

Five Things You Need to Know About the Terms of Your SBIR Award

The Small Business Innovation Research (SBIR) program provides eligible small businesses the opportunity to access billions of dollars in U.S. Government research and development funding. Through SBIR and its sister program, Small Business Technology Transfer (STTR), the U.S. Government incentivizes U.S. small businesses to create and profit from innovative technology that has the potential for commercial success in the private sector.

SBIR is a highly competitive program with 11 participating agencies. Receiving an SBIR award is a significant accomplishment. But it's only half the battle. For an SBIR awardee to perform successfully and position itself for more lucrative Phase II and/or Phase III awards, it must execute in full compliance with the terms of the award. Below we identify five key areas SBIR awardees should keep in mind to ensure successful performance in compliance with the terms and conditions of their awards.

1. Know the Terms That Apply

The terms and conditions of SBIR awards vary by agency and award type. About half of SBIR awards are provided to small businesses in the form of contracts; the other half are provided as grants. All SBIR contracts are subject to the Federal Acquisition Regulation (FAR). The applicable clauses will be listed in the SBIR award. See, e.g., [Department of Defense Model SBIR Contracts](#). Conversely, many agencies have their own special terms and conditions that apply to their SBIR grants. Some of these terms can be found in the SBIR grant agreement itself; others are included in separate documents detailing the agency's general terms and conditions for SBIR grants, and are incorporated by reference into the grant. See, e.g., [National Science Foundation SBIR Grant General Conditions](#).

2. Budget, Costs and Time

SBIR awardees must understand how they will charge the agency for work performed under the award and what records they must keep substantiating those charges. Fixed-price SBIR contracts are relatively straightforward; the contract will dictate how much (and when) the contractor can charge the agency. Typically, payments under a fixed-priced SBIR award are linked to specific deliverables.

SBIR grants and cost-reimbursement contracts are more cumbersome to administer. SBIR grants often include a budget. Although grantees are allowed a certain degree of latitude to re-budget within and between budget categories, agency approval may be required before a recipient makes certain budget modifications or undertakes particular activities. In addition, because under a grant or cost-reimbursement contract the agency will be paying the awardee's documented costs, the awardee must have an accounting system capable of tracking all costs and distinguishing costs on one project from those of another. The complexity of the accounting system will depend on the award type and value. Agencies often require SBIR awardees to undergo a pre-award "survey," or audit, to evaluate the suitability of the awardee's accounting system.

Keeping accurate records of employee time is critical. Labor costs often comprise the majority of costs charged to an SBIR award. SBIR awardees must keep accurate timesheets detailing the activities performed by their employees on the award so they can substantiate their labor charges.



3. Self-Performance Requirements & Key Personnel

SBIR awardees are required to self-perform certain portions of the work. Under Phase I SBIR awards, the awardee must self-perform at least 2/3 of the work with its own personnel. Under Phase II SBIR awards, the awardee must self-perform at least 1/2 of the work.

In addition, SBIR awardees must ensure that certain key employees work on the award or approval is provided to substitute a new employee. The principal investigator on an SBIR award must be primarily employed with the awardee at the time of award and for the duration of the project, unless a waiver is granted. Similarly, SBIR awardees typically must obtain approval from the agency to change employees designated as key personnel.

4. Intellectual Property

One of the most critical aspects of an SBIR award that awardees must understand is their rights in intellectual property. Consistent with the overarching goals of the SBIR program, the intellectual property rules are designed to encourage SBIR awardees to develop new intellectual property and commercialize it. SBIR awardees may elect to take title of any invention that they conceive or first actually reduce to practice under a federal contract or grant. In return, the SBIR awardee must report subject inventions to the agency and take certain steps to seek commercial opportunities. The SBIR awardee must also provide a license to the Government to practice the invention or have it practiced on behalf of the Government.

SBIR contracts also contain standard FAR clauses governing rights in data delivered to the agency under the contract. Agencies generally receive unlimited rights in data delivered under the contract unless the SBIR awardee asserts copyright or claims “SBIR rights” to the data. If the awardee asserts SBIR rights, for a period of four years the Government is permitted to use the data for Government purposes only and cannot disclose the data outside the Government without permission of the contractor. SBIR contractors must ensure that they properly mark data delivered to the Government to obtain the benefit of these rules.

5. Reporting Requirements

Virtually all SBIR awards require the awardee to submit various reports to the Government. SBIR reporting requirements may include technical reports, financial reports, progress reports and final reports at the end of an SBIR phase. As noted above, submission of one or more of these reports may trigger payment under the award. SBIR awardees should pay close attention to their reporting obligations and ensure that all information provided in the report is 100% accurate.

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SBIR awards are a great opportunity for organizations to leverage federal funding to advance their research and development goals. SBIR awardees should understand the key terms of their award to ensure successful—and fully compliant—performance of the award.



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