

BURNS & LEVINSON LLP

Funding Your Company with Government Contracts and Grants Including the SBIR/STTR Program

Bootstrapping 101: Alternative Ways to Fund a Startup

Boston IEEE Entrepreneur Network

November 5, 2013

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U.S. Federal Laboratory System

- Federal laboratories belong to Federal Laboratory Consortium
- There are about 600 Federal laboratories, with over 200,000 engineers and scientists
- These Federal laboratories have approximately \$40B in funding
- Advance ongoing relationships with these engineers and scientists, make the Federal Laboratories aware of your technology

Government Contracts and Grants

- **Contracts**
 - Acquire (by purchase, lease or barter) property or services for direct benefit of U.S. Government
 - Governed by federal acquisition regulations (FARS and DFARS)
- **Grants**
 - Carry out a public purpose of support or services or stimulation authorized by a law of United States
 - Governed by terms of grants

Government Contracts and Grants (cont.)

- Small Business Innovation Research (SBIR) Program
- Small Business Technology Transfer (STTR) Program

Sources of Information

- Contracts – www.fbo.gov
 - FedBizOpps, formally Commerce Business Daily
- Grants – www.grants.gov
- SBIR's and STTR's – www.sbir.gov
www.zyn.com/sbir
- Keep Current – www.zyn.com/sbir/insider

Funding of SBIR/STTR Programs

- 1982: Government committed \$36 million in funds
- Present: Government committed over \$2.5 billion in funds
 - Department of Defense (DOD)
 - Health & Human Services (NIH) are the largest supporting agencies

Funding of SBIR/STTR Programs (cont.)

- Other Agencies/Departments
 - Agriculture
 - Commerce
 - DHS
 - Education
 - Energy
 - NASA
 - NSF
 - Transportation
 - EPA

What are the Programs?

- SBIR Program
 - Small technical companies (under 500 employees)
- STTR Program
 - Minimum 40% involvement of small technical company (under 500 employees)
 - Minimum 30% involvement of non-profit research institutions, contractor-operated federally funded research and development centers, or universities

Small Business Qualifications for SBIR/STTR Programs

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- Independently owned and operated
- Principal place of business located in U.S.
- At least 51% owned (or if publicly traded, 51% of voting stock owned) by U.S. citizens or permanent resident aliens
- For profit

Small Business Qualifications for SBIR/STTR Programs (cont.)

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- Company size limited to 500 employees
- Principal researcher employed by small business
- In SBIR program only, the small company may be majority owned by multiple venture capital companies, hedge funds or private equity firms and still be eligible for SBIR funds

Program Structure: Phase I

- Approximately 15% of applicants receive awards
- Establish technical merit and feasibility
 - SBIR: 6 months/\$225K
 - STTR: 1 year/\$150K
- Sole Source Procurement is available under Phases I, II, or III

Program Structure: Phase II

- Approximately 40% of Phase I recipients receive awards
- Continues R&D efforts from Phase I and begins evaluation of commercial potential (purpose to refine, test and evaluate concept)
- SBIR: 2 years/\$1.5M
- STTR: 2 years/\$1M

Program Structure: Phase III

- Commercialization of Phase I/Phase II results
- Work that derives from, extends, or completes an effort made under prior SBIR funding agreements, but is funded by sources other than the SBIR Program
- Phase III work is typically oriented towards commercialization of SBIR research or technology

Contractor's Patent Rights Under FAR 52.227-11

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- Contractor may retain the entire right, title, and interest throughout the world to each subject invention. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

Subcontracts

- Subcontract shall contain flow down clauses from prime contract
- Subcontractor shall retain all rights as if subcontractor were contractor
- Contractor shall not, as part of consideration for awarding subcontract, obtain rights in subcontractor's inventions
- Subcontract can be Phase III SBIR/STTR even if prime contract is not an SBIR contract

“March-In” Rights

- Federal Agency has right to require contractor, an assignee or exclusive licensee, to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to responsible applicants in the following cases...

“March-In” Rights (cont.)

- Contractor or assignee has not achieved practical application of invention
- Health & Safety needs not satisfied by Contractor or assignee
- Public use specified by public regulations if not satisfied by Contractor or assignee

Data Rights for SBIR-STTR Program

- Small business concern retains rights to data in performance of award for not less than four years
- Agencies are required to protect SBIR data rights developed from Phases I, II and III

Data Rights for SBIR-STTR Program (cont.)

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- SBIR data rights continue to be protected from date of delivery of last deliverable under award
- SBIR data that is protected and referenced under a subsequent SBIR award remains protected under subsequent award

Benefits of the SBIR/STTR Program

- No Debt
- No Equity
- No Royalties
- Government Technical Analysis
- Credibility
- Ownership of Intellectual Property
- Confidentiality
- Government Procurement
- Debriefing
- Sole Source