiaBeam</i> |



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2:30 PM – 3:00 PM

NNSA Phase III – Applied Spectra and DIRAC

Arden Dougan | DOE National Nuclear Security Administration

Katie Wroblewski | DOE Contracting

Rick Russo | Applied Spectra

Faranak Nekoogar | DIRAC

3:00 PM – 3:20 PM

DOD Navy – Niowave

Quentin Saulter | U.S. Navy, Office of Naval Research

Jerry Hollister | Niowave

3:20 PM – 3:55 PM

ROUNDTABLE DISCUSSION

Jon Edelen | RadiaSoft

Richard Fink | Applied Nanotech

Isar Mostafanezhad | Nalu Scientific

3:55 PM

Closing Remarks



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Implementation of Phase III Awards

Manny Oliver

Director, Office of SBIR/STTR Programs

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September 28, 2023



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SBIR/STTR Policy Directive: Phase III Awards

- SBIR/STTR Policy Directive 4(c) provides language explaining Phase III in greater detail than captured in the statute.
https://www.sbir.gov/sites/default/files/SBA%20SBIR_STTR_POLICY_DIRECTIVE_May2023.pdf
- (c) “Phase III refers to work that derives from, extends, or completes an effort made under prior SBIR/STTR Funding Agreements, but is funded by sources other than the SBIR/STTR programs. Phase III work is typically oriented towards Commercialization of SBIR/STTR research or technology, including through further R/R&D work.”
 - (1) *Phase III Work*
 - Includes both private sector funded and Federally funded Phase III awards (Policy directive applies only to Federally-funded Phase III)
 - (2) *Data Rights*
 - “A Phase III award is, by its nature an SBIR/STTR award, has SBIR/STTR status, and must include SBIR/STTR Data Rights protection.”
 - (3) *Competition Requirements*
 - “The competitions for SBIR/STTR Phase I and Phase II awards satisfy any competition requirement of the Armed Services Procurement Act, the Federal Property and Administrative Services Act, and the Competition in Contracting Act.”

Data Rights Issues

- Case: A small business applies for an award to a competitive DOE (non-SBIR/STTR) solicitation and is selected for award. The proposed project is an extension of a prior SBIR/STTR award.
 - *Is the small business entitled to SBIR/STTR data rights?*
 - *Was the small business required to disclose that the proposed project was an extension of a prior SBIR/STTR award in its application?*



Data Rights Issues

- Case: A small business applies for an award to a competitive DOE (non-SBIR/STTR) solicitation and is selected for award. The proposed project is an extension of a prior SBIR award.
 - *Is the small business entitled to SBIR/STTR data rights? YES, because the award is an extension of previous SBIR it is a Phase III award and entitled to SBIR data rights.*
 - *Was the small business required to disclose that the proposed project was an extension of a prior SBIR/STTR award in its application? NO. There is no requirement to disclose that the proposed project is an extension of prior SBIR in the application to receive a Phase III award*



SBIR/STTR Policy Directive Phase III Awards

- SBIR/STTR Policy Directive 4(c)
 - (4) *“Phase III work may be for products, production, services, R/R&D, or any such combination.”*
 - (5) *There is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern. There is no limit on the time that may elapse between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award. A Federal Agency may enter into a Phase III SBIR/STTR agreement at any time with a Phase II Awardee. Similarly, a Federal Agency may enter into a Phase III SBIR/STTR agreement at any time with a Phase I Awardee. A subcontract to a Federally-funded prime contract may be a Phase III award.*
 - (6) *Size. The small business size limits for Phase I and Phase II awards do not apply to Phase III awards.*



SBIR/STTR Policy Directive Phase III Awards

- SBIR/STTR Policy Directive 4(c)
 - (7) *“Special acquisition requirement. Agencies or their Government-owned, contractor-operated (GOCO) facilities, Federally-funded research and development centers (FFRDCs), or Government prime contractors that pursue R/R&D or production of technology developed under the SBIR/STTR program shall issue Phase III awards relating to the technology, including sole source awards, to the Awardee that developed the technology under an SBIR/STTR award, to the greatest extent practicable, consistent with an Agency’s mission and optimal small business participation.”*



SBIR/STTR Policy Directive: Phase III Awards

- SBIR/STTR Policy Directive 4(c)
 - (7) *This section also contains information about implementing special preference and how to appeal decisions not to issue a Phase III award to the Small Business Administration*
 - (i) Implementing the requirement.
 - (ii) Sole Source Awards.
 - (iii) Other Preference.
 - (iv) Agency Notice of Intent to Award.
 - (v) SBA Notice of Intent to Appeal.
 - (vi) Suspension of Work.
 - (vii) SBA Appeal.
 - (ix) SBA Case Report to Congress.

Special Acquisition Requirement Issues

- Case: A small business reviews a broad solicitation issued by DOE (non-SBIR/STTR) looking for new innovations in nuclear energy. The company previously received SBIR Phase I and II awards to develop novel fuel rod technology for nuclear reactors.
 - *Is DOE required to issue the small business a sole source Phase III award?*



Special Acquisition Requirement Issues

- Case: A small business reviews a solicitation issued by DOE (non-SBIR/STTR) looking for new innovations in nuclear energy. The company previously received SBIR Phase I and II awards to develop novel fuel rod technology for nuclear reactors.
 - *Is DOE required to issue the small business a sole source Phase III award?* **NO**
 - The special application requirement applies only in cases where DOE is seeking the specific technology developed under the SBIR program



Special Acquisition Requirement Issues

- Case: A small business is notified that a DOE National Lab is issuing a competitive solicitation for RF loads to be used for the ITER fusion reactor. The small business has previously received Phase I and II awards to develop RF loads for fusion reactors.
 - *Is the DOE National Lab required to issue the small business a sole source Phase III award?*



Special Acquisition Requirement Issues

- Case: A small business sees that a DOE National Lab is issuing a competitive solicitation for RF loads to be used for the ITER fusion reactor. The small business had previously received SBIR Phase I and II awards to develop RF loads for fusion reactors.
 - *Is DOE required to issue the small business a sole source Phase III award? NO*
 - *In this case the solicitation was not requesting the specific technology developed under the SBIR program by the small business. The RF load had to meet specific performance requirements, but the solicitation did not specify a technology that was required to meet the requirements.*



Who must comply with the Special Acquisition Requirement?

- “Agencies or their Government-owned, contractor-operated (GOCO) facilities, Federally-funded research and development centers (FFRDCs), or Government prime contractors”
- This applies DOE, DOE National Labs, and DOE-funded prime contractors
- Most organizations (Federal agencies, National Labs, private companies) have competition requirements to ensure they are getting the best value.
- Issuing sole source awards typically requires justification and approval
 - *DOE Headquarters*
 - JOFOC: Justification for Other than Fair and Open Competition
 - More details: <https://www.energy.gov/management/articles/competition-requirements-0>



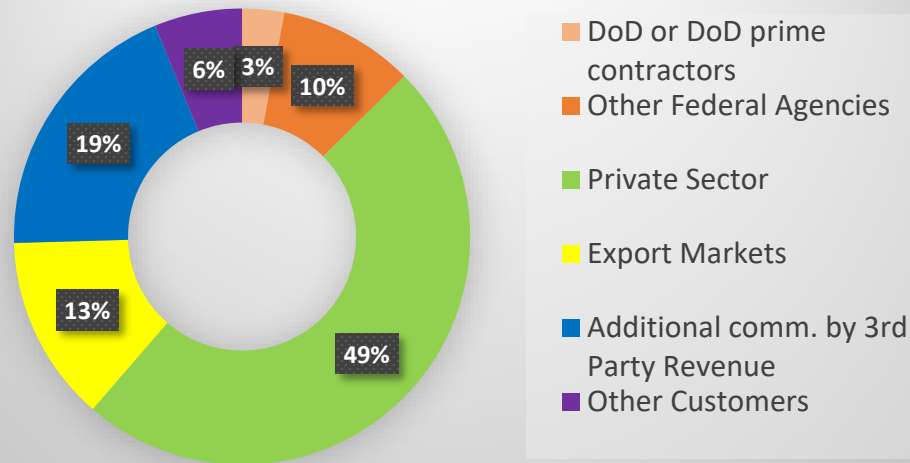
Court Cases

- Night Vision Corp. vs. United States (2005)
 - *Night Vision received Phase I and II awards from the Air Force to develop wide field of view night vision goggles. The Air Force subsequently issued a contract to another firm, who had been a subcontractor to Night Vision during the Phase II award. Night Vision sued claiming that it was owed a Phase III award based on successful completion of the Phase I and II awards. The court ruled in favor of the United States.*
 - <https://www.uscfc.uscourts.gov/sites/default/files/opinions/BLOCK.NightVisionReissd.pdf>
- Lite Machines Corporation vs. United States (2018)
 - *Lite Machines received Phase I, II and III awards from the Air Force to develop technology related to unmanned aerial vehicles. When the Air Force subsequently awarded a large contract to a competitor, Lite Machines sued claiming that it was entitled to a Phase III award under the Special Acquisition Requirement and this requirement should have been incorporated in its awards. The court ruled in favor the United States.*
 - https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2018cv1411-34-0

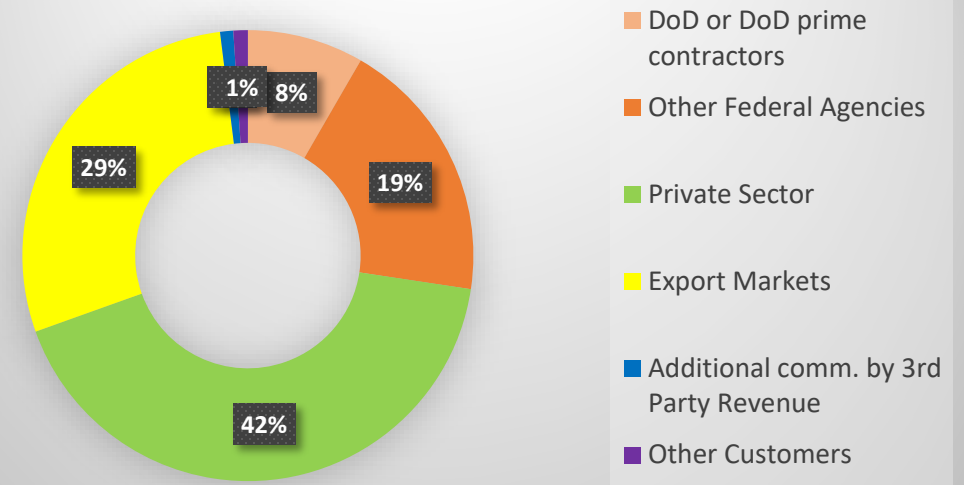
Where do DOE SBIR/STTR awardees obtain Phase III Awards?

- Based on past awardee reports to SBIR.gov (Company Commercialization Report), there has been an increase in sales to Federal customers

Sales, 1983-2010 Awards



Sales, 2011-2020 Awards



Workshop Take Aways



- Awarded when there is an identified **urgent need** for the technology
- **Need an internal champion** – make sure you are building relationship with your program manager during Phase I and Phase II
- Personnel change at multiple points – program manager, customer, contracting...need to **build new relationships** when that happens
- **Use memo to educate** on Phase III contracting points – more tools to be developed - https://science.osti.gov/-/media/sbir/pdf/docs/2019/HCA_memo_on_Phase_III_SBIRSTTR_awards.pdf
 - *Technology has already been competitively vetted (can be sole source)*
 - *Phase III can stem from Phase I or Phase II – can be from any agency and can have any amount of time between SBIR awards and the Phase III award*
 - *Extends the data rights of the technology another 20 years*
 - *No maximum amount and/or limit on the number of Phase III awards that can be issued*
- **Don't give up!**





Quick Partnering Updates

Carol Rabke, Ph.D.

Tech to Market (T2M) Advisor - Partnering

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You will need
partners to
successfully
commercialize...



Partnering Events for DOE Phase II Awardees

- ***Virtual Quarterly Commercialization Workshops*** focused on topics that are typical areas of weakness - manufacturing, licensing, financial modeling, preparing to pitch, intellectual property strategies, etc.
- ***virtual Partner Pitch Program (vP³)*** on Tuesdays in April/May and August/September
 - *97 Phase II awardees pitched*
 - *Stakeholders register for pitches of interest to them*
 - *Fourteen (14) different Pitch Sessions organized by topic areas*
 - *DOE Disclaimer: no guarantee of stakeholder interest/participation; not endorsing stakeholders; unvetted*



SBIR Partnering Platform

- A **public facing, self-supporting searchable database**; anticipated public release **mid-October**.
- Objective: provide a repository where SBIR/STTR applicants/awardees (**INNOVATORS**) can find potential partners (**PARTNERS**) and partners can access 1000+ vetted technologies
 - *PARTNERS/INNOVATORS register independently*
 - *AI will be used for matchmaking; confidential messaging*
 - *Pitch session recordings will be made available to session registrants*
 - *General resources as well as newsfeed for applicable industry/stakeholder news*



Questions??

We value your feedback to help us improve the DOE SBIR/STTR Programs

Interested in understanding your individual partnering needs

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<https://science.osti.gov/sbir>

