Comments from Jim Greenwood, Greenwood Consulting Group, Inc.
SBA's SBIR/STTR Policy Directive – 10/4/12

Section I., "SBA requests comments on ways to simplify and improve the application process…"

The biggest help in this regard would be a major overhaul, or replacement of, the grants.gov electronic proposal submission process. It is difficult, bureaucratic, non-user-friendly, lacking in helpful error comments, and generally the most difficult and counter-intuitive submission process used by the SBIR/STTR agencies. When NIH has to issue a manual on how to submit an SBIR/STTR proposal using grants.gov, and that manual is over 200 pages long, it should be clear that grants.gov is where SBA should focus attention to "simply and improve the application process."

Section 4(a). Benchmark commercialization rate

The policy directive's recommendation for benchmark rates to decide if an SBIR/STTR competitor's conversion rates of Phase 1's to Phase 2's, and Phase 2's to Phase 3's, is completely contradictory to the "simplification and standardization" requirements of the Legislation. 1st the benchmarks apply to winners of 20+ Ph1s or 15+ Ph2s over 5 years, excluding the past 2 years. Or the agencies can apply it to a 10 or 15 year period, excluding the most recent fiscal year. The transition rate then applies to number of awards during the previous 5, 10 or 15 fiscal years, excluding the most recent year. It continues with this complex, convoluted set of options that make it impossible for an SBIR/STTR competitor to know or keep track of its standing with any given agency until being put in the 1 year "time out" mandated by the legislation. All of this needs to be simplified, with a minimum variability depending on agency differences in the commercialization expectations and experiences.

Section 4(b). No prescreen, invitation, or preselection for Phase 2 awards.

We agree with the intent of the Legislation, which is to avoid agencies predetermining the winners of Phase 2 awards. However, we disagree with the extreme interpretation that we have heard some at DOD are taking to this provision. Those parties are claiming that it is not possible to issue any "letter of encouragement" or similar effort to give an SBIR/STTR competitor an indication of his/her chance of success. It is one thing to say agencies cannot preclude someone from submitting a Phase 2 proposal, but it is another thing to say agencies can't offer encouragement to certain potential applicants. I do not want to be precluded from submitting, but I also appreciate an indication whether the agency is interested in my Phase 2 project—I do not want to waste my time and money writing a proposal that has little chance of success. DHS handled this very well a few years ago, when they said they would offer an encouragement to those proposers from which they would like to receive a Phase 2 proposal, but left the door open to receive a Phase 2 proposal from anyone else who felt strongly that they wanted to submit it. Further, an unnecessarily broad interpretation of the Legislation here will be contrary to the requirement that agencies make funding decisions within 90 days of the proposal due date.

Section 4(c). "greatest extent practicable" use of STTR company for Phase 3

SBA asks for comments on whether it should more precisely define what this means. The answer is YES. My recommendation is that, if an agency does not want to issue a sole source award to the Phase II awardee, then it must submit justification to SBA with a copy to the Phase 2 company. Either SBA or the Phase 2 company should be able to contest this decision. Put simply, the burden of proof as to why a

Phase 2 company should NOT receive the Phase 3 should rest on the agency. The agencies are less likely to circumvent the Phase 2 company if they have to explain and justify why, and less likely to use questionable reasons for such circumvention. And how can SBA be expected to decide and file an appeal to the agency's funding agreement with a non-STTR company within a mere 5 business days? This comes across as though SBA does not plan to appeal any decisions by agencies that give Phase 3 to someone other than the Phase 2 recipient company.

Section 6(a). If agency doesn't meet SBIR statutory percentages to VCOCs/HFs/PEFs, then it can make STTR awards to VCOCs/HFs/PEFs

There is NO BASIS in the Legislation for this portion of the SBIR and STTR policy directives. The Legislation says NOTHING about opening the STTR program to the VCOCs/HFs/PEFs. And the weak excuse offered in the SBA "size determination" directive that the STTR program needs to be sacrificed like the SBIR program to the VCOCs/HFs/PEFs, which was to allow "simplicity" in Phase 1 SBIRs transitioning to Phase 2 STTRs and vice versa, is not supported by this section of the policy directive: for example, if an agency allotted all of its allowed percentage of SBIR funding to VCOCs/HFs/PEFs, then they would have no STTR money that could be allotted to these new entrants to the programs. Recommendation: With no Legislative guidance from Congress that STTR should be included in the VCOC/HF/PEF give away, the SBA should not take this initiative and particularly not in the half-baked way proposed in this section of the STTR policy directive.

Section 6(a). Measuring % of R&D performed by subs

The language does not reflect the good work by Dept of Energy to find a more intelligent measure of R&D. At a minimum, you should not preclude DOE doing a better job of measuring the fraction of the project that is R&D and therefore should be used as a basis for how much (dollar value) can be subcontracted.

Section 6(a). PI must perform at least 51% of work with small firm, based on 40 hour work week.

The problem with this proposed guidance is the "based on 40 hour work week" provision. If SBA is going to use this, they need to define what they mean. For example, does that mean that 51% is a PI spending at least 20.4 hours with the small firm, regardless of how many hours they work elsewhere? That will allow (and has in the past) a person to have a full time job elsewhere, then put in another 20.4 hours at the SBIR company, and qualify as a PI. I don't think this is what is intended by the PI being "primarily employed" by the SBIR company during the project. Recommendation: make it "over 50% of all hours worked by the person, either in the small business or elsewhere, and precludes full time employment elsewhere." Then the situation above would be avoided.

Section 6(b). Agencies may request similar certifications prior to award, such as at the time of submission of the application.

Requiring certification at time of submission is a bad idea, and contrary to the STTR program's ability to encourage development and commercialization of innovations. It will basically preclude any new firms that would use STTR to initiate their operations. We frequently advise newcomers, who would not start a business unless they can get STTR funding to jump start their innovation efforts, to not form a business until they have to—as SBA should know very well, there are many hurdles and costs associated with starting a small business, and most small businesses fail (in part because they are undercapitalized).

Why, then, would SBA force newcomers to form small businesses just to submit an STTR application, when they only have a 1 in 5 (or worse) chance of getting an award? SBA watered down this controversial certification language to just read that agencies "may" request additional certifications—that is not enough. SBA needs to stand up for small businesses, including start-ups, by stating in the policy directive that no certification prior to award is permitted. Or, alternatively, SBA should only allow certifications at the time of submission if that certification states the applicant understands he/she must meet the eligibility requirements by the time of award, and state what those requirements are.

Section 8. Additional certifications to prevent fraud, waste and abuse.

SBA asks for comments on whether additional certifications will prevent fraud, waste and abuse in the STTR program. The answer is NO, additional certifications will not. What will prevent fraud, waste and abuse is SBA and the agencies spending more resources (such as part of the 3% administrative tax given to the agencies, at the price of reducing the money for SBIR awards) on helping STTR applicants understand and comply with the myriad of rules and regulations surrounding an STTR proposal and award. The Reauthorization is bad enough, in terms of discouraging small innovative firms from competing in the STTR program for fear of being accused of fraud, waste and abuse, and it is completely inappropriate for SBA, as an advocate for small business, to trying to come up with a slew of sticks and hammers to be used to beat up small businesses for not knowing all the rules and regulations. As an advocate of small business, the SBA should be emphasizing education and assistance to small firms to make sure they do not commit fraud, waste and abuse in their STTR endeavors. SBA is requiring, in Section 9(f) of the SBIR PD, that agencies get annual approval of how they will spend their 3% admin tax, and therefore SBA could require a thoughtful and comprehensive educational effort as part of this approval.

Section 9(e). Use of all Federal Labs in SBIR.

At the SBA webinar briefing interested parties on the policy directive, SBA promised to get clarification that the SBIR (and STTR) program will now permit subcontracts to all Federal Laboratories, not just FFRDCs. This clarification should be included in this section of the policy directive, and the corresponding section of the SBIR PD.

Section 9(f). Website inclusion of successful prosecutions for fraud, waste and abuse in the STTR program.

What is the purpose of this requirement? It smacks of tabloid journalism, and ranks right down there with including the "police blotter" in the local newspaper. There is no value in smearing the names of STTR companies across the FWA websites of the agencies. This is particularly true since SBA is opening the door for FWA charges to be levied against newcomers and novice STTR companies that don't know the reams of rules and regulations and make an honest mistake—why should they be slandered in the FWA witch hunt? And again, how does SBA, as the advocate for small business, conclude that this does anything to help champion and celebrate small business. This is an ill-conceived and inappropriate idea, and needs to be eliminated. Here's an idea of what you could do instead: include examples of cases where the SBA and/or the agencies helped STTR companies avoid common FWA mistakes. That would show you are not out to get small businesses, but are helping them become better government contract and grant recipients.

Section 9(f). Using commercial software for redundancy in proposals

How incredibly naïve of that agency to think the re-use of words, phrases, or terminology means that these are duplicate proposals! If my firm works in "artificial intelligence," I will use that term quite often—but apparently your software will determine I am double dipping if I use it frequently in two different proposals. If the agencies cannot do a more thoughtful and intelligent process of sniffing out duplication, then they should not bother.

Section 9(f). SBA welcomes other comments on ways agencies may reduce fraud, waste and abuse.

Three ways: education, education, education. This whole section of the STTR PD smacks of a heavy handed witch hunt to seek out every small business that doesn't know the rules and regulations and punish them as severely as possible. STTR firms are not a bunch of crooks, so don't treat them like they are. Those who are crooks should be found out, prosecuted, and punished. The others need to know the rules and regs. The agencies and SBA do an incredibly BAD job of educating STTR applicants and recipients. As an example, there are dozens of references by SBIR/STTR agencies to the DCAA "Information for Contractors" guide, which is not very good, not specific to SBIR/STTR, and not very relevant to grant agencies like NIH. So why do the agencies reference it so often? Because there's nothing else out there. Take the 3% admin tax, take the push for FWA, take SBA's responsibility for being an advocate for small business, and start developing training and materials that will help innocent small firms avoid being guilty of FWA.

Section 10. Reduce data collection burden by entering data once.

SBA proposes to develop a mind-boggling 7 data bases to collect and track information on SBIR/STTR. The agencies can use their 3% admin tax to pay for their role in this massive data undertaking. But what about small firms applying for and receiving STTR awards? Our advice to them will be to start increasing their indirect rates that they charge on STTR projects to cover these costs. Therefore, SBA's massive data base undertaking will result in more expensive STTR projects, with less R&D work being done and more money spent on paperwork and administration. SBA's claim that the burden on small business is minimal because they will only have to enter data once and it will be shared across databases ignores that even entering a bunch of new data and information ONCE is an additional burden that should not be minimized. I recommend SBA return to their plan to create this massive mess of data bases and try to eliminate half of them as being unnecessary or more of a burden on small businesses and the agencies than they are worth. Remember the repeated requirement of the Legislation: focus on simplicity.

Section 10. Data collected.

I recommend SBA include indication of whether an STTR firm (applicant or awardee) is a women or minority owned firm. Given the Reauthorization's emphasis on these demographics, it would be valuable to be able to readily identify such firms for agency and FAST recipients' outreach efforts.

Section 10(d). Access of applicant database to authorized govt officials only

This proposed database is said to be only viewable to authorized government officials and not shared publicly. But this is inconsistent with current practice of making this information available to local and state economic development groups that are trying to provide resources to unsuccessful STTR applicants. This latter practice is very important, especially given the Legislation's emphasis on WOSB and SDB participation, and should be clarified in this part of the PD.

Section 10(g). Commercialization database.

Do not reinvent the wheel. Adopt the successful DOD Commercialization Achievement Index, modified as appropriate for different agencies and their commercialization norms and expectations.

Section 12. Proof of Concept Partnership Pilot Program

We have no issues with creation of this program, since it is called for in the Legislation. However, we note that the faculty members benefitting from this funding apparently do not have to meet the "eligibility at application" certifications that can be imposed, at each agency's discretion, under Section 8. Why are faculty contemplating starting businesses treated one way under this pilot program, but treated differently (and more harshly) under the rest of the STTR program? This is completely contradictory to the Reauthorization requirement of "simplicity and standaridization, that SBA embraces repeatedly elsewhere in the SBIR and STTR PDs.

Appendix 1. inclusion of clause releasing information about unsuccessful applicants.

We applaud requiring such a clause in all proposal cover sheets so that unsuccessful applicants can get linked with resources to make them more competitive on future SBIR/STTR proposals.

Section 7(c). NIH & NSF will have 15 months to get awards in place.

The Legislation makes a ridiculous allowance of 12 months for these two agencies to make funding decisions. That is bad enough, but SBA proposes to make it that much worse by giving these agencies another 3 months to get the awards in place. This is completely contrary to SBA writing "if an agency takes a long time to make an award, it may be difficult for the small business to retain its key personnel." The best solution, I believe, is to give NIH and NSF only 30 days to put the funding agreement in place. They likely cannot do this, so they will have to make funding decisions in less than 12 months to give themselves more time to do the agreements. This not only reduces the ridiculous 12 month funding decision time period, but reduces the overall time period from proposal due date to award to 13 months, rather than the 15 months SBA is proposing.

Section 7(e). Controlling position of the SBC

This sounds good, but does not reflect reality. A small firm can try to control a huge university/Federal lab, but there are many reasons why the largess may dominate. SBA, if any agency, should be sensitive to this, and this language should be modified accordingly. Otherwise, this comes across as a clause that SBA and the agencies will use against the SBC when it comes to the Fraud, Waste and Abuse witch hunt that permeates the Legislation and the SBIR and STTR PDs.

Section 7(g). Provide cost principles at time of award

This timing does not make sense. Under FWA, SBA is expecting the small firms to know Federal cost principles in preparing and negotiating a contract or grant, but this says the agency does not have to tell the SBC about the reams of rules and regs until they have signed the agreement. SBA should be leading the parade in terms of getting small firms education and help understanding and complying with all of the myriad of rules surrounding SBIR/STTR, but instead you are perpetuating a culture of "keep the

small firms in the dark and then beat them up when they don't know the rules." I recommend SBA change its philosophy in this regard, and refocus on educating and informing small firms in advance of them preparing their proposals.

Section 7. Allowing a fee/profit

Page 25 erroneously suggests that fee/profit might not be allowed by an agency. If you refer to previous reauthorization legislation, you will see that Congress clearly specifies that all agencies MUST allow fee/profit. This subsection needs to be corrected. Also, the language about allowing fee/profit consistent with "normal profit margins provided to profit-making firms for R/R&D work" does not track with agencies' imposed limits of 7% on most SBIR/STTR work, whereas the FAR itself says 15% is allowable on R&D under cost plus fixed fee awards. I recommend SBA encourage awarding higher than the traditional 7% fee/profit on SBIR/STTR awards.

Section 9(c). Using vendor of choice for technical assistance.

This section does not explain how STTR applicants can request the $5k for hiring their own vendor for this service. In the theme of simplicity and standardization, should SBA not state how all the agencies should do this? And does it mean that $5k can be added to the SBIR cost proposal in addition to the maximum dollar amount allowed by the agency?

Section 9(g). Duplicative proposals.

There is a common misunderstanding among STTR applicants and agency reviewers that duplicate proposals are not allowed. This is not correct—the problem comes when a company accepts multiple awards for duplicate work. SBA adds to the confusion and misunderstanding in this policy directive, with the summary of Section 9(g) on page 26 of the STTR PD referring to "redundancy…in the applications submitted." We recommend that you make a clear statement in this section of the PD that there is NOTHING WRONG WITH SUBMITTING ESSENTIALLY IDENTICAL PROPOSALS, but the wrongdoing is in accepting multiple awards for one set of research.

Section 9(f). compliance with cost principles or it is FWA

This is completely unreasonable. Not only do many small and start up firms submitting SBIR proposals not know the reams and reams of federal procurement regulations and cost principles, but there are many gray areas where government contractors/grant recipients disagree with Federal contracting officers and grants administrators. Heck, there are documented cases where Federal auditors don't agree with what a previous Federal auditor told the STTR applicant to do. And if you want to talk about waste in the STTR program, then consider the many agency reviewers who do not know or understand these cost principles, but allow their ignorance to influence their scoring of applicants' proposals. Simply put, the cost principles are very complicated, subject to negotiation, and misunderstood both within and outside of the Federal government. DO NOT use this as a blanket excuse for filing FWA charges against an STTR company. I recommend you amend this subsection to refer to "intentional non-compliance" or similar language so you can go after legitimate abuses of the cost principles.

Appendix 1. Proposal solicitation certifications

The certification on page 44 is ridiculous! You are requiring, in paragraph 2, every piece of documentation that has ever existed to be “evidence” of the firm meeting the ownership and control requirements. What SANE individual would sign such a ridiculously broad statement? And paragraph 9 require a portion of the work being described “in detail in the proposal”—there is no need for this to be described in the proposal, and likely would not be included because the small firm would not know of another award at the time they are submitting this proposal. And in paragraph 11, why is a “waiver” being required? You’ve not required one elsewhere in these certifications. Paragraph 12 precludes modern practice of employees working at home rather than “at my facilities.” Paragraph 13 omits the important “multiple” in describing VCs. What does “immediately” mean in Paragraph 14 when indicating when notification is required?