

▼ GOVERNMENT CONTRACTS SBIR SERIES

Graduation to SBIR Phase III

Now that you've proven your concept is feasible and successfully demonstrated your prototype, you are ready to graduate to SBIR Phase III. Phase III awards are where commercial applications of SBIR-funded research/ research & development are funded by non-federal sources of capital; or where products, services, or further research intended for use by the federal Government are funded by follow-on non-SBIR Federal Funding Agreements. Phase III work "derives from, extends, or completes an effort" made under prior SBIR Phase I and II funding agreements.

You are still eligible for a Phase III award even if you have outgrown your small business status. Also, if a SBIR awardee has been acquired, the acquiring entity is eligible to receive a Phase III award if it has been novated the relevant Phase I or II award(s) or is a successor-in-interest to the entity that performed the Phase I or II award(s).

One of the primary benefits of a SBIR Phase III award is that the federal agency or federal prime contractor making the Phase III award does not have to hold a competition. The competitions for the SBIR Phase I and Phase II awards satisfies any applicable competition requirements.

There is no limit on the number, duration, type, or dollar value of SBIR Phase III awards. Also, there is no limit on the time that may elapse between a Phase I or Phase II award and a Phase III award, or between a Phase III award and any subsequent Phase III award.

Obtaining a SBIR Phase III award often depends on the relationships you have built with government contracting officers and program managers, some of whom may not be familiar with SBIR Phase III awards. The SBA's SBIR and STTR Policy Directive provides that federal agencies and federal 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."

Unfortunately, the boundaries of the preference are not well-defined and, at present, there is little case law interpreting the preference. Although the SBIR statute authorizes agencies and prime contractors to issue Phase III awards using noncompetitive procedures, the U.S. Government Accountability Office (GAO) and the Court of Federal Claims (COFC) have both found that Section 638(r) does not confer a right to receive a Phase III sole-source award. At least one GAO case has explored the possibility that Section 638(r) confers a right on a potential Phase III recipient to receive a contracting preference in a full and open competition. But, the decision was inconclusive and the preference undefined because in that case GAO determined that the requirement did not "derive from, extend, or complete" a SBIR effort.

Given this uncertainty, it is important to market your SBIR technology and interest in performing a Phase III award to potential government and prime contract customers. But, if the Government proceeds with a competition for a product or service that is an extension of your prior SBIR-funded effort, then a protest may be an effective way to ensure your earlier work is appropriately recognized and credited in the evaluation.

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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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