

ALERT

New SBIR/STTR Policy Enhances Phase III Sole Source Preference Requirements

April 25, 2019

WHAT: The U.S. Small Business Administration (SBA) has issued an updated final policy directive for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. Among the major revisions are expanded requirements to enforce the Phase III contracting preference.

WHEN: The final policy directive was issued April 2, 2019 and is effective May 2, 2019.

WHAT DOES IT MEAN FOR INDUSTRY: As discussed in our Government Contracts SBIR Series, the implementing statutes and regulations require that “[t]o the greatest extent practicable, Federal agencies and Federal prime contractors shall issue Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.” This Phase III preference was not well defined under the prior policy directive, and thus difficult for Phase I and Phase II awardees, or the SBA on their behalf, to challenge agency failures to provide the preference. Under the new directive, SBIR/STTR awarding agencies will now be required to first consider and document whether a requirement involves Phase III work, and if so, whether a Phase III sole source is practicable. If, and only if, a sole source is not practical, the agency must then further consider and document other ways to give Phase I or Phase II awardees preference. Agencies will be required to notify SBA of any intent not to issue a Phase III award, so that SBA may file a notice of intent to appeal the decision with the head of the contracting agency. The consideration and documentation requirements may also enable SBIR/STTR awardees to file protests challenging an agency’s failure to consider and document its Phase III determinations.

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Practice Areas

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