

Unleashing Small Business Innovations: A Path to Growth and Prosperity

SBIR/STTR – Part 1



Karri Palmetier



Palmetier Law was founded to help small and medium-sized businesses navigate the maze of government contracting regulations. As a WOSB/SDVOSB, Karri understands the entrepreneurial spirit of a small business and appreciate the difficulties they face to enter the government contract market. With more than two decades of experience in the Air Force, major defense contractor and law firm, she brings a unique perspective as a trusted adviser to support companies.

My Primary Practice areas are:

- Small Business Requirements
- Data Rights and Patents
- Ethics Programs
- Contract Administration and Terms/Conditions
- Commercial Item Status
- Subcontract Management
- Non-FAR Contracts
- Compliance and Training

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- SBIR Background and Goals
- Eligibility Requirements
- Ownership, Control and Influence
- Contract Management
- SBIR Compliance Matters
- Subcontractor Matters
- Potential Pitfalls

- Authorized by statute through the SBIR Development Act of 1982
 - Implemented through SBA Policy Directive
 - Reauthorized in Sept 2022:
 - Increased Government due diligence reviews for cybersecurity, patents, employee composition, and
 - Ties to foreign countries of concern (People's Republic of China, the Democratic People's Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State)
 - Small businesses with large quantity of SBIR awards must show commercialization

- Enable small businesses to pursue research and development to maintain and strengthen the industrial base and the national economy
- Invest taxpayer dollars to develop and commercialize innovation
- Stimulate Small Business Economy
 - Enable technological innovation
 - Foster technology transfer with research institutions (STTR)
- SBIR/STTR Success Stories: iRobot, Symantec, Qualcomm

Authorized Agencies

Agriculture
Commerce
Defense (DoD)*
Education
Energy (DoE)*
National Institute of Health (NIH)*
Homeland Security (DHS)
Transportation (DoT)
Environmental Protection Agency (EPA)
National Aeronautics Space Administration (NASA)*
National Science Foundation (NSF)*

Requirements

- Agencies with >\$100M in R&D, must expend 3.2% of R&D on SBIR/STTR awards
- With >\$1B, must expend 0.45%

*STTR

SBIR Phases

- Phase 1 and Phase 2 (Research and Development)
 - Must be funded with SBIR funds
 - Subject to SBIR statutes and regulations
 - Includes FAR and supplements
 - May be a procurement, grant, or other agreement
 - Each agency/department has different process
 - Managed by SBIR Program Managers
 - Small business must control and be responsible for contract performance

You are the Prime – In Charge and Responsible

SBIR Phases

- Phase 3
 - Commercialization and Procurement phase
 - May not be funded with SBIR funds
 - Managed by Program of Record
 - May be subject to standard procurement regulations such as FAR or other transaction authorities
 - May be awarded without competition; ie Sole Source to owner of SBIR Rights
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SBIR/STTR Comparison

Requirement	SBIR	STTR
Partnering Requirement	No specific requirement but allowed	Small business must partner with non-profit research institution
Principal Investigator	Must be employed by Small business (51% of time)	May be employed by Small business or research institution
Work Requirement	Must perform 2/3 work in Phase I and 50% of work in Phase II	Small business must perform 40% Research institution must perform 30%
Funding Amounts	Must spend 3.2% of extramural R&D funds	Must spend 0.45% of extramural R&D funds
Majority VC Ownership	Some agencies have opted in	Not allowed
Participating Agencies	11 agencies	5 agencies

Always Read the Solicitation

- Small Business with fewer than 500 employees including affiliates
- Be organized for profit
- Principal place of business in the United States
- Appoint principal investigator who has appropriate expertise to oversee project technically and scientifically
- Meet ownership and control requirements

Ownership and Control Requirements

- Must be unconditionally owned by at least 51% US Citizens and Permanent Residents
 - Foreign ownership is allowed with conditions
 - Must be minority interest
 - Full Disclosure as certain countries are prohibited (currently China, Russia, North Korea, Iran)
- Must be fully controlled by US Citizens and Permanent Residents
 - If by a company, company must comply
 - If joint venture, each member must comply
 - Foreign control and influence is **prohibited**

Ownership and Control Requirements

- Watch for Affiliation issues, especially with any changes in ownership, new minority owners, investors
 - Must notify Contracting Officers and Small Business Administration (SBA) of changes in ownership and control
 - Affiliation includes common ownership, common management, identity of interest and others under 13 C.F.R. §121.103

Ownership and Control Requirements

- Venture Capital firms, hedge funds, etc
 - No individual firm may have majority interest
 - If majority-owned by multiple, then limited SBIR eligibility and no STTRs
 - Will need to provide citizenship, affiliations, and more for each individual investor
 - Must have office within the United States
 - Only following agencies opted into the program
 - Department of Health and Human Services (Centers for Disease Control and Prevention, and the National Institutes of Health)
 - Department of Energy (Advanced Research Projects Agency)
 - Department of Defense (Defense Advanced Research Projects Agency)
 - Department of Defense (Department of the Navy)
 - Department of Defense (United States Air Force)
 - Department of Education
 - Many reporting obligations and increased oversight on agencies so not available for all SBIR awards

- Agencies may issue open request for any type of research or solution
- Agencies may describe the technical areas of interest
- Some have annual cycle
- Broad Agency Announcement (BAA)
- Funding Opportunity Announcement (FOA)
- Notice of Funding Opportunity (NOFO)
- Request for Application (RFA)

- Contract
 - DoD, DHS, EPA, DoT, DoED, NSF (occasionally)
 - Agency purchases specific product with more defined requirements
 - Federal Acquisition Regulation applies
- Grant
 - NSF, DoE, USDA, NIST, NOAA, NSF
 - Provides money for general research to support public purpose
 - 2 CFR Part 200 applies
- Other Transaction Agreement (OTA)

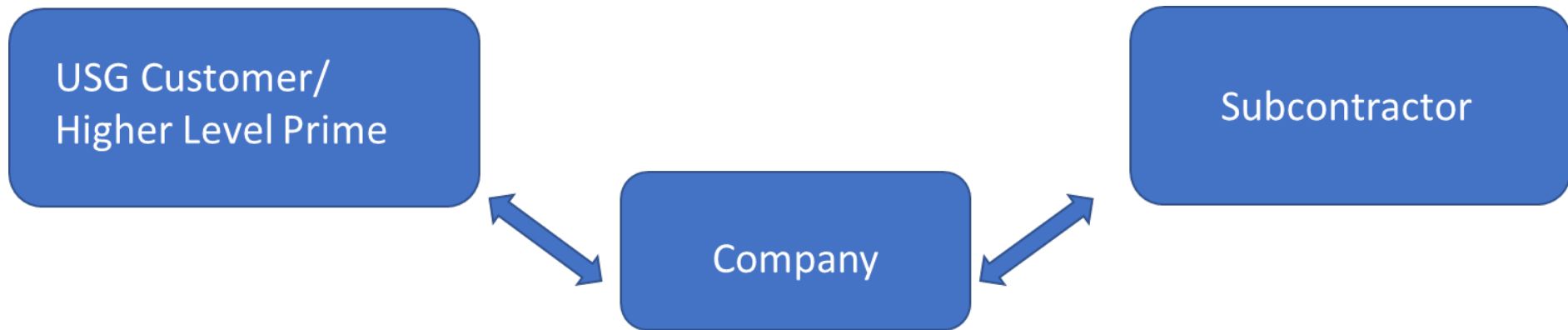
- Key Personnel
 - Principal Investigator must be full time to small business
 - Consider language in employment agreements
 - Government approve changes to PI
- Information Technology
 - Cybersecurity: FAR 52.204-21, DFARS 252.204-7012
 - Banned equipment; Chinese (FAR 52.204-25), Kaspersky (FAR 52.204-23)
 - Section 508 of the Rehabilitation Act for electronic and information technology
- Export Control
 - Determine if information is export controlled and if licenses required
 - Check for dual use authorization by Government

- Domestic Sourcing
 - Purpose is to grow U.S. economy
 - “support scientific excellence and technological innovation through the investment of Federal research funds in critical American priorities to build a strong national economy... one small business at a time”
 - Purchase only American-made equipment and products *to the extent possible*
 - All work must be performed in the United States Standard Requirements under Buy American Act, Trade Agreements Act and others may apply too

- Types:
 - IT Security Management Plan
 - Interim and Final Reports
 - Patent Reports
 - Phase II Proposal
 - Hardware, software code
- Determine required contents (SOW) and format (usually a clause)
 - Do not include proprietary, export-controlled or classified unless approved by contracting officer
- Mark everything as required by contract clauses

- Approved Systems
 - Usually in Phase II or Phase III
 - Accounting: on cost reimbursement contracts must track cost elements and comply with cost principles
 - Property: if receive government property or purchase property under cost reimbursement contracts must track property inventory at prime or subcontractor
 - Procurement: on cost reimbursement contracts, establish a system that complies with FAR and DFARS
 - For DoD, requires DCMA or DCAA approval

- You Are Responsible for Subcontractors
- Consider: Common Goals, Intellectual Property, Liability, Future Relationships
- Due Diligence Check
 - Ask tough questions: capable, partner, liability, licenses
 - Allocation of work tasks
 - Check if suspended or debarred (FAR 52.203-6)
 - Validate responsibility (FAR Subpart 9.4)
- Limitations in Subcontracting
 - Phase I – Small business must perform 2/3 of research and development
 - Phase II – 50% of R/R&D
 - STTR – small business must perform 40% of R&D work and Research Institution must perform 30% of R&D
 - For Phase III, FAR 52.219-14 may be included



- Flowdown Requirements
 - Clauses both FAR and full text
 - SBIR/STTR requirements
 - Quality Control: e.g. ISO, AS9100, GIDEP
 - Acceptance criteria
 - Representations and certifications

- Federal and State Governmental entities like universities, testing facilities, laboratories, and nonprofits
 - Will assign a principal investigator (may want to designate as key person)
 - Negotiations may take time
 - Sovereign entities and have special rules that impact intellectual property, controls, and contract types
 - Fundamental Research is strong preference
 - Strong desire to be able to publish
 - Export control and cybersecurity require additional approvals
 - For STTR, research institute must be U.S. university, Federally funded R&D Center, or non-profit research institution

Build and Manage Your Team

- Criteria for Selecting Your Team
 - Ensure alignment of goals
 - Talk with entire entity (contracts, finance and legal)
 - Complete a due diligence check
- Questions to Ask
 - *Will they commit to commercializing the technology?*
 - *Who will need to approve the arrangement?*
 - *What type of IP rights will they grant you? Cost?*
- Allocation of Tasks
 - Essential Duties – Principal Investigator
 - Consider What Skills You Need To Commercialize
 - Obtain IP Rights Needed for Commercialization
- Consider an Overarching Teaming Agreement

Start Assembling Team Immediately
Don't Delay Until Final RFP

- Manage Schedule and Be Proactive
- If can't avoid, then follow notification process
 - USG has discretion to approve
 - Even if approved, may be considered in past performance and subsequent awards
- Cure Notice
 - Respond in writing with facts
 - Assert defenses if applicable

Do Not Default

- Accept funding on more than one SBIR/STTR for essentially equivalent work
- Misrepresentations on principal investigator, percentage of work performed, funds expended
- Falsification of research or plagiarism on reports
- Undisclosed conflicts of interest



Karri L. Palmetier

Karri@palmetierlaw.com

(303) 697-8914

(317) 397-7344

www.palmetierlaw.com

SBIR/STTR Program

- SBA - www.sbir.gov
- VC Ownership - <https://www.sbir.gov/vc-ownership-authority>
- Tutorials - www.sbir.gov/tutorials

Agencies

- Agriculture - <https://www.nifa.usda.gov/grants/programs/small-business-innovation-research-technology-transfer-programs-sbirsttr>
- Commerce/NIST - <https://www.nist.gov/tpo/small-business-innovation-research-program-sbir>
- DoD SBIR - <https://www.defensesbirsttr.mil>

- Energy - <https://www.energy.gov/science/sbir/small-business-innovation-research-and-small-business-technology-transfer>
- HHS/NIH - <https://seed.nih.gov>
- DHS - <https://www.dhs.gov/science-and-technology/sbir>
- NASA - <https://sbir.nasa.gov>
- NSF - <https://seedfund.nsf.gov>
- Transportation - <https://www.volpe.dot.gov/work-with-us/small-business-innovation-research>